



PUBLIC DEFENDER  
(OMBUDSMAN) OF GEORGIA

# NATIONAL PREVENTIVE MECHANISM

2015



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

## 1.1. PREVENTIVE VISITS

In 2015, Special Preventive Group of the Office of the Public Defender of Georgia, in order to inspect state of human rights protection, conducted 54 visits in 15 penitentiary institutions throughout the country and met with 3 300 inmates; 7 visits in the boarding schools unders religious denominations and met with 200 children; 10 visits in the small family-type children's houses and met with 69 children; 7 visits in the specialized residential institutions for elderly persons and met with 150 beneficiaries; 1 visit in the temporary accommodation center of the Migration Department under the Ministry of Interior and met with 18 persons. 2 monitoring were carried out to observe the return process of the Georgian migrants deported from the European countries back to Georgia. National Preventive Mechanism (hereinafter also NPM) also participated in monitoring of state of rights of asylum seekers, refugees and persons having humanitarian status. Moreover, monitoring had been conducted in 32 temporary detention isolators and 59 police stations with total 54 detainees visited. 1 visit was conducted in the place of restriction of liberty and 25 prisoners were met. 1 visit was conducted in the military unit and 35 soldiers were met. As a result of 2 visits in two hauptwachts 1 military serviceman was met. During 12 visits in the mental health institutions totally 661 patients were met.

Throughout the monitoring, representatives of the Public Defender inspected physical environment of closed-type establishments as well as state of rights of inmates living thereto with a particular emphasis on their treatment.

## 1.2. COMMUNICATION WITH STAKEHOLDERS

In compliance with its mandate the NPM gives due consideration to the need for maintaining good communication with stakeholders. Notably, it is impossible to carry out inspection, draft recommendations and consequently advocate for and follow up the implementation of recommendations without engaging in the dialogue with civil society, international organizations, relevant governmental authorities and other stakeholders. In this regard, various important activities had been carried out in 2015.

### 1.2.1. DIALOGUE WITH GOVERNMENT AUTHORITIES

During the reporting period, the NPM maintained active communication and engaged in dialogue with government authorities. Meetings were held both individually and

within various working groups. To illustrate the process of dialogue several formats of meeting can be outlined:

- On April 24, 2015, at the Administration of the Georgian Government, Public Defender of Georgia Ucha Nanuashvili met with Prime Minister of Georgia Irakli Garibashvili. At the working meeting, the Public Defender provided the Head of the Government with information on developments in the country with regards to human rights and freedoms.
- The NPM had several meetings with the Minister of correction and probation, his deputies and representatives of the penitentiary department on the issue of granting the photo recording right to the Special Preventive Group. As a consequence of active work and meetings, as per the amendments to the “Imprisonment Code” adopted in 2015 and due to enter into force from 1 September, 2016, members of the Special Preventive Group will be allowed to take photos in the penitentiary institutions.
- Throughout the reporting period several meetings were held with the Minister of Corrections and other representatives of the Ministry on particular problems existing in the penitentiary system and on activities carried out for the purpose to fulfill certain recommendations of the Public Defender.
- The NPM was actively involved in the activities within the working group of the Interagency Council against Torture and Ill-treatment.
- Meeting was held with the Chief Prosecutor of Georgia, where problematic issues related to the combating torture and ill-treatment were discussed.
- On August 3, 2015, Minister of Corrections and Probation Kakha Kakhishvili paid a visit to the Public Defender of Georgia. The meeting was attended by Deputy Public Defenders Paata Beltadze and Natia Katsitadze as well. Problems and ongoing reforms in penitentiary system and other important issues were discussed at the meeting.

#### 1.2.2. DIALOGUE WITH DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANIZATIONS

In 2015, the NPM had active communication with diplomatic missions and international organizations in Georgia as well as abroad. The Public Defender and representatives of the NPM were participating in different forums and meetings held under the aegis of international organizations. The following events need to be outlined:



- On April 6, 2015 the Public Defender of Georgia submitted written observations for the 23<sup>rd</sup> Session of the UN Human Rights Council's working group on Universal Periodic Review (UPR). Written observations were related to the state of implementation of recommendations issued to Georgia within the first cycle of UPR, including recommendations related to the activities of NPM.
- Meeting in Geneva with the representatives of the UN Subcommittee on Prevention of Torture (SPT), where newly established NPM Advisory Council and renewed composition of the Special Preventive Group was discussed. During the meeting SPT members were provided with the information on existing conditions in the closed type establishments and in this regard importance of special reports, reflecting the results of planned and ad hoc visits in the penitentiary institutions, was particularly underlined.
- On March 13, 2015, UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment paid visit to the Office of the Public Defender of Georgia.
- Throughout the reporting period, the Public Defender held regular meetings with the international organizations and diplomatic corps accredited in Georgia and discussed, inter alia, issues related to the existing situation in the closed type institutions.
- On November 23-24, 2015, Public Defender of Georgia Ucha Nanuashvili held meetings at the Council of Europe with the Secretary General Thorbjorn Jagland, human rights commissioner Nils Muiznieks, head of directorate of human rights Christos Giakoumpoulos, executive director of the European Committee for the Prevention of Torture (CPT) Jeroen Schokkenbroek, head of directorate of political affairs Alexander Geless and other representatives of the CoE.
- Head of the Prevention and Monitoring Department had a regular meetings and communication with representatives of diplomatic corps and international organizations, including representatives of the US Embassy, Delegation of the EU and other diplomats.

### 1.2.3. PUBLIC RELATIONS

The provision of information concerning the human rights situation at the places of deprivation of liberty to the public remains one of the priorities set by the NPM. This objective is achieved through the publication of after-visit, special and annual reports, organizing various events, meetings and via media.

- On January 30, 2015, the Public Defender of Georgia held public debates on the issue “ill-treatment in the penitentiary establishments – how adequate is the state response?”
- On June 26, the NPM presented its annual report.
- During 2015, the NPM released four special reports related to the (1) state of rights of the persons with disabilities in the penitentiary establishments and non-voluntary and forcible mental health institutions; (2) state of rights of elderly persons in the daily specialized institutions; (3) state of children’s rights in the boarding schools under the Orthodox Church of Georgia and Muslim Denomination and (4) special report on request/complaint mechanism in the penitentiary system of Georgia. Notably, study on request/complaint mechanism was carried out for the first time and was widely acknowledged by various stakeholders.
- In 2015, the NPM prepared, published and submitted six after-visit reports describing situation in the penitentiary establishments. These reports are accessible via official web-site of the Public Defender.
- During the reporting period, in order to better inform society, the NPM kicked off release of the quarterly bulletins, which briefly describe activities carried out by the NPM, information on the penitentiary establishments, dynamics of implementation of NPM recommendations, legislative review, information on international events, experts’ opinion, agenda of the upcoming events and etc. In 2015, totally three such bulletins had been published.
- On December 4, 2015, the Public Defender held public debates on the issue “re-sponse to the facts of ill-treatment in police: visions of state and society”. Among others, Head of Prevention and Monitoring Department Nika Kvaratskhelia also delivered a speech on existing situation in the institutions under the Ministry of Interior.

The NPM regularly disseminated public statements concerning outcomes of the visits to the places of deprivation of liberty. In addition, members of the NPM participated in different TV and radio programs and gave interviews to the printed and internet media outlets.

#### 1.2.4. PARTICIPATION IN INTERNATIONAL EVENTS

Representatives of the NPM participated in several international events, among them, the head of the Prevention and Monitoring Department took part in the CPT Conference

“Taking Stock and Moving Forward” held on March 2, 2015.<sup>1</sup> On June 2-5, 2015, the head of Prevention and Monitoring Department attended symposium in Geneva organized by the Association for the Prevention of Torture (APT), dedicated to the protection of rights of LGBT inmates.<sup>2</sup> During this visit, He was recorded in the short video footage dedicated to the international day for the support of victims of torture, which airs representatives of NPMs from five different countries (Norway, Senegal, Kyrgyzstan, Georgia and Paraguay) discussing the idea of torture free world.<sup>3</sup>

Representatives of the NPM participated in the working meeting and training for the NPMs, held in Riga during July 16-19, 2015. The training was intended for the NPMs integrated into the system of Public Defender as an institution. The three days long training was carried out under the support of the Latvian Ombudsman. Totally 31 representatives of public defender’s offices from the various countries took part in the meeting, including 22 heads of respective NPMs. The training was delivered by the experienced experts from the APT.

On November 10, 2015, Deputy Public Defender of Georgia and the head of Prevention and Monitoring Department attended 23<sup>rd</sup> session of the UN Human Rights Council’s UPR (second cycle) held in Geneva. The Session reviewed report on Georgia describing existing state of human rights in the country.

#### 1.2.5. RELATIONS WITH NGOs AND DONOR ORGANIZATIONS

In 2015, the NPM actively cooperated with different local and international NGOs and donors, among them the NPM was in cooperation with NGO “Human Rights Center”. Staff of this NGO together with the members of the Special Preventive Group carried out visits in the No.5 (women) and No.11 (juveniles) penitentiary establishments.

Throughout the reporting period, the NPM had an active communication with the South Caucasus regional office of “Prison Reform International” (PRI). A number of meetings were held on the issue of protection of human rights in the places of deprivation/restriction of liberty.

Representatives of the NPM held meetings in Geneva with NGOs - “APT” and “UPR Info”, where important aspects of activities of Georgia’s Ombudsman were discussed.

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1 Detailed information on the conference is available at <<http://www.cpt.coe.int/en/conferences/cpt25.htm>> [last accessed 09.06.2016].

2 Detailed information on the symposium is available at <<http://www.apr.ch/en/resources/addressing-situations-of-vulnerability-of-lgbt-persons-in-detention-jean-jacques-gautier-npm-symposium-2015-outcome-report/>> [last accessed 09.06.2016].

3 Video is available at <<https://www.youtube.com/watch?v=GeLfwW1hMKw>> [last accessed 09.06.2016].

Throughout the reporting period, the NPM has been in active cooperation with the EU within the framework of the project “Support of the Public Defender’s Office II”. Through this project, the EU has been providing important financial and analytical support to the NPM for already several years. This support is manifested in planning and financing of various training, capacity building and monitoring activities.

Moreover, several training activities and study visits have been carried out under the framework of the Council of Europe Project “Human Rights in Prisons and Other Closed Institutions.”

NPM was actively involved in the project of the UN Association in Georgia (UNAG), which envisaged exchange of information and conducting joint monitoring in penitentiary institutions to study the state of rights of asylum seekers, refugees and persons having humanitarian status.

#### 1.2.6. COMMUNICATION WITH FOREIGN COLLEAGUES

The NPM paid a particular attention to the communication and experience sharing with colleagues. Throughout the reporting period, representatives of the Ombudsman met with the SPT representative and furnished him with the information related to the activities of the Prevention and Monitoring Department and its future plans. Subcommittee positively assessed Department’s activities and colleagues agreed that Georgian NPM would share its experience to the NPMs of other countries.

The Public Defender of Georgia and the NPM also pays particular attention to the cooperation and experience sharing with NPMs of different countries. In 2015, study visit of the NPM was carried out in Serbia; also, the NPM of Georgia hosted colleagues from Czech NPM on October 19-20, 2015.

### 1.3. WORKING METHODOLOGY AND TRAINING OF THE NMP STAFF

#### 1.3.1. ADVISORY COUNCIL

During 2015, NPM’s Advisory Council<sup>4</sup> held three meetings. Members of the Council were provided with the information on past and future activities of the NPM; they expressed own opinions and recommendations for better functioning of NPM.

4 Members of the NPM Advisory Council are: Givi Mikanadze, Tsira Tchanturia, Tamar Gvaramadze, Jago Katchkatchishvili, Nino Makhashvili and Ana Arganashvili. Detailed information on the Council is available at <<http://www.ombudsman.ge/en/prevenciis-erovnuli-meqanizmi/prevenciis-erovnuli-meqanizmis-sakonsultacio-sabcho/about-advisory-council-of-the-national-preventive-mechanism.page>> [last accessed 09.06.2016].

### 1.3.2. WORKING METHODOLOGY

The NPM worked extensively for reviewing and updating working methodology. To that end, several meetings and events were held, new monitoring instruments were prepared and members of the Special Preventive Group were trained.

On January 25, meeting was held in Gudauri, where newly elected members of the Special Preventive Group were provided with the information on terms and conditions, also on challenges and possible solutions.

On May 10-11, working meeting for drafting guidelines for monitoring mental health institutions was held in Batumi. Representative of the Council of Europe office in Georgia, staffers from the Ombudsman's Office and members of the Special Preventive Group took part in this meeting.

On July 9-10, working meeting was held in the Ombudsman's office with the participation of representatives of the Special Preventive Group, Gender Equality and other departments. The meeting aimed at enhancement of monitoring instruments for the women's penitentiary establishment.

Throughout the reporting period, the Statute of the Special Preventive Group was drafted. Also, manual on monitoring penitentiary establishments has been updated, namely instruction on studying ill-treatment, access to medical care and suicide prevention has been added to the existing monitoring instrument. Guidelines for monitoring mental health institutions were also prepared during the reporting period.

Moreover, for the drafting of report on request/complaint in the penitentiary system, specific research methodology was adopted, which was intended for analysis of normative base and domestic practice in light of international standards applicable for the procedures of complaints/requests submission.

### 1.3.3. STAFF TRAINING

On May 15, 2015 training on the state of rights of asylum seekers and refugees in the places of deprivation of liberty and on Georgian borders was held for the staff of the Ombudsman's Office in the UN Association - Georgia. The training was conducted under the UN High Commissioner of Refugees (UNHCR). Participants discussed UNHCR guidelines for the monitoring of state of rights of asylum seekers and refugees in the places of deprivation of liberty. Staffers from the Prevention and Monitoring Department shared their experience regarding monitoring of joint return operation of migrants, which was carried out for the first time in 2014.

On July 21-24, 2015, staffers from the Ombudsman's Office had a study visit to the Serbian Ombudsman. The visit was organized by the Democratic Control of Armed Forces (DCAF) and Office of the Public Defender of the Republic of Serbia. The objective of the visit was to share experience of the Serbian Ombudsman's Office in the field of military issues, monitoring of security sector and specifics in the work of NPM.

On November 2-6, staffers from the Ombudsman's Office had a study visit in Strasbourg and got aware of the activities and functions of different bodies of the Council of Europe.

During November 30 – December 3, 2015, the DCAF conducted training for the staffers of the Ombudsman's Office on the monitoring of security sector.

## 2. SITUATION IN PENITENTIARY ESTABLISHMENTS

### 2.1. GENERAL OVERVIEW

The effective fight against impunity is essential for preventing torture and ill-treatment. The state is obliged to adequately react to the allegations of torture and ill-treatment. Notwithstanding the initiation of investigations into alleged facts of ill-treatment of prisoners at penitentiary establishments, not a single employee of these establishments was convicted for ill-treatment in 2015. Consequently, the position of the Public Defender as regards the necessity of creating an independent investigative mechanism to conduct effective investigation into allegations of torture, inhuman and degrading treatment remains unchanged.

In order for the definition of torture under the UN Convention against Torture be adequately internalized in national criminal legislation, Article 144<sup>1</sup> of the Criminal Code of Georgia should be amended to specify that torture may be committed with acquiescence of a public official or other person acting in an official capacity.

The eradication of the effects of torture and other forms of ill-treatment, protection and rehabilitation of victims is one of the main elements of the fight against torture. The Public Defender expresses regret over the absence of any kind of state program securing rehabilitation of victims of torture in the penitentiary system. Criminal sub-culture existing in these institutions creates a serious threat of ill-treatment and often leads to violence and oppression. The failure to document ill-treatment in penitentiary establishments in a timely and methodical manner and absence of the legal obligation imposed upon doctors to report directly to investigative authorities are subject of concern. Presence of representatives of the prison administration at the meeting of the prisoner and the doctor violates medical confidentiality.

Prison administrations are obliged to secure order and safety. The Special Preventive Group found their security and supervision practices problematic. There is a tendency of isolating prisoners for long periods of time, including in de-escalation and safe rooms, without sufficient grounds. Besides, in some establishments, the use of special means, such as handcuffs is frequent and appears to be routinely applied.

There are other challenges, such as those related to the practice of exercising surveillance and control through visual and/or electronic means in penitentiary establishments; compatibility of the Rules about Storing, the compliance of Deleting and Destroying Recordings with international standards of human rights; As well as the practice according to which orders authorizing electronic surveillance contain little information and are of a formal nature.

It is worth noting that notwithstanding the entitlement recognized in the Organic Law concerning the Public Defender, the representatives of the Public Defender do not have a possibility to examine recordings of visual and/or electronic surveillance. Besides, the Imprisonment Code and the Regulations about Storing, Deleting and Destroying Recordings allow visual observation by the administration of the penitentiary establishment of meetings of the representatives of the Public Defender with prisoners, through video recording without sound. The Public Defender demands changing this provision in relation to the members of the Special Preventive Group/the Public Defender, because it contradicts Article 19 (3) of the Organic Law concerning the Public Defender. According to the mentioned provision, meetings of the Public Defender/members of the Special Preventive Group with detainees, prisoners or persons otherwise deprived of liberty are confidential. Any kind of eavesdropping or surveillance is impermissible.

The Public Defender is concerned that his concerns/recommendations regarding the use of special means were not taken into account in the Imprisonment Code.

The Public Defender welcomes measures taken to increase accountability of employees of the penitentiary system. However, absence of the system for evaluating performance of functions by prison administrations and adequacy of working conditions for the staff of these establishments remain problematic. On the positive side, some steps have been made towards educating the staff. However, qualifications and experience of the staff of penitentiary establishments are still far from satisfactory.

The Public Defender considers introducing the system for assessing risks of convicted persons as a step forward. Notwithstanding this, he considers that it is necessary to introduce changes to eradicate existing flaws.

It is true that in comparison with previous years, environment and sanitary-hygienic conditions have improved in some penitentiary establishments. However, the existing conditions still call for considerable improvement to make them compliant with international standards. The state is obliged to eliminate the flaws in due time, notwithstanding the existing difficulties and create adequate conditions in prisons.

In the Parliamentary Report of 2014, the Public Defender recommended the Minister of Corrections to close the establishment №7, due to inadequacy of conditions. According to the response, the Ministry cannot fully close the establishment at this stage, but intends to significantly reduce number of prisoners and distribute them to other establishments, according to the risk levels. They also plan full rehabilitation of the establishment №7, closure of the first floor of the building and reduction of limit for allocating the accused/the convicted persons. It is worth noting that in February 2016, 19 convicted persons were already transferred from the establishment №7 to the establishment №6.



As regards the position of the Ministry, taking into account the state of infrastructure of the establishment and its initial function (it was built as an investigative isolator), it is difficult for the Public Defender to imagine how the establishment can be rehabilitated so that the infrastructure corresponds to the standards for the institutions for deprivation of liberty. Consequently, the Public Defender reiterates its recommendation about closing the establishment №7.

In most establishments, prisoners are not allocated standard living space of 4 square meters, as required by the Imprisonment Code of Georgia. There are problems with securing natural and artificial ventilation, sanitary-hygienic conditions and privacy in sanitary facilities. Prisoners do not have the infrastructure necessary for physical exercise in the yards in closed establishments.

It is worth noting that the infrastructure for long-term visits has been arranged at the establishment №5. The situation has not changed in this regard at the penitentiary establishments №7, 8 and 9. The Public Defender gives negative assessment to the fact that except for the establishment №8, none of the penitentiary establishments allocates a special room for meetings of the Public Defender/members of the Special Preventive Group with prisoners at any time, without visual surveillance through electronic means.

The Public Defender pointed out in a number of reports that conditions at penitentiary establishments should secure resocialization and reintegration of prisoners into the society. The Public Defender welcomes various measures taken at penitentiary establishments to secure resocialization of prisoners. Despite these steps, the problem of implementing rehabilitative activities at the establishments with special risk levels and at medical establishments with units for long-term care remains acute.

The Public Defender highlights increase in the use of the measures of encouragement, in comparison with the previous year. However, it is also worth noting that disciplinary sanctions are also increasingly applied. Georgian legislation does not specify which disciplinary sanctions may be imposed in specific cases. Consequently, prison administration enjoys broad discretion in selecting appropriate sanctions. This increases the risk of applying disciplinary sanctions disproportionately. In 2015, the instances of solitary confinement of prisoners with mental health problems cause concern. It is also worth noting that contacts with families are not allowed at the establishment №7 in connection with the application of sanctions.

Monitoring carried out in 2015 focused on the effectiveness of penitentiary healthcare and existing challenges. The Public Defender welcomes measures aimed at full re-organization of medical department, review of standards of penitentiary healthcare and increase in healthcare budget. Repairs were carried out in penitentiary establishments

№5 and 12 to improve medical infrastructure. The Unit for Regulating Medical Activity of the Medical Department of the Ministry of Corrections (responsible for checking food, sanitary-hygienic conditions and medical services in penitentiary establishments) made some progress. It is worth noting that in the reporting period, no substantial steps have been made in order to secure full integration of penitentiary healthcare with public healthcare. Informing prisoners about preventive healthcare remains a challenge in 2015.

The number of doctors and nurses was increased in 2015, albeit not sufficiently in some establishments. For example, the ratio of prisoners to medical staff (doctors and nurses) is high in the establishments №2, 14, 15 and 17. Regularity and frequency of inviting doctors, processing medical records and provision of dental care remain problematic in 2015. The question of accessibility of brand name medications also arises. Medical personnel mainly prescribe generic medications made available at the given establishment at the expense of the state, limiting the possibility of purchasing brand name medications by patients themselves.

As regards positive developments, emergency medical assistance has been added to the classification of medical interventions. However, it is important that this development is reinforced in a normative act as soon as possible. The timeliness of medical referrals is problematic. The independence and competence of doctors constitutes a significant challenge.

The Public Defender highlights the entry into force of the Georgian Law “Code of Juvenile Justice” in 2015. Informing juvenile prisoners about their rights and obligations in an understandable language remains a problem. It is also problematic that in 2015 juvenile prisoners were placed not only in the rehabilitative establishments for juveniles, but at the establishments №2 and №8. In addition, throughout the reporting period, it is possible to observe the expanding practice of transferring juvenile convicts to the establishments №2 and №8 temporarily, for security reasons. There is no environment appropriate for rehabilitation of juvenile prisoners in the mentioned establishments. Besides, juvenile prisoners are not isolated from adult prisoners. Accordingly, the Public Defender advises placement of all juvenile prisoners in the rehabilitative establishment for juveniles. Importantly, no disciplinary sanctions have been applied to juvenile convicts in 2015.

The general situation at the penitentiary establishment №5 is satisfactory. The Public Defender welcomes creation of necessary infrastructure for long-term visits at this establishment. However, he views the absence of full checkup at the time of admission of prisoners at the establishment an important problem. There is a positive trend of reduced use of solitary confinement as a disciplinary sanction, but there are more trans-

fers to the cell type accommodation. As regards healthcare, there is still a problem of receiving regular/planned medical service in a timely manner. There have been improvements in supplying hygiene items.

Separation of mothers and children after the child reaches the age of three remained a problem in 2015. These procedures are very painful for both children and mothers. The question of engaging mothers with children in various programs and activities remains problematic as well.

The Public Defender has pointed out in a number of reports that conditions in penitentiary establishments cannot secure adequate re-socialization of persons deprived of liberty indefinitely and their reintegration into the society. In penitentiary establishments in which persons deprived of liberty indefinitely are placed no diverse and regular rehabilitative activities are carried out. The infrastructure necessary for long-term visits is not available in some penitentiary establishments.

It is worth noting that in some establishments, practice of placing the convicts and the accused together remains problematic in some establishments. Importantly, allocation of the living space of at least 4 square meters for the accused that are imprisoned should be regulated at the legislative level. The Public Defender underlines the significance of offering the accused rehabilitative activities and giving the possibility of maintaining contact with families.

Within the framework of visits carried out throughout the year of 2015, general situation of the GBT<sup>5</sup> and especially vulnerable groups<sup>6</sup> has been studied and risks and possible cases of oppression/harassment towards representatives of these groups have been revealed. Criminal subcultures and informal rules have existed in penitentiary establishments for decades. In penitentiary establishments<sup>7</sup> Logistics Unit is divided into two sub-units. One sub-unit is responsible for distribution of food and supply of prisoners with products from the shop of the establishment. The second sub-unit is in charge of cleaning. This Unit is separated from the rest of the prison. Placement by the prison administration of prisoners in the Logistics Unit somewhat constitutes means of isolating them in an attempt to avoid tensions between prisoners. The prisoners responsible for cleaning are especially vulnerable. They do not identify themselves as GBT persons, but for some reasons, other prisoners associate them with GBT persons. Accordingly, dangers of discrimination, violence and stigmatization are considerable in relation to them. The attitude of the staff of these establishments towards the mentioned category of prisoners constitutes a challenge.

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5 Gay, Bisexual and Transgender persons.

6 Prisoners that are responsible for cleaning the establishment.

7 Except for the establishments N5, N11, N16 and N18.

Many of the prisoners that are foreign nationals and representatives of ethnic or religious minorities do not know their legal rights due to the language barrier. They are mostly unable to address consulates or diplomatic representatives of their respective countries due to complications with meeting social workers. Foreign nationals and persons that do not know the Georgian language have difficulty with access to medical services.

Direct contact and communication with family members is important for rehabilitation of prisoners. Family visits are hindered because authorities are failing to hold detainees at the most appropriate facility closest to where the detainee's family is located. Due to the glass barrier in the room for short visits, they cannot have direct physical contact with family members. It is worth noting that the infrastructure necessary for video visits is available only in five establishments.

Prisoners have problems with conversation limits when making phone calls. If a prisoner does not use conversation time fully, the remaining time is blocked and the prisoner has to buy a new card. It means additional costs.

In semi-open establishments for deprivation of liberty, there is a shortage of phones. In closed prisons, phones are located in the room for employees on duty. The presence of the controller on duty causes a violation of confidentiality of phone conversations.

The Public Defender is worried that prisoners placed in the de-escalation room cannot send letters and make phone calls. Besides, it is important that prisoners subjected to solitary confinement are able to make phone calls to the Public Defender's Office. This necessitates legislative change.

The right of speedy and impartial examination of complaints against public officials and the existence of the system of effective internal monitoring represent significant elements of the fight against torture. It is worth noting that current practice of informing prisoners about their rights does not secure providing prisoners with information generally about their rights and specifically about the right to file complaints and procedure of examining those complaints.

In penitentiary establishments, safe, accessible, confidential and impartial procedures for examining applications/complaints are not available. In some cases, applications/complaints are not responded to in a timely manner. The decisions made in connection with these applications/complaints are not properly substantiated. The work of the General Inspection of the Ministry of Corrections and its reactions to the complaints are not effective.

## 2.2. ILL-TREATMENT IN PENITENTIARY ESTABLISHMENTS

In order to secure prevention of torture and ill-treatment, it is essential that the state adequately reacts to the alleged facts of ill-treatment in penitentiary establishments and alleged facts of ill-treatment by law-enforcement officers, so that those involved in torture do not act with impunity.

The Public Defender of Georgia has repeatedly emphasized lack of institutional independence of investigative authorities in law and practice, in connection with the crimes allegedly committed by the law enforcement officers and allegations of crimes committed in the penitentiary establishments. In 2013 and 2014 Reports for the Parliament of Georgia, the Public Defender gave a recommendation to create an independent investigative organ to ensure effective investigation into death, torture, inhuman and degrading treatment by the law-enforcement officers and those committed in the territory of penitentiary establishments. This recommendation has not so far been fulfilled.

According to the information provided by the Chief Prosecutor's Office of Georgia,<sup>8</sup> in 2015, investigation was initiated into 35 criminal cases in connection with facts of torture and ill-treatment in penitentiary establishments. This includes 12 criminal cases in connection with Article 144<sup>1</sup> of the Criminal Code of Georgia, 15 criminal cases in connection with Article 144<sup>3</sup>, 8 criminal cases in connection with Article 333. Investigation was terminated into one criminal case in connection with the crime provided by 144<sup>3</sup>, based on Article 105 (1) (a) of the Criminal Code of Georgia. All the other investigations are under way.

Under Article 17 (2) of the Constitution of Georgia, torture, inhuman, crucial or degrading treatment or punishment is impermissible.

Under Article 7 of the International Covenant on Civil and Political Rights (ICCPR), no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. According to Article 10 of the ICCPR, all persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. According to the UN Human Rights Committee, respect for human dignity constitutes a norm of international law not subject to derogation.<sup>9</sup>

International human rights law guarantees protection of rights of persons deprived of liberty in their respective establishments. A state should take all necessary measures to ensure that the person does not suffer beyond the inevitable element of suffering connected to punishment. Failure to fulfill this obligation causes the violation of Article 3 of the European Convention of Human Rights.<sup>10</sup>

8 The letter N13/11646 of the Chief Prosecutor's Office of Georgia dated 25 February 2016.

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

10 KUDLA v. POLAND, Appl.no. 30210/96; Valašinas v. Lithuania, Appl. no. 44558/98, § 102, ECHR 2001-VIII.

The European Court of Human Rights emphasizes that Article 3 of the European Convention of Human Rights constitutes one of the fundamental values of democratic society. States are obliged to ensure that every persons is imprisoned under conditions respectful of his/her dignity, that conditions of deprivation of liberty do not put them in the state of despair that exceeds the level of suffering characteristic to imprisonment and that taking into account practical demands of imprisonment, his health and well-being are properly secured.<sup>11</sup>

Protection of persons deprived of liberty under human rights law is greater than that provided to other persons. According to the case law of the European Court of Human Rights, it is true that ill-treatment must reach minimum level of severity in order to fall within the scope of Article 3, but the use of physical force against persons deprived of liberty that is not strictly required by the conduct of the prisoner violates human dignity and falls within the scope of the mentioned Article.<sup>12</sup>

Based on the standards envisaged by European Convention of Human Rights and developed in the case law of the European Court of Human Rights, in order to give effect to the right to life and prohibition of torture and ill-treatment, states have not only negative obligations (to abstain from violating the right), but also positive obligations (to ensure protection of rights). It is especially important to protect persons placed in closed institutions from torture, inhuman and degrading treatment or punishment and secure their right to life. Prisoners are under the exclusive control of the state and accordingly, competent state organs are obliged to take all reasonable measures to prevent real and immediate risks for physical inviolability, if they knew or should have known about such risks.<sup>13</sup>

A positive obligation of the state to protect persons from torture and other forms of ill-treatment includes taking preventive measures that facilitate protection of persons from ill-treatment. The necessity of these preventive measures is pointed out in international human rights treaties as well as judgments of the European Court of Human Rights, the European Committee for the Prevention of Torture and UN Committee against Torture. Prevention of Torture is a global strategy that is aimed at substantially minimizing risks and creating the environment in which torture and ill-treatment are less expected.

Accordingly, there should be guarantees in law and practice that secure unconditional protection from ill-treatment.

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11 CASE OF DAVTYAN v. GEORGIA, Appl. no 73241/01.

12 CASE OF TEKİN v. TURKEY, Appl. no. 22035/10.

13 Pantea v. Romania no. 33343/96, §190, ECHR 2003-VI ; Premininy v. Russia, Appl. no. 44973/04, §84, 10 February 2011.

The elements of torture in the Criminal Code of Georgia repeat the elements of the definition given in Article 1 of the UN Convention for the most part. However, there are differences which should be addressed through legal change.

Article 144<sup>1</sup> of the Criminal Code of Georgia defines torture as ‘exposing a person, his/her close relative or the person who is dependent on him/her materially or otherwise to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral suffering, and which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed.

This Article does not take into account cases when torture is committed with the acquiescence of the official. The Public Defender emphasizes the need for legislative change so that the definition in the Convention against Torture is reflected in the Criminal Code more precisely. Article 144<sup>1</sup> should be amended to add that torture may be committed with acquiescence of the public official or the person acting in the official capacity. Due to the absence of such a reference, omissions by public officials or persons that act in the official capacity in cases of torture do not fall within the scope of this article.

Under Article 14 (1) of the UN Convention against Torture, ‘each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible’. In order to fulfil the obligations under Article 14 of the Convention, it is necessary to take a range of measures to secure protection for victims of torture. The conception for restoring rights includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>14</sup>

There are procedural and substantive aspects to the obligations imposed upon states. In order to meet procedural obligations, it is necessary to adopt legislation, create a mechanism for filing complaints, establish the investigative organ and other institutions, including the independent judicial organ authorized to interpret rights and determine compensation for victims of torture. These mechanisms should be accessible for all victims of torture.

As regards substantive dimension of the obligation, the state has to make sure that the victims of torture get full and effective reparation, including compensation and to an extent possible, full rehabilitation.<sup>15</sup>

Provision of legal aid is one of the important elements of protection of victims of torture and inhuman treatment. The question of legal aid at the expense of the state is governed by the Law Concerning Legal Aid. According to this law, public law entity ‘Legal Aid Service’ is responsible for providing public legal aid. Only persons that cannot afford

14 General Comment N3, Article 14 (Compensation and Rehabilitation of Torture Victims), para 2, 13 December 2012.

15 Ibid., para 5.

payment can have access to legal aid, unless otherwise provided by law. The mandate of public law entity 'Legal Aid Service' does not envisage provision of free legal aid to victims of torture at places of deprivation or restriction of liberty.

Elimination of results of torture and other forms of ill-treatment, protection and rehabilitation of victims is one of the main aims of the 2015-2016 Action Plan for the Fight against Torture. In order to secure achievement of these goals, the following needs to be done: formation of the state program for rehabilitation of victims and planning necessary activities; analysis and further improvement of legislation in order to secure effective legal aid and legal protection for victims.<sup>16</sup>

Even though these questions have been integrated into the action plan for the fight against torture, there is no state program in Georgia that secures rehabilitation of victims of torture in the penitentiary system. The existence of legislative framework and programs is essential to secure availability of adequate rehabilitation services for victims of torture and other forms of ill-treatment in the penitentiary system.

In addition to the problems listed above, it was established as a result of monitoring of penitentiary establishments in the reporting period that criminal subculture in the penitentiary establishments creates serious danger of ill-treatment of prisoners and frequently causes violence and subjugation among prisoners. The Public Defender believes that it is necessary for the state to take a range of measures to eradicate criminal subculture in penitentiary establishments, albeit without jeopardizing rights and safety of prisoners while seeking the achievement of this objective.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE GOVERNMENT OF GEORGIA

- Take all the necessary measures to introduce the state program for rehabilitation of torture victims.

### PROPOSALS TO THE PARLIAMENT OF GEORGIA

- Amend Article 144<sup>1</sup> of the Criminal Code of Georgia to indicate that torture may be committed with the acquiescence of an official or a person acting in the official capacity.
- Amend Georgian Law on Legal Aid so that adequate legal aid is secured for the alleged victims of ill-treatment in all cases.

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16 2015-2016 Action Plan of Fight against Torture, Inhuman, Crucial or Degrading Treatment or Punishment, p. 21, available at <http://police.ge/files/MONITORING/Documents/Action%20Plan%2015-16.pdf>



## 2.2.1 DOCUMENTING FACTS OF ILL-TREATMENT AND NOTIFYING COMPETENT ORGANS

According to the information provided by the Ministry of Corrections,<sup>17</sup> the numbers of bodily injuries suffered by prisoners in penitentiary establishments are the following:

The number of bodily injuries suffered by prisoners in penitentiary establishments					
Establishment	Self-injury	Inflicted by another person	Everyday life injuries	Not clarified	overall
N2	533	100	236	7	876
N3	0	0	16	3	19
N5	21	0	202	0	223
N6	353	0	27	0	380
N7	110	0	5	2	117
N8	771	79	396	54	1300
N9	0	0	6	0	6
N11	1	3	40	0	44
N12	2	1	9	0	12
N14	2	6	105	0	113
N15	42	2	214	0	258
N16	0	0	15	0	15
N17	56	3	168	3	230
N18	172	0	30	0	202
N19	57	4	21	15	97

Timely and methodical registration of bodily injuries of alleged victims of ill-treatment and of their claims and filing reports to the competent organs are essential for securing effective investigation and prevention of ill-treatment in the long run. Medical personnel employed by penitentiary establishments have a special role in documenting alleged facts of ill-treatment. Timely medical examination of prisoners at the time of admission to penitentiary establishments is no less important for prevention of ill-treatment. It is meant to check whether a person was subjected to torture or other forms of ill-treatment from the moment of arrest to the moment of admission to the penitentiary establishment.<sup>18</sup>

According to the recommendation of the European Committee for the Prevention of Torture, the following information should be included in medical files when examining the person in a closed establishment:

17 The Letter of the Ministry of Corrections dated 10 March 2016, MOC 71600192429 (Registered at the Public Defender with the number N3159/16.

18 General Report No. 23 of the European Committee for the Prevention of Torture, 2013, para 71, 73.

- All information provided by the prisoner necessary for medical examination (including his own description of health state and all claims about ill-treatment);
- Full description of objective medical conclusions based on medical examination;
- Views of the doctor about the above issues, including reflections about correspondence of the claims of the person with objective medical conclusions.

Medical records should include information about all additional tests, conclusions made and medical aid provided. There should be special forms for documenting bodily injuries allowing anatomical illustration of injuries. It would be desirable to obtain photos of injuries.<sup>19</sup>

Istanbul Protocol, the Manual on the Effective Investigation and Documentation of Torture and Inhuman or Degrading Treatment and Punishment emphasizes the need for taking photographs of bodily injuries, in order to secure prevention of torture.<sup>20</sup>

The doctor that examines a detainee should be able to establish probability of infliction of injuries through violence, even if the patient does not report about it. He/she should be able to document physical and psychological evidence of violence and establish the degree of correspondence of the applicant's report about ill-treatment and the results of examination .<sup>21</sup> The doctor can use the following formulations: "does not correspond" "corresponds" "corresponds with high probability" "is characteristic (typical)".<sup>22</sup> The doctor should use a standard medical report for documentation.<sup>23</sup>

At the time of admission of prisoners to penitentiary establishments, a doctor meets them immediately to examine their health state. At the time of meeting, the doctor documents bodily injuries, if any. After injuries are detected, medical documentation is filled in and included in the medical history of the prisoner. Besides, there is 'a trauma register for accused persons and convicts' where bodily injuries of prisoners are registered by medical personnel. It is necessary to include the name and last name of the prisoner, time of detecting the injury, location and character of the injury, origin of the injury, the signature of the doctor and the signature of the patient. They describe the injury and specify its origin: "self-injury" "injury inflicted by another person", „everyday life injury“. The doctor does not evaluate correspondence of the character of the injury with the information provided by the patient about its origin.

The documentation of bodily injuries of prisoners at penitentiary establishments con-

19 Ibid., para. 74.

20 Istanbul Protocol, para 105.

21 Ibid, para 122.

22 Ibid, para. 187.

23 Ibid, para. 125.

stituted a problem in previous years. In his parliamentary report of 2014, the Public Defender of Georgia issued a recommendation to the Minister of Corrections to prepare and introduce a new form for registering injuries, in accordance with the Istanbul Protocol, in order to include more detailed information about bodily injuries. Besides, he recommended intensive trainings about documentation of ill-treatment for medical personnel of penitentiary establishments.

As regards fulfilment of these recommendations, according to the Ministry of Corrections of Georgia, the preparation of a new form for registering injuries is under way since the second half of 2014, with the participation of forensic medical expert and support of the Council of Europe. There are working meetings with the involvement of the Penitentiary Department, medical Department, Investigative Department, Training Centre, Ministry of Internal Affairs and Ministry of Labor, Health and Social Affairs. Besides, throughout 2014, cascade trainings were conducted for the staff of the penitentiary system in order to help them acquire knowledge and specific skills in this area.

The Public Defender welcomes the stand of the Ministry of Corrections as regards new forms for documenting injuries of prisoners in penitentiary establishments. However, it is worth noting that these forms of registering injuries are not yet used in penitentiary establishments. The existing practice of describing injuries is still problematic and cannot secure effective detection of alleged facts of ill-treatment. Besides, the checks of penitentiary establishments in the course of reporting period showed that bodily injuries of prisoners are not adequately documented. Mostly, the origin of injuries is not specified. There are traumas of unclear origin, questionable character and location. These are cases in which the prisoner does not explain the origin of the injury or declares that this is an everyday life injury (e.g. inflicted as a result of falling off the bed), but its location and character create doubts that the injury could be inflicted by another person.

If a prisoner says that it is an everyday life injury, the doctor should fully examine the body in order to find other injuries and also check whether the report of the prisoner about the origin of the injury is credible and whether there can be doubts about violence as a source of injury. The doctor should conclude, as a result of examination, if the character and location of injury make ill-treatment as their cause probable.

When admitting the person at the closed institution, the medical examination should be confidential. It is essential that the person is questioned about ill-treatment only by the doctor, without presence of the staff of the given establishment.<sup>24</sup>

It has been established as a result of checks carried out in penitentiary establishments in the reporting period that in most establishments, the representatives of the administration are present at medical examination of the newly admitted prisoners. It has

24 General Report No. 23 of the European Committee for the Prevention of Torture, 2013, para. 75.

also been established that in some instances, the staff of the establishment attends the meeting of the prisoner with the doctor, including when injuries inflicted in penitentiary establishments are documented. Consequently, the confidentiality of communications of the doctor and the prisoner is not secured.

It is worth noting that in his Parliamentary Report of 2014, the Public Defender of Georgia gave a recommendation to the Minister of Corrections to take all reasonable measures, including through training and instructions so that the confidentiality of conversations between prisoners and medical personnel are fully secured.

According to the information provided by the Ministry of Corrections about fulfilment of this recommendation, the Ministry does not acknowledge the problem indicated above and explains that conversations between medical personnel and prisoners are conducted without involvement of any third party. However, at the request of medical personnel, the representative of the establishment may attend the meeting, for security purposes. Besides, the Medical Department apparently gives instructions to the personnel, there are periodic trainings, including about confidentiality.

As mentioned above, medical personnel responsible for documenting bodily injuries of prisoners has a special role in preventing ill-treatment. The development of trust between a prisoner and a doctor is essential to properly document allegations of ill-treatment. This is impossible without confidential communication. It is no less important to report to the competent organs about allegations of ill-treatment. National legislation and international standards require reporting to the competent organs and proper investigation into the allegations of ill-treatment.

The doctors of the penitentiary system should act in the best interests of their patients and keep in mind the obligation to secure confidentiality. At the same time, the doctor has moral reason to uncover ill-treatment. If the patient agrees to disclose information about ill-treatment, the doctor is obliged to send the information to the respective investigative authority. If the patient refuses to disclose the information, the doctor should weigh potential danger for this patient against benefits of disclosure of information for all prisoners and the entire society interested in eradicating the practice of ill-treatment.<sup>25</sup>

According to the established practice, when the accused enters a penitentiary establishment, the report about bodily injuries is sent to the Prosecutor's Office. Reports about bodily injuries of the convict/the accused during their stay at the establishment are sent to the Investigative Department of the Ministry of Corrections as well as the Prosecutor's Office of Georgia.

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25 Istanbul Protocol, para 72.

The checks carried out throughout the reporting period in penitentiary establishments showed that the reports were sent to the investigative bodies in all cases. The Special Preventive Group detected one case of failure to report from the penitentiary establishment N15. This was explained by the prison administration by the failure of the doctor to inform the representatives of this establishment that were supposed to send the report to the investigative bodies.

It is worth noting that according to the practice established in penitentiary establishments, if the doctor discovers bodily injuries in the course of medical examination, he/she informs the representatives of the Unit of Legal Regime and Security of this establishment. They consequently provide information to the director of the establishment. The director sends the report to the Prosecutor's Office and the Investigative Department of the Ministry of Corrections. It is also worth noting that the legislation only provides for the obligation of the director of the institution to send reports to the investigative organs about the bodily injuries of patients.

The Public Defender believes that it is appropriate to increase the role of doctors in reporting of alleged facts of ill-treatment. The legislation needs to be amended in order to introduce the obligation of doctors to personally send reports to the Prosecutor's Office about bodily injuries of prisoners detected in penitentiary establishments.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS

- Prepare and introduce a new form for documenting injuries in accordance with the Istanbul Protocol, making it possible to insert more detailed information about bodily injuries.
- Conduct intensive trainings for the medical personnel of penitentiary establishments about identification and documentation of ill-treatment.
- Prepare clear instructions to secure confidentiality of communications between doctors and prisoners and ensure their practical implementation.
- Secure proper fulfilment by the representatives of penitentiary establishments of the obligation to report about allegations of ill-treatment to competent organs.
- Define the obligation of doctors of penitentiary establishments to directly send a report to the Chief Prosecutor's Office of Georgia, whenever he/she receives information or makes a conclusion that the prisoner could have been subjected to ill-treatment in a respective subsidiary normative act.

## PROPOSAL TO THE PARLIAMENT OF GEORGIA

- To amend the Imprisonment Code of Georgia and introduce the obligation of doctors of penitentiary establishments to directly send a report to the Chief Prosecutor's Office of Georgia, whenever he/she receives information or makes a conclusion that the prisoner could have been subjected to ill-treatment

### 2.3. ORDER AND SAFETY IN PLACES FOR THE DEPRIVATION OF LIBERTY

According to the European Prison Rules, 'Order should be secured in prisons, taking into account the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities'.<sup>26</sup> It requires introducing the system of order and safety that balances security and programs created for re-integration of prisoners into the society. Various elements necessary for effective management of prisons should be taken into account.

Safety measures cover prevention of violence, fire and other emergencies, creation of safe environment for prisoners and personnel of the establishment, prevention of suicide and self-injury. It is possible to classify safety components as follows: physical safety covers physical safety of buildings, including walls, windows, door etc. Procedural safety requires methods and procedures for prison safety. It relates to the regulations necessary for preventing escape and securing order.<sup>27</sup> One of the best means of securing safety is the conception of dynamic security.

The conception of dynamic safety envisages positive relationship between personnel and prisoners under the conditions of fair treatment, also the activities aimed at re-socialization and future integration of prisoners into the society. According to the UN Prison Incident Management Handbook, personnel of the penitentiary establishment should understand that human and fair treatment of prisoners will facilitate securing order and safety in the establishment.<sup>28</sup>

Positive relationships between prisoners and personnel of penitentiary establishments are necessary for order and safety in penitentiary establishments. In order to establish these positive relationships, it is important for the prisoners to realize that rules and procedures of the establishment are safe and introduced to create human environment. Prisoners should feel that they are treated fairly and their rights are protected.

26 Committee of Ministers of the Council Of Europe, European Prison Rules, Rule N 49, Recommendation of the Committee of Ministers Rec (2006) 2, adopted on 11 January 2006.

27 Andrew Coyle, International Centre of Prison Studies, A Human Rights Approach to Prison Management, 2009, available at <http://www.prisonstudies.org/> [last visited on 15.02.2016].

28 United Nations Prison Incident Management Handbook, 2013, para. 21-22, available at [http://www.un.org/en/peacekeeping/publications/cljas/handbook\\_pim.pdf](http://www.un.org/en/peacekeeping/publications/cljas/handbook_pim.pdf) [last visited 15.02.2016].

Even though securing order and safety in the establishment is essential, in some instances, use of force is necessary. The control of prisoners also envisages such elements of static safety as necessary infrastructure and equipment as well as management of incidents and use of force, if necessary.<sup>29</sup> Importantly, according to the UN Code of Conduct for Law-enforcement Officers, the law-enforcement officials may use force only when strictly necessary and to the extent required for the performance of their obligations.<sup>30</sup> It means that they should take additional safety measures in extreme cases. Use of force is acceptable only through adequate procedures and taking into account the best practices.

In the reporting period, the checks of penitentiary establishments by the Special Preventive Group showed that the practice of surveillance and adoption of safety measures by the administration is problematic. There is a tendency of using the measure of long-term isolation against patients by administration, without adequate grounds. The use of handcuffs is also frequent and seems to be routine.

Securing human rights, order and safety in penitentiary establishments requires complex and systematic measures. The following organizational questions<sup>31</sup> need to be taken into account: appropriate normative basis (regulations); accountability, operative abilities and competence of personnel (personnel-prisoners ratio, organizational structure, skills and experience of personnel, Code of Ethics for the staff, the regulations of the establishment and procedure for disciplinary proceedings); elements of dynamic security (relationship of personnel with prisoners, observation, collection of information, knowledge of personal characteristics of each prisoner, management of conflicts, mediation, etc); plan for managing incidents and special situations. These and other relevant questions will be examined below in greater detail.

### 2.3.1. ACCOUNTABILITY

Accountability of personnel is essential for protection of human rights and for securing safety and order in penitentiary establishments. There should be legal regulation making it possible to evaluate capacity to secure order and performance of administration and personnel, relying on pre-determined indicators, based on internal and external monitoring. Creation of such legal framework will increase transparency, accountability and reliability of the establishment.<sup>32</sup>

29 Ibid. para. 13.

30 UN General Assembly, Code of conduct for law enforcement officials, 5 February 1980, A/ RES/34/169, available at <http://www.refworld.org/docid/48abd572e.html> [last visited on 16.02.2016].

31 Ibid. para. 15.

32 sUnited Nations Prison Incident Management Handbook, 2013, p. 17.

The adoption of the Law of 1 May 2015 about the Special Penitentiary Service should be regarded as a significant step towards securing accountability of personnel of penitentiary establishments. It defined principles, rules and competences of the Special Penitentiary Service of the Ministry of Corrections, the status of its employees, the system of continued professional training, legal, security and social protection guarantees. Besides, Order N 144 of the Minister of Corrections of 19 October 2015 approved Disciplinary Regulations for Employees of the Penitentiary Service of the Ministry of Corrections, encouragement rules, the Code of Ethics which defined bases for imposing disciplinary responsibility and for encouragement, types of disciplinary sanctions and types of encouragement measures, rules for imposition of disciplinary sanctions upon the employees. The Code of Ethics defined standards and rules of behavior that facilitate reinforcement of principles of fairness and responsibility, adequate performance of functions, human rights protection, strengthening trust and respect in the society.

The Ministry of Corrections is preparing projects of work descriptions for the personnel of penitentiary establishments describing rights and responsibilities for each position.

Despite positive steps, creation of adequate working conditions for the employees of penitentiary establishments remains the problem. There should be sufficient number of employees in such institutions. They should be provided with effective legal and social guarantees of protection, so that the lack of such guarantees does not negatively affect their treatment of prisoners, securing safety and order in the establishment.

There is no system of performance evaluation for the administration of penitentiary establishments, which incorporates pre-determined indicators. According to the existing practice, penitentiary establishments send reports to the Penitentiary Department and the Ministry of Corrections on a range of important questions.

As regards accountability of individual employees, apart from accountability to the direct supervisor, the alleged violations by employees will be examined by the General Inspection of the Ministry of Corrections. According to the information provided by the Ministry, in 2015 disciplinary sanctions were imposed upon 159 employees.

In order to secure accountability and adequate performance of functions by employees of penitentiary establishments, it is necessary to prepare clear work descriptions and guidelines for standard operational procedures and for managing incidents. Unfortunately, under the conditions of absence of the compilation of guiding documents and low qualification of employees, it is difficult for the employees of penitentiary establishments to make decisions in a timely manner. It increases risks for excessive use of force and ill-treatment.



## RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- Introduce legal regulation allowing internal and external monitoring based pre-determined indicators and evaluation of the capacity to secure order in a penitentiary establishment and performance of functions by administration and personnel,
- Create clear work descriptions, guidelines for standard operational procedures and for managing incidents, in order to secure adequate performance by the employees of penitentiary establishments and accountability.

### 2.3.2. TRAINING OF EMPLOYEES

Under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, 'every state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons.' This envisages the obligation of the state to work out the program with the purposive methodology based on human rights.

According to Rule 75 of the UN Standard Minimum Rules for the Treatment of Prisoners of the UN (Mandela Rules), 'all prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass theoretical and practical tests at the end of such training shall be allowed to enter the prison service. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.'

Under Rule 76.1, 'training shall include, at a minimum, training on: relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates; Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment; security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation; first aid, the

psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.

According to the information provided by the Ministry of Corrections, the public law entity Training Centre of the Execution of Sentences and Probation, in 2015, new educational programs have been worked out for training employees of penitentiary establishments in national legislation and relevant international standards.

The employees of penitentiary establishments attended trainings on a range of topics throughout 2015. The following trainings were conducted concerning human rights, safety and order:

Themes of Trainings	The number of participants of trainings
Rules and Procedures of Examination	2434
Documentation of Torture under the Istanbul Protocol, Prevention of Torture, Inhuman and Degrading Treatment	90
Securing confidentiality of communications between medical personnel and prisoners	362
Multidisciplinary Teamwork	488
Facilitation and Improvement professional independence and competency of medical personnel, Issues of Observing the Principles of Medical Ethics	99
Prevention of Suicide and Working with vulnerable groups	554
Specificities of Treatment of persons belonging to Special categories, including LGBT persons	419

Besides the above mentioned trainings, after the entry into force of the new Georgian law about Special Penitentiary Service, the regulation for mandatory training and re-training of the employees of the Special Penitentiary Service was adopted. With the Order №148 of the Minister of Corrections of Georgia of 19 October 2015, ‘the Rule for Conducting the Special Contest, types of mandatory special professional training courses and the rules for attending them, the rule for certification and periodic retraining’ was approved. According to the information provided by the Ministry of Corrections, the process of certifying current employees should be completed by 1 January 2017. 148 employees have gone through this process.

Also, in 2015, long-term training course (with the duration of six months) for employees of the Legal Regime Unit at the establishments for deprivation of liberty was continued. It consists of 5 stages and covers both theory and practice. 25 persons participated in this course.

The trainings should be focused on the prevention of torture and ill-treatment and on human rights protection at penitentiary establishments. When preparing the program, the frequency of trainings and topicality of subject-matter should be taken into account. It is also important that the knowledge acquired through trainings is used in practice. Relevant international practices shows that in many prisoners, training programs do not adopt human rights based approach and procedures and are not of much practical use. The personnel of the penitentiary establishments prefer to follow the established practice.<sup>33</sup> In order to maintain sustainability of trainings and their practicality, it is essential to introduce a mechanism for evaluating trainings. There are different ways of evaluating the effectiveness of trainings that can help assess if there have been any improvements.

It is worth noting that the Training Centre of the Ministry of Corrections, the public law entity, has introduced a mentorship program, within the framework of the 'long-term training course for the employees of the Legal Regime Unit of the establishments for deprivation of liberty', in order to evaluate effectiveness and sustainability of the results of trainings. The training was conducted for 11 mentors of the system of corrections.

Despite the above mentioned positive steps, qualification and experience of employees of the penitentiary system remain one of the main challenges. The Public Defender considers that the number of participants of trainings in 2015 and subject-matter of these trainings do not adequately address the needs related to knowledge and skills of personnel in order to secure human rights protection as well as order and safety. Special attention needs to be paid to the following issues: safety, including the conception of dynamic safety, management of violent criminals using techniques of prevention and discharge, such as negotiation and mediation.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- Introduce training programs, based on the assessment of needs for improving knowledge and skills of personnel, to secure protection of human rights, order and safety in penitentiary establishments; facilitate participation of employees in these training programs. When preparing these training programs, special attention needs to be paid to the topics such as safety, including the

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

conception of dynamic security, management of violent criminals through such techniques of prevention and discharge, such as negotiation and mediation.

- Increase the number of participants of the long-term (six month) training course for employees of the Legal Regime Unit of the Establishments for Deprivation of Liberty.
- Introduce an effective mechanism for evaluation of effectiveness and sustainability of the results of trainings as well as for supervision over the practical use of knowledge and skills acquired through trainings.

### 2.3.3. CLASSIFICATION OF CONVICTS

Under Article 10 (2) of the Imprisonment Code, the prison establishments are: low risk facility for deprivation of liberty, semi-open establishment for deprivation of liberty, closed type establishment for deprivation of liberty, special risk establishment for deprivation of liberty, juvenile rehabilitation facility, and special facility for women.

According to Article 46 (4) of the same law, 'by decision of the chairperson of the Department, a convicted person may be transferred for further service of the sentence to a prison facility of the same or different type if he/she systematically violates internal regulations of the facility; is ill and/or in cases where it is necessary to ensure his/her safety taking into account risk factors; also in cases of reorganization, liquidation or overcrowding of the facility or in circumstances specified in Article 58(1) of this Code; or in other important, reasonable circumstances and/or in the case of a consent of the convicted person. A multi-disciplinary team assesses and periodically re-assesses the risks from a convicted person. The risk types, risk assessment criteria, the risk assessment and re-assessment procedure, the procedure for the transfer of a convicted person to a prison facility of the same or different type, and composition and powers of a multi-disciplinary team are defined by an order of the Minister.

The Order №70 of 9 July 2015 by the Ministry of Corrections approved the rules about types of risks, criteria for risk assessment, rules of risk assessment and reassessment, rule and conditions of transferring convicts to prisons of the same or other type, composition and competences of multidisciplinary teams.

According to the information provided by the Ministry of Corrections, 9 meetings of the multidisciplinary team were conducted in 2015. The risk level of 105 convicts was assessed. 100 convicts were found low risk and 5 convicts were found mid-level risk.

The Public Defender welcomes legal regulation of the matter and views adoption of the system of assessment and periodic re-assessment of risks of convicts clearly a step forward. However, he considers it necessary to change the rules so as to introduce legal guarantees for protecting the rights of convicts, in the course of risk assessment.

In the first place, it is worth noting that under Article 4 of Order №70 of 9 July 2015 issued by the Ministry of Corrections, initial assessment of risk of convicts by a team and distribution of convicts in establishments, according to the risk level by the director of the penitentiary establishment must be completed no later than 1 January 2017.

However, according to the information provided by the Ministry of Corrections, only an insignificant part of risk assessments was completed. There is a risk of failure to manage assessing the risk of convicts within the above mentioned time-frame. This process will be conducted in a hurry and will most likely cause infringement of interests of convicts. It is important that the Ministry of Corrections takes all measures to ensure that assessment of risks of convicts is not speeded up and the rights of convicts are protected.

Article 15 of these rules envisages providing information to the convict about the decision of the multidisciplinary team about the risk level, when leaving the convict in the same establishment for deprivation of liberty or in case of transfer to another establishment. It also requires providing the decision and case materials, based on a written request.

Article 17 envisages the possibility of challenging the decision of the multidisciplinary team by a convict. However, it is worth noting that the rule does not require involvement of the convict in the process of decision-making by the team.

The Public Defender regards it necessary to oblige the penitentiary establishment or penitentiary department to inform the convict about the initiation of the process of assessing the risk of danger he/she poses by the multidisciplinary team. Besides, the convict must have the right to present additional documentation to the multidisciplinary team at any stage of examination of his/her case, if he/she thinks that it may lead to a desirable decision.

Under Article 6 (1) of the Rules, the process of assessing the risk of danger starts with examining information about the convict. For this purpose, the director of the establishment creates a group and draws up the list of the convicts the cases of which this group has to examine. One group may need to go through information about 700 convicts. If there is a multidisciplinary team for individual planning of sentences at the establishment, no such groups are created and their function is performed by these multidisciplinary team.

Under Article 14 (1), 'based on the assessment by the multidisciplinary team, the decision about transferring the convict to the establishment for deprivation of liberty of

the same or other type is made by the director of the department, within 20 working days from the moment of transfer of the decision about the risk of danger posed by the multidisciplinary team.

It is worth noting that according to the draft order, doctors cannot be members of the groups that do initial examinations or multidisciplinary teams. Inclusion of doctors is essential, because health state of the convict should be taken into account when transferring the convict from one to another establishment, especially if the convict is transferred to the closed or special risk facility. The decision about such transfers should be made based on the assessment by the doctor of the health state of the convict.

Based on the above said, the chief doctor of the establishment should be a member of the group of initial examination. The Head of the Medical Department or other authorized person should be added to the multidisciplinary team. As the alternative, it is possible to specify the obligation to request information about the health state of the convict in the process of assessing the risk. The multidisciplinary team should take into account the health state of the convict in making the final decision about risk of danger and in recommending the transfer to the type of establishment.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- Change the Rules of assessment and re-assessment of risk of the convict, types of risks and criteria for assessing risks so as to:
- Introduce an obligation of the penitentiary establishment or penitentiary department to inform a convict about initiation of the process of assessing the risk of danger by a multidisciplinary team. In addition, the convict should have the right to submit additional documentation to the multidisciplinary team at any stage of examination, if he/she considers that this will lead to a desirable decision.
- Make a chief doctor of the establishment a member of the group for initial examination of information and head of the medical department or other authorized person a member of the multidisciplinary team. Alternatively, the obligation to request information about the health state of the convict in the course assessing the risk of danger may be introduced.
- Ensure that the multidisciplinary team takes into account the health state of the convict in making a final decision about the type of risk of danger of the convict. And in recommending the transfer to the establishment of a certain type.

## 2.3.4. SAFETY MEASURES, MANAGEMENT OF INCIDENTS AND EMERGENCIES

### 2.3.4.1. De-escalation and Safe Rooms

In 2015, within the framework of penitentiary reform, the regulations for all penitentiary establishments were adopted by the Ministerial orders. According to these regulations, in penitentiary establishments N2<sup>34</sup>, N5, N8 and N18 de-escalation rooms were opened; in establishments N3, N6 and N7 – safe rooms were opened.

According to existing regulations, it is possible to place the convict/accused in the de-escalation and safe rooms if they threaten their own life or health or the life or health of other people. The person placed in such rooms should be under constant supervision of the medical personnel and under constant visual supervision of the person responsible for safety in the given establishment. De-escalation and safe rooms should be equipped with a safe mattress, video camera with toilet falling outside its field of vision, with the remote control, open type toilet, capable of withstanding damage, water tap and adequate ventilation.<sup>35</sup>

Visits of the Special Preventive Group to penitentiary establishment revealed that the supervision systems are installed in de-escalation and safe rooms of penitentiary establishments N3, N6 and N8 so that the toilet area is within the field of vision of video cameras. Whenever the prisoners are placed in such rooms, the requirements of the regulations are violated. This amounts to the violation of the right to privacy of prisoners. In some instances, if the prisoner is placed in such rooms for a long period of time, this can be equated to inhuman and degrading treatment.

According to the regulations, the person may be placed in such rooms based on the decision of the administration of the establishment, but the person responsible for specific decisions is not specified. Besides, according to the regulations, a special file is created whenever a person is placed in such rooms and information is entered about the state of the person with reasonable intervals. However, the standard of substantiation for deciding on the placement in a de-escalation or a safe room is not defined.

Importantly, the above mentioned regulations do not specify maximum term for placing a prisoner in such rooms. According to the existing regulations, the accused/convict can

34 In the absence of the adequate infrastructure, there are no de-escalation rooms in the establishment N2.

35 Article 17 of the Regulations of the penitentiary establishment N2 approved by the Order N119 of the Minister of Corrections dated 27 August 2015; Article 17 of the Regulations of the Penitentiary Establishment no 5 Approved by the order N116 dated 27 August 2015; Article 39 of the Regulations of the Medical Establishment for the Accused and Convicted Persons N18 Approved by the Order N114 dated 27 August 2015; Article 26 of the Regulations of the Penitentiary Establishment N3 of the Order N109 dated 27 August 2015; Article 27 of Regulations of the Penitentiary Establishment N6 Approved by the Order N108, dated 27 August 2015; Article 26 of the Regulations of the Penitentiary Establishment N7 Approved by the Order N 107 dated 27 August 2015.

be placed in a de-escalation/safe room until criteria for such placement are fulfilled. Besides, measures of physical restraint and special means envisaged by Georgian legislation may be used in these rooms, if necessary. Physical restraint should be used for a reasonable period, until criteria given in paragraph 1 of this article are fulfilled.

According to the information provided by the Ministry of Corrections, in 2015, prisoners were placed in a de-escalation room only in the penitentiary establishment N8 (overall, 175 cases). 133 prisoners of the establishment N3 and 20 prisoners of the establishment N6 were placed in safe rooms. There were a few instances of placing prisoners in de-escalation/safe rooms for long terms. There are many instances of placement of prisoners for more than 10 days, and a few instances of placement for 15-20 days. There was one case of placing the prisoner in a de-escalation room for 31 days. 2 prisoners were placed in safe rooms for 35 days.

The above mentioned shows that placement of prisoners in de-escalation or safe rooms is not properly regulated by law. Subsidiary normative acts issued by the Minister do not introduce legal guarantees of protection. This creates a real threat of placing prisoners in de-escalation/safety rooms disproportionately and for unjustifiably long periods, as also confirmed in practice.

In its report prepared based on the visit to Georgia of 2014, the European Committee for the Prevention of Torture indicates that maximum period of placing the person in a de-escalation room (four days, as the delegation was told) is too lengthy. It should be reduced to a few hours and should never exceed 24 hours.<sup>36</sup> Besides, the Committee underlines the importance of de-escalation strategy and points out that due to the absence of such a strategy prisoners may resort to such means of solving their problems as hunger strikes and acts of self-harm.<sup>37</sup>

The Public Defender regards it impermissible to place prisoners in a de-escalation/ safe room under current conditions for a long term, because it amounts to the infringement of human dignity. If there are still reasons for placing a prisoner in a de-escalation/safe room after the expiry of a 24-hour term, administration of the establishment must resort to other means, including provision of adequate psychiatric aid to prisoners. It is also worth noting that during the visits at N8 penitentiary establishment, the members of the Special Preventive Group were told by prisoners that if they were placed in a de-escalation room, they could not send mail, use phone and have visitors.

According to the above mentioned regulations, placement in the de-escalation room should not be the basis for automatic restriction of rights provided by Georgian leg-

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36 See the Report of the European Committee for the Prevention of Torture following the 2014 visit, CPT/Inf (2015), para. 94.

37 Ibid., para 54.



isolation for the accused/convicts. Therefore, the existence of such a practice is impermissible as it constitutes a breach of law and unjustifiable restriction of the rights of prisoners.

Besides, grounds for placement in a de-escalation/safe room, procedure and legal guarantees are not provided by law and are instead regulated by a subsidiary normative act issued by the Minister. Since placement in such rooms is a restrictive measure by its nature, it should be governed by law.

Since placement of prisoners in the mentioned rooms amounts to a forcible measure applied to the prisoner in order to secure order and safety at the establishment and carries a great risk of ill-treatment of prisoners, it is essential to store the video recordings from these cells for a reasonable time (not less than 1 month).

The Public Defender believes that prisoners should be placed in de-escalation/safe rooms only in accordance with law and with adequate legal guarantees, so as to avoid human rights violations. This will be possible only if the legislation is amended to specify who makes decisions about placement of the prisoner in de-escalation/safe rooms, standard of substantiation for applying this measure and maximum reasonable time for its use.

## **PROPOSAL TO THE PARLIAMENT OF GEORGIA**

- Regulate grounds, procedure and maximum reasonable time (24 hours) for placing prisoners in de-escalation/safe rooms by law; specify the person that makes decisions about applying this measure, standard for substantiation for such decisions and legal guarantees for prisoners when using this measure.

## **RECOMMENDATIONS**

### **RECOMMENDATIONS TO THE MINISTRY OF CORRECTIONS:**

- Define maximum reasonable time for placement in a de-escalation/safe room (which should not exceed 24 hours) by a subsidiary normative act; also specify the person that makes decisions about using this measure and standard of substantiation for such decisions.
- Secure observance of requirements of legislation when placing persons in a de-escalation/safe room through supervision and control.
- Secure storage of video recordings from de-escalation/safe rooms for a minimum period of 1 month.

### 3.3.4.2. Surveillance by means of visual and electronic means

According to Article 54 (1) of the Imprisonment Code, 'in case of a reasonable belief, the administration is authorized to conduct surveillance and control through visual and/or electronic means, based on safety of the accused/convicted or other persons and other lawful interests - to prevent suicide, self-injury, violence against accused/convicted or other persons, damage to property, and to avert other crimes and offences. Electronic surveillance is conducted with audio and video devices and/or other technical means of control. The administration may, through electronic means, record the process of surveillance and control, and the information received as a result of this process.'

According to Article 54 (9), the Minister defines the procedure for conducting surveillance and control through visual and/or electronic means, and for storing, deleting and destroying recordings.

The Order of the Minister of Corrections of 19 May 2015 approved the regulations concerning visual and/or electronic means of surveillance and control, storing, deleting and destroying recordings. The Public Defender welcomes legal regulation of the question of visual and/or electronic surveillance. Nevertheless, he points out that this regulation is problematic in terms of compatibility with international standards of human rights.

According to Article 3 (5) of these regulations, electronic surveillance and control of the accused/convict cannot be extended to showers, toilets, rooms for long-term visits, except for cases envisaged by Georgian legislation. As regards the mentioned reservation, on 19 December 2014, the Public Defender of Georgia addressed the Minister of Corrections with the proposal to add toilets in prison cells to the list of places that cannot be under surveillance. However, the Minister did not take this proposal into account. The European Committee for the Prevention of Torture clearly specifies in its reports based on visits to various countries that as regards the process of surveillance and control in prisoners, the privacy of prisoners should be preserved when they are using toilets and showers.<sup>38</sup>

It was revealed as a result of visits of the Special Preventive Group to penitentiary establishments that in the absence of the above reservation, privacy of prisoners is not preserved in the establishment N6. Particularly, video cameras are installed in most cells of this establishment and also in some solitary, closed type cells of the establishment N15. Toilet areas are within the camera's field of vision. The privacy of prisoners is not secured.

The European Committee for the Prevention of Torture emphasizes that decisions about surveillance and control through visual and/or electronic means should be substantiated

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38 See <http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf> p. 19, para 31; See also <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf> p. 30, para 60 [last visited on 12.03.2016].

ed and the use of this measure without adequate substantiation can be regarded as a breach of the prisoner's right to privacy.<sup>39</sup> According to Article 4 (1) of the Regulations Concerning Surveillance and Control through visual and/or electronic means, Storage, deleting and Destroying recordings, if there are grounds provided by Article 2 of these rules, the decision about the use of surveillance and control through visual and/or electronic means is made by the director of the establishment and the respective order is issued. The order is issued until the elimination of grounds envisaged by Article 2 of these rules, but not longer than three months.' Under Article 3, the decision must be substantiated and proportionate to the goal. However, the obligation to substantiate the order is not envisaged. The Parliamentary Report of the Public Defender of 2014 and the Reports resulting from the visit of the National Preventive Mechanism of Georgia of 2015,<sup>40</sup> the Public Defender indicated that in order to provide sufficient legal guarantees, it is necessary to specify in each order an aggregate of facts and circumstances that generated the need for such a measure and also explain why other means are not effective in the given case. In each individual case, risk should be carefully assessed. The order should demonstrate that surveillance and control through visual and/or electronic means is the only option available. Unfortunately, the Ministry of Corrections did not take into account the given recommendation.

The results of monitoring reveal that in practice orders about surveillance through electronic means contain limited information and are similarly formulated. According to the Special Preventive Group that carried out checks at a number of penitentiary establishments in the reporting period, the orders of the director of the penitentiary establishment about surveillance do not explain why the use of this measure was necessary. The orders are currently issued at the request of the Safety Unit of the establishment. In many cases, these requests are not also well-substantiated.

These requests do not show whether the proposed measure is proportionate in terms of achieving the legitimate aim and whether there is any need for using this measure at all. They invoke the following grounds for introducing surveillance: the need for protecting safety and health of the prisoner, prevention of further complications, observation of internal rules, etc. However, these requests do not specify the dangers and what circumstances made the use of this measure necessary.

It is worth noting that in some cases the requests of the Safety Unit does not specify

39 The European Committee for the Prevention of Torture (CPT), Visit to Ukraine, 1-10 December 2012, para. 52, available at <http://www.cpt.coe.int/documents/ukr/2013-23-inf-eng.htm> [last visited on 12.03.2016].

40 The visit to the Penitentiary Establishment N3, Report, pp. 8-10, available at <http://www.ombudsman.ge/uploads/other/3/3290.pdf> The visit to the Penitentiary Establishment N7, Report, pp. 8-10, available at <http://www.ombudsman.ge/uploads/other/3/3291.pdf> The visit to the Penitentiary Establishment N2 Report, pp. 8-10, available at: <http://www.ombudsman.ge/uploads/other/3/3294.pdf> [last visited on 12.03.2016].

the goals of surveillance. They only indicate that the prisoner was transferred to the cell equipped with the system of visual surveillance, due to re-grouping of prisoners. However, the necessity of applying this measure was not substantiated. Besides, according to these requests, the Safety Unit takes into account personal qualities of the prisoner when requesting surveillance, but it is not specified which qualities are relevant. In some cases, the Safety Unit requests transfer of the prisoner to the cell of the medical unit and introduction of surveillance. The Safety Unit indicates in its requests that the chief doctor requests transfer of the prisoner to the medical unit. However, it was found out as a result of examination that in such cases, the chief doctor requests such transfers only for the purpose of medical supervision and not for visual surveillance.

In some cases, the surveillance is based on the ground that is not envisaged by Article 54 (1) of the Imprisonment Code. For example, the mentioned provision does not list surveillance for the purpose of prevention. Accordingly, such surveillance does not serve a legitimate purpose envisaged by Article 54 (1) of the Imprisonment Code and therefore, it is unlawful. It is true that the mentioned provision of the Imprisonment Code allows the possibility of surveillance 'in order to avoid crime or other offence'. However, the reference to 'the goal of securing observance of internal regulations' leaves room for broad interpretation and accordingly, some arbitrariness. It is not clear which requirements of internal regulations need to be secured through surveillance and what is an appropriate nature of action. It is also not explained why it is argued as if there are no alternatives for securing observance of internal regulations when there are other means, including procedure for disciplinary responsibility, for achieving the same goal.

It is worth noting that in penitentiary establishment no. 3, all cells for solitary confinement, safe rooms and all cells in the medical unit are equipped with cameras. Therefore, whenever the need for transferring prisoners to these cells arises, they are inevitably subject to the electronic surveillance. Accordingly, when making decisions about surveillance, necessity and proportionality of this measure are not assessed in all cases. Its automatic use is due to the lack of solitary cells and cells in the medical unit that are not be equipped with the system of surveillance. It is worth noting that the surveillance is terminated not when there is no longer any need for such a measure, but when there is no longer any need for keeping the person in the indicated cells (e.g. when there is no need for medical supervision or the term for solitary confinement as a disciplinary measure has expired).

The requests filed by the Safety Unit of the establishment N3 that form the basis for the orders of the director of the establishment about electronic surveillance of prisoners placed in the solitary cell for disciplinary offences are basically identical. The Safety Unit of the Establishment indicates that the surveillance is reasonable for securing prisoner's safety or for health reasons. It is not specified what may threaten the health of the patient.

The electronic surveillance is cancelled with the orders based on the requests that only specify that the time for placement in solitary confinement expired and the prisoner was to be transferred to the common cell.

Apart from the substantiation of the decision about visual and/or electronic surveillance, it is important to periodically review those decisions. Under Rule 50.1 of the European Prison Rules, security measures used against individual prisoners must be minimal, going only so far as needed to secure safe imprisonment. Under Rule 50.4, every prisoner must be under such security conditions that correspond to the risk level. Under Rule 50.5, the needed level of security should be reviewed regularly throughout the entire period of imprisonment.'

It is worth noting that the Minister of Corrections took up the proposal of the Public Defender to change the Regulations Concerning Visual and/or Electronic Surveillance and Control, Storage, Deleting or Destroying the Recordings as regards introducing the obligation to review decisions about surveillance. However, assuming that in practice, the decisions about surveillance and control are not well-substantiated, it does not make much sense to adopt new decisions of the same quality.

It is also worth noting that in 2014 Parliamentary Report, the Public Defender addressed the Minister of Corrections with the recommendation to determine the reasonable time (not less than 10 days) for storing the recordings of video surveillance and secure unimpeded access to such recordings for the members of the Special Preventive Group. However, this recommendation has not been complied with. Under Article 15 (2) of the Regulations Concerning Visual and/or Electronic Surveillance and Control, Storage, Deleting or Destroying the Recordings, the recorded material is stored only for 24 hours.

Besides, notwithstanding Article 18 (b) of the Organic Law of Georgia about the Public Defender that creates an entitlement to demand and receive all necessary documents and materials from state organs and organs of local self-governance, public establishments and officials for examination in 10 days maximum, the representatives of the Public Defender did not have any practical possibility to view these video recordings.

Apart from the above mentioned problematic issues, Article 8 of the Regulations Concerning Visual and/or Electronic Surveillance and Control, Storage, Deleting and Destroying the Recordings repeats the formulation of the Imprisonment Code and points out that the administration is authorized to observe the meetings of persons indicated in Article 54 (6) of the Imprisonment Code through visual, technical means of remote observation and record without sound.

We gave the recommendation in 2014 Parliamentary Report to the Parliament and the Minister of Corrections to amend the Imprisonment Code and the above mentioned

Rules to secure confidentiality of meetings of the representatives of the Public Defender/members of the Special Preventive Group and prohibit any kind of eavesdropping and surveillance. However, this recommendation was not implemented. The Public Defender requires changing relevant provisions of the Regulations Concerning Visual and/or Electronic Means of Surveillance and Control, Storage, Deleting and Destroying the Recordings and the Imprisonment Code in relation to the Public Defender/members of the Special Preventive Group. The existing provisions contradict Article 19 (3) of the Organic Law Concerning the Public Defender, according to which the meetings of the Public Defender/members of the Special Preventive Group with detainees, those imprisoned or otherwise deprived of liberty, convicted persons, should be confidential. Any kind of eavesdropping and surveillance is prohibited.

### **PROPOSAL TO THE PARLIAMENT OF GEORGIA**

- Amend the Imprisonment Code and insert the requirement of confidentiality of the Meetings of the Public Defender/members of the Special Preventive Group with the accused/convicted person and prohibition of any kind of eavesdropping or surveillance.

## **RECOMMENDATIONS**

### **RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS**

- Change the Ministerial Order Approving the Regulations Concerning Surveillance and Control by Visual and/or Electronic Means, Storage, Deleting and Destroying Recordings and insert the clause according to which the meeting of the Public Defender/member of the Special Preventive Group with the accused/convict is confidential and any kind of eavesdropping or surveillance is prohibited.
- Formulate the Ministerial Order about the Regulations Concerning Surveillance and Control by Visual and/or Electronic Means, Storage, Deleting and Destroying Recordings so that it contains information about the circumstances that made surveillance and control through visual and/or electronic means necessary and without any alternatives.
- Take all reasonable measures to ensure that surveillance with electronic means is carried out only if other measures are ineffective and for so long as they are strictly necessary, taking into account specific circumstances; ensure that the decisions about electronic surveillance are properly substantiated.

- Define reasonable time (at least 10 days) for storing the recordings of the video surveillance and secure unimpeded access of the members of the Special Preventive Group to these recordings.

#### **2.3.4.3. Separation of Prisoners for Safety Reasons**

According to Article 57 (1)(b) of the Imprisonment Code, to avoid self-injury, or damage to other persons and property, to prevent crimes and other offences in the penitentiary facility, to suppress the disobedience of an accused/convicted person to a lawful demand of an employee of the bodies of the penitentiary System, to repel attacks, to suppress collective disobedience and/or mass unrest, the accused/convict may be separated from other accused/convicted persons based on a substantiated order.

The grounds and procedures for using this measure are governed by the orders of the Minister of Corrections approving the regulations of each of the penitentiary establishments. These regulations provide for the similar procedure for all penitentiary establishments. The decision about placing the convict separately from other convicts for a reasonable time is made by the director of the establishment at the request of the convict or at his/her own initiative if there are adequate grounds. In the absence of the director of the establishment, a properly authorized person will secure separation of the convict from other convicts for maximum 24 hours. The Director issues the order about the separation of the convict from other convicts.

Conditions for extension of the term of separation of convicts are different for the establishments of special risk and other establishments. Particularly, according to the regulations for the special risk establishments, if necessary, separation of a prisoner from other prisoners may be extended with the decision of the director of the establishment for a reasonable term, until the danger that serves as a basis for separation of this prisoner exists. According to the regulations of other establishments, if necessary, the term of separation of the convict from other convicts may be extended with the decision of the director of the establishment for another 30 days. If these safety measures are not successful, the director of the establishment requests the director of the Department to transfer the convict or persons that endanger the safety of the convict to another establishment for deprivation of liberty. If proper grounds exist for making such a request, it is not necessary to exhaust the initial term.

The checks carried out by the Special Preventive Group in the reporting period revealed that the separation of prisoners is actively used. Particularly, in 2015, 120 prisoners were placed separately in the establishment N3, 43 prisoners in the establishment N6, 55 prisoners in the establishment N8, 2 prisoners in the establishment N11, 42 prisoners in

the establishment N14, 67 prisoners in the establishment N 15, 2 prisoners in the establishment N 16, 73 prisoners in the establishment N 17, 5 prisoners in the establishment N 18, 5 prisoners in the establishment in N 19, following the above described procedure.

Besides, the checks showed that placement of prisoners in separate, solitary cells is frequent and even systematic, even without following the above procedure and in the absence of an adequate legal basis. It was revealed that in the establishments N 6, N7 and N9 some prisoners were separated from other prisoners against their will for years and remain separated until now. In addition, some of these prisoners did not have long-term visits. One prisoner that has been separated from other prisoners since 2005 is sentenced to life imprisonment.

The practice of separation of prisoners from others shows that this measure is used in penitentiary establishments in violation of important legal principles and guarantees. There are cases of placing prisoners separately for long terms, in the absence of a formal basis for using this measure, namely the order of the director, the issuance of which is mandatory, according to the regulations of the establishment. This practice constitutes a violation of the requirements of law. It is also worth taking into account that the convicts do not have the possibility to challenge the measure (indefinite separation from other convicts).

Besides, it is necessary to pay attention to the grounds and duration for extending the term of separating prisoners, according to the regulations of the special risk establishments for deprivation of liberty. This allows the administration of the establishment to separate prisoners for an undefined term.

The European Court of Human Rights has underlined in a few judgments that under Article 3, the state is obliged to secure serving the sentence under the conditions respectful of human dignity, so that it does not cause distress or suffering intensity of which exceeds suffering inevitably connected to imprisonment and to ensure protection of health of the prisoner properly, taking into account practical demands of imprisonment.<sup>41</sup> The Court also points out that in assessing conditions of imprisonment, their cumulative effect needs to be taken into account, along with specific charges against the applicant.<sup>42</sup>

In the case *Pretty v. the UK*<sup>43</sup>, the Court noted that the right covers elements of physical and mental unity. Private life may also cover such aspects as self-perception. The Court explained that Article 8 of the Convention covers the right to personal development and

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41 See *Valašinas v. Lithuania*, Appl.no N44558/98, para. 102, ECHR 2001-VIII; *Kudła v. Poland* [GC], Appl. no N30210/96, para. 94, ECHR 2000-XI.

42 See *Dougoz v. Greece*, N40907/98, para. 46, ECHR 2001-II.

43 *Pretty v UK*, 29 April 2002.



the right to establish relations with other persons and the outside world.<sup>44</sup>

The European Committee for the Prevention of Torture underlines that it ‘pays particular attention to the convicts under conditions close to separation, despite the reason for placing them under such conditions (disciplinary reasons, the result of their “dangerous” or “difficult” behavior, interests of criminal investigation, their personal request). The principle of proportionality requires balance between the requirements of the case and the use of the regime of separate placement of the prisoner, which may have grave results. The mere fact of such a placement may in some cases amount to inhuman and degrading treatment. In case, such a measure must be short-term.<sup>45</sup> In 2015, the UN Special Rapporteur on Torture paid attention to the practice of isolating prisoners and pointed out that separate placement of prisoners for months may amount to torture, inhuman and degrading treatment and increase the risk that the prisoner will endanger his own life and health or the life of health of others.<sup>46</sup>

Regarding this issue, the Public Defender considers it important to create legal guarantees so that the prisoners separated from others are not placed under conditions that cause suffering beyond what is inevitably caused by deprivation of liberty and isolation. It is also important to define the maximum term for separating prisoners by law, including in the special risk institutions for deprivation of liberty and also introduce the obligation of reviewing this measure, after 14 days.

The temporal framework for using this measure of separate placement of prisoners, and circumstances the presence of which cancels the need for its use are not clear. It is also not explained why it is impossible to achieve the goal of securing safety by placing this specific convict together with other convicts or by transferring him to another institution.

It is impermissible to disregard the requirements of international human rights law obliging the state to periodically review necessity and proportionality of the measures applied to secure safety. According to Rule 50.5 of the European Prison Rules, the level of security should be reviewed regularly throughout the entire period of imprisonment.

In the case *Ramirez Sanchez v. France*, the European Court of Human Rights indicated that the isolation of convicts cannot be imposed on a prisoner indefinitely. Moreover, it is decisive to give a convict the possibility to have the type and grounds for applying this measure reviewed by independent judiciary. In this case, the Court found the violation

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44 Burghartz, p. 37, § 47, and Friedl v. Austria, 31 January 1995, p. 20, § 45.

45 The Report of the European Committee for the Prevention of Torture, 1998 Report following the visit in Finland, CPC/Inf(96)28).

46 Report of the UN Special Rapporteur on Torture regarding the 2015 visit to Georgia, A/HRC/31/57/Add.3, para. 85.

of Article 13, as the convict did not have the possibility to challenge the measure.<sup>47</sup>

The placement of prisoners separately by the administration of the establishment with the purpose of securing their safety, without adequate grounds violates national legislation and international acts. This undermines the possibility of rehabilitation of prisoners and may even amount to torture or inhuman and degrading treatment.

The Public Defender regards it impossible to isolate the person indefinitely, without relying on the grounds and procedures provided by the orders of the Minister of Corrections approving the regulations of penitentiary establishments. Isolation of prisoners indefinitely constitutes the violation of the rights provided *inter alia* by Articles 3, 8 and 13 of the European Convention.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- Amend the regulations of the Special Risk Establishments for Deprivation of Liberty and specify the maximum term of separating prisoners from other prisoners.
- Make it obligatory to review the decision on placing the prisoner separately in 14 days from the moment of applying the measure and afterwards, with the same intervals.
- Create legal guarantees to ensure that separated prisoners are not placed under conditions that will aggravate suffering characteristic to the deprivation of liberty and also isolation.
- Ensure through supervision and control that prisoners are isolated against their will only for the purpose of securing safety, based on the grounds and procedures provided by the regulations of respective penitentiary establishments.
- Ensure placement of prisoners separated from others against their will and with disregard of the grounds and procedures provided by the regulations of penitentiary establishments together with other prisoners immediately.

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47 Ramirez Sanchez v. France, no. 59450/00 para. 145, 152.

#### 2.3.4.4. Use of Special Means

According to the information provided by the Ministry of Corrections, in 2015 only handcuffs were used as special means in penitentiary establishments. Particularly, there were 15 cases of using handcuffs in the establishment N2, 123 cases in the establishment N3, 22 cases in the establishment N6, 55 in the establishment N8, 1 in the establishment N15 and 3 in the establishment N17.

In the Parliamentary Report of 2014, the Public Defender of Georgia highlighted the concerns that were not taken into account in the process of examining legal amendments to the Imprisonment Code defining special means and determining the rules of their use. The Public Defender underlines that integrating his recommendations in legislation and subsidiary normative acts is essential for securing human rights protection and existence of adequate legal guarantees when using special means. Particularly, legislation prohibits the use of pepper spray in a closed space. However, the use of tear gas in a closed space is not prohibited. The problem also lies in the absence of a clear definition of a non-lethal weapon and its various types.

Apart from the above concerns, in the 2014 Report the Public Defender gave a recommendation to the Minister of Corrections to amend the Rules defining types of special means available to the organs of the correctional system, rules and conditions of storing, carrying and using them and determining the person authorized to use them, approved by the Ministerial Order N145 dated 12 September 2014 and to prohibit having the person handcuffed to a fixed object.

As regards this recommendation, as indicated by the Ministry of Corrections, according to Article 6 of the mentioned Rule, handcuffing a person to a fixed object is impermissible and can only be used in the extreme cases when the legitimate aim defined by law cannot be achieved by other means. Accordingly, there is no need to issue such a recommendation because this question is already regulated by law in detail.

The Public Defender cannot share this position and asserts that handcuffing a person to a fixed object should be prohibited, since this contradicts international standards of human rights. Such treatment may amount to inhuman treatment. Here it is necessary to invoke the approach of the European Committee for the Prevention of Torture, according to which if a detained person acts in an agitated or violent manner, the use of handcuffs can be justified. However, a person should not be handcuffed to a wall or fixed objects and should be under constant supervision in the adequate environment. If agitation of this person deteriorates his health, the law-enforcement officials should demand medical assistance and follow advice of doctors.<sup>48</sup>

<sup>48</sup> The Report of the European Committee for the Prevention of Torture on the Russian Federation, CPT/ Inf(2013)41, N52, p.29.

It is worth noting that the frequent use of handcuffs in the establishment N3 (123 cases) shows routine nature of its use by the employees of this establishment. Such practice may cause conflicts between the employees and prisoners and hinder maintaining safe environment and order under conditions of human rights protection.

#### PROPOSALS TO THE PARLIAMENT OF GEORGIA

- Amend the Imprisonment Code to introduce prohibition on the use of tear gas in closed spaces.
- Amend the Imprisonment Code to define the types of non-lethal weapons.
- Amend the Imprisonment Code to prohibit handcuffing of a person to a fixed object.

#### RECOMMENDATION TO THE MINISTER OF CORRECTIONS

- Secure thorough supervision and control to ensure that handcuffs are not used routinely at the establishment N 3.

## 2.4. PRISON CONDITIONS

### 2.4.1. PHYSICAL ENVIRONMENT AND SANITARY-HYGIENIC CONDITIONS

According to European Prison Rules, the building provided for prisoners, and in particular all sleeping accommodation, shall respect the requirements of human dignity and, as far as possible ensure the feasibility of solitude. Health and hygiene requirements shall also be protected, taking into consideration the space, airing and HVAC conditions and lighting.<sup>49</sup> In all buildings where prisoners live, work or congregate: the windows have to be large enough to enable the prisoners to read or work by natural light in normal conditions, fresh air circulation shall also be ensured, except where there is an air conditioning system; artificial light shall satisfy recognized technical standards; there must be an alarm system that enables prisoners to immediately contact the staff.<sup>50</sup> According to the ECtHR case-law, apart from ill-treatment and inhuman treatment, violation of Article 3 of the European Convention can be caused by the circumstances in which a person has to live. Following one of the basic principles of the European Rules, lack of resources cannot justify the prison conditions which constitute inhuman treatment.<sup>51</sup>

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49 Rule 18.1

50 Rule 18.2

51 Rule 4

It should be noted, that compared to previous years, a number of penitentiary establishments have improved physical environment and sanitary conditions. Nevertheless, there is still significant need for improvement of prison conditions to bring them in conformity with international standards. The state is obliged, despite the related difficulties, to timely eliminate these deficiencies and create proper conditions for prisoners.

#### **2.4.1.1. Establishment N2 of the Penitentiary Department**

Six prisoner accommodation blocks are functioning in this establishment. A, B, C, D, E and F blocks have 2 (11, 1 m<sup>2</sup>), 4 (15.6 m<sup>2</sup>), 6 (18, 9 m<sup>2</sup>), 8 (22-25 m<sup>2</sup>) and 10-place (32, 49 m<sup>2</sup>) cells.

The medical unit of the establishment has 3 (18.14 m<sup>2</sup>) and 4-place (15.6 m<sup>2</sup>) cells. The space calculations do not exclude the table, the bed and the toilet space. It should be noted that the 6, 8 and 10-place cells have less than 4 m<sup>2</sup> space per prisoner. All cells have one window (1.35X0.96 cm). For 2, 3, 4 and 6- place cells natural and artificial lighting is satisfactory. In 8 and 10-place cells one window fails to provide adequate natural lighting and ventilation.

The ventilation system of the cells is not operational. The cells are furnished with two-tier beds, a wardrobe, a table and chairs. The prisoners have TV. Cells have a separate sanitary knot.

The physical environment of female section of the establishment N2 (E Building) was inspected. The section has four cells, each designed for 6 prisoners, with concrete floors. Central heating system is installed and permanent water supply is provided. There is an isolated sanitary knot in each cell. Female prisoners have TV and radio. At the time of our visit<sup>52</sup> there were 13 female prisoners. There is a problem of accessibility of the personal hygiene items for women in the facility.

The juvenile section of the establishment N2 has 5 cells, 2 classrooms, 1 gym, a shared working space for psychologist and a social worker and a shower. At the time of our visit, the section had 8 juvenile inmates. All cells were duly equipped with the necessary utensils.

The quarantine section has 5 cells and shower. Central heating and ventilation systems are installed in the shower. The space per prisoner in cells is less than 4 square meters. Each cell area is about 15 m<sup>2</sup> and is designed to accommodate six prisoners. Natural and artificial lighting in the cells is satisfactory, but the ventilation system does not provide adequate ventilation of cells. Cells are equipped with two-tier iron beds, a wardrobe, a table and chairs and central heating. There is an isolated sanitary knot in each cell.

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52 1-2 July 2015.

At the time of admission, the inmates are provided with the bedding and linen. However, the linen is not changed afterwards, due to the shortage of the linen in the facility, according to the administration representatives. Therefore, the prisoners are mostly provided with the clean linen by the members of their families. Linen is either washed in the laundry facilities of the establishment by the prisoners themselves or outside the establishment, by their family members. The majority of the interviewed prisoners said that they do not want their linen to be washed in the common washing machine with other prisoners' clothes. They prefer to wash the linen themselves, or to have it washed by their family members outside the establishment. If the prisoners themselves wash their clothes and linen, they have to dry them in their living cells.

Space of the solitary confinement cells, except those located in the D block is 4.5-5.5 square meters. The cells have a bed (plank), a chair and a table. The cells have central heating and ventilation systems. Lighting is satisfactory. The toilets are partially separated from the cells and the sanitary/hygienic conditions of the cells are unsatisfactory. There is an explicit lack of space. Some cells are under the surveillance cameras.

It should be noted that 16 solitary confinement cells of the D block of 16 have an area of 11 square meters each, and therefore, physical conditions are generally satisfactory. However, these cells are used for placement of the D block prisoners only. Noteworthy that, the Public Defender had approached the Minister of Corrections of Georgia in October 2014<sup>53</sup> that only the solitary confinement cells of D block were suitable for the use in case of disciplinary isolation, but the recommendations were not followed.

A block of the establishment N2 has 26 yards (18 m<sup>2</sup> each, C block- 15 yards (18 m<sup>2</sup> each), D block - 36 yards (23 m<sup>2</sup> each), E block - 2 yards. The yards are partially covered from above and equipped with the wooden benches and bins, surveillance cameras are installed. Prisoners spend an hour on the fresh air daily. They are able to train on a daily basis in the special gym, which is equipped with appropriate tools.

There are 9 investigation rooms in the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that an audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting them during the conversation.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minis-

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53 See the report of the Special Prevention Mechanism following the visit to the Institution N2 on 21 22 October 2014, available at < <http://www.ombudsman.ge/uploads/other/2/2191.pdf> > [last accessed 25.02.2016].

ter of Corrections that each inmate should be provided with 4 square meters of space, and all of the buildings - with proper ventilation. It should be noted that these recommendations have not been fulfilled, since the above shortcomings were still reported during the year. The parliamentary report of the previous year recommended creation of conditions compatible with human dignity in the solitary confinement cells and before that, to temporarily place the prisoners in solitary confinement cells only in the D block for disciplinary isolation, though none of the recommendations were followed.

#### **2.4.1.2. Establishment N3 of the Penitentiary Department**

In the establishment N3 the cells are designed for placement of 2 (10 m<sup>2</sup>), 4 (15 m<sup>2</sup>) and 6 (19.5 m<sup>2</sup>) inmates. At the time of the visit<sup>54</sup> most of the 6-place cells (11 cells) were fully inhabited, which does not comply with the rules established under the paragraphs 2 and 3 of Article 15 of the Imprisonment Code.<sup>55</sup>

Article 15, paragraph 4 of the Imprisonment Code provides that the accommodation of prisoners should have windows that allow natural light. The accommodation should have natural and / or artificial ventilation. N3 prison cells have small-sized windows, which are quite high, the wall is about half a meter thick, respectively, and unhindered light cannot reach the cell. They have no proper ventilation and natural light. Artificial lighting of the cells is satisfactory, while the artificial ventilation system is not working properly; 2 horizontal central heating pipes are installed under the windows; Cells are furnished with two-tier iron beds, which do not have a staircase up to the second tier. Cells also have individual wardrobes, a table and chairs; in most cells, the prisoners have TV. The cells have separated sanitary facilities (approximately 1.8 m<sup>2</sup>) where it is possible to take a shower; there are, however, problems with the water supply in the facility. The sanitary conditions of the living cells are generally satisfactory.

Establishment has 9 yards. Odd numbered yards have an area of about 37 m<sup>2</sup>, and even numbered yards - about 26 m<sup>2</sup>. Yards are partly roofed, with artificial lighting inside and equipped with wooden benches, bins and surveillance cameras.

It should be noted that during the visit in October 2014, the 4 and 6-bed cells were not fully inhabited, while in May 2015, the cells were completely filled. Accordingly, in 6-bed cells the prisoners are not provided with requisite personal area of 4 m.<sup>2</sup>

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54 7-9 May 2015.

55 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”. According to paragraph 3 of the same Article: “the living space per inmate of any temporary detention institution shall not be less than 3 square meters”.

In the investigation rooms, the prisoners meet representatives of investigative authorities, lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting their conversation to a certain extent.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure removal of extra beds from the living cells, proper ventilation and water supply of the facility, as well as to arrange the possibility of physical exercise via allocation of extra space for the yards. To eradicate the ventilation problem, air conditioners were installed in the cells in 2015, which is welcome, but it should be noted that it is necessary to tackle the problem of the central ventilation system. The recommendations concerning continuous water supply have not been implemented.

#### **2.4.1.3. Establishment N5 of the Penitentiary Department**

The establishment N5 is designed for the female prisoners of the penitentiary department. There are 7 residential buildings: the imprisonment unit, A, B, C and D blocks, residential unit for tuberculosis patients, maternal and children's department.

According to the information received from this establishment,<sup>56</sup> the unit for long-term dates was built in 2015; 7 rooms designed for the psycho-rehabilitation program "Atlantis" were repaired; the beauty parlor was repaired and equipped; heating systems of A, B and D blocks were upgraded; a special ward for post-operative and health complications was repaired and re-equipped; maternal and child section living rooms were renovated together with the corridor of the building, the floor covers were changed, and the necessary equipment was renewed; living rooms with appropriate equipment were arranged for disabled persons according to their requisite specificities; the green line was created and ornamental plants and conifers were planted.

Imprisonment Code allows all inmates to have regular contact with their families and close relatives via prison dates. Such meetings promote social integration and resocialization.

16 cabins designed for such visits operated in the facility throughout the year. Along a blank wall on the other side of these cabins, there are 16 dysfunctional cabins. Booths

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<sup>56</sup> Written response N739/16 of the director of the establishment N5, received by Public Defender on 21 January 2016.



installed in the middle of these cabins are made of glass. For years, prisoners had to meet their visitors at rendezvous beyond these glass barriers and their removal is certainly a step forward, but a problem of space of rendezvous rooms remains, which, in turn, creates an impediment to a confidential conversation. In particular, persons who come to visit prisoners in fact have to meet alongside those booths, in the corridor, as the size of the cabin remaining on the other side of the dividing glass is only 1 square meters. The visit revealed that the rendezvous process is observed by prison staff standing nearby.

Blocks have common-use shower rooms. Water consumed in the A, B, C buildings bathrooms' runs through the sewer system and accumulates in the toilet facilities. Ventilation functions poorly, the walls and the floor are out of date and in need of repairs.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to take all necessary measures to create infrastructure necessary for extended visits at the establishment N5 and to renew the obsolete inventory of the maternal and children's unit. It is a positive fact that the inventory was renewed and the necessary infrastructure for the extended visits was set up during the year. As for other recommendations - the establishment of proper ventilation, operation of central ventilation system in the investigation rooms, ensuring the confidential environment for rendezvous and the shower plumbing and ventilation systems maintenance issues - the recommendations have not been implemented.

#### **2.4.1.4. Establishment N6 of the Penitentiary Department**

It should be noted that capital renovations of the facility began in 2014 and are ongoing. In 2015, the first and second regime buildings underwent cosmetic repairs, ventilation systems were installed in 11 solitary cells and 15 safe rooms, dining-kitchen building was substantially repaired and yards were roofed with metal nets.

The facility has 2 residential buildings. The first building has 152 cells, and the other one- 90 cells. During our visit to the facility<sup>57</sup> one or two prisoners were placed in the cells. There were 3 prisoners in three cells and 4 prisoners in only one cell. The area<sup>58</sup> per prisoner fully complied with the statutory requirement of Article 15 (2) of the Imprisonment Code in the cells inspected by the Monitoring Group of the National Preventive Mechanism.<sup>59</sup>

57 15 September 2015.

58 E.g.: a cell in which one prisoner was placed, the cell area was of 16.34 m<sup>2</sup> to 19.97 m<sup>2</sup>; 2-man cells had 20 m<sup>2</sup> to 39.17 m<sup>2</sup> of floor space. As for the single cell where 4 prisoners were placed, the space was 19.07 m<sup>2</sup>.

59 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any

The newly renovated toilets of the cells have a semi-insulated door, making the isolation difficult in 2 and more place cells. It should also be noted that there are surveillance cameras in front of the toilets in the cells, which looks directly at the prisoners while they're serving their natural needs. The ventilation is not installed in the toilets of the cells, and the ventilation of the cells themselves is not sufficient. The common showers of the second residential building are only naturally ventilated. In some of the cells, water gets dammed in the bathroom sinks.

There are 6 investigation rooms in the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that the audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting them during the conversation.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper ventilation for residential as well as solitary confinement and quarantine cells, investigation rooms and shower rooms of the establishment N6. It should be noted that the recommendation was taken into account only with regards to solitary confinement cells, and there is still a problem as regards quarantine, investigation and shower rooms.

#### **2.4.1.5. Establishment N7 of the Penitentiary Department**

The establishment N7 is notable for hard living conditions, on which the Public Defender has repeatedly addressed<sup>60</sup> the Minister of Corrections, including the recommendation to close this institution. These problems are described in detail in 2013 and 2014 the Parliamentary Reports of the Public Defender, although the issue has not been resolved and no steps were taken towards the closure either.

The facility has 27 cells. Out of these 14 are double-occupancy cells, 5 cells are meant for 4 prisoners, and the remaining 8 cells are designed for eight prisoners each. In double cells N3 and N6 detainees were not placed due to repairmen works. Double cell area is about 7 square meters, four –place cells - 9 square meters, and eight-place cells - 14.5 square meters. Double cells have area of 3.5 square meters per prisoner, four-place cells - 2.25 square meters, and the eight-place cells -1.8 square meters. The table, the

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type of penitentiary institution shall not be less than 4 square meters per prisoner”.

60 30/07/2013 Recommendation N03-3/513; 16/12/2013 Recommendation N894/03-5; 19/02/2014 Recommendation N03/458.

bed and the toilet space are not excluded from these space calculations. On June 19, 2015, the eight-place cells N2 and N18 cells were inhabited by 7 prisoners, cells N7, N9 and N25 by 6 prisoners, N16 cell by 4 prisoners, N11 cell by 3 prisoners. As for the four-person cells, N10 and N17 cells were inhabited by 4 prisoner, cells N8 and N24 by 2 prisoners, while N1 cell only by 1 prisoner. Double cells N12, N13, N14, N15, N19, N20 and N22 were inhabited 2 prisoners. 6 prisoners were placed in separate cells.

From the 27 cells described above, 2 cells are inhabited by the prisoners involved in maintenance works, 2 per cell. Both cells are located at the first floor and did not have a number. On the left side of the entrance, near the staff room there is another cell for two prisoners employed in maintenance works. The cell has very small-sized (about 30X30 cm) window that is under the ground, and in fact neither the light nor air are provided to the cell. No other types of ventilation exist either. The cell area is of about 5 square meters (2.5X2). On the left side of entrance there is another cell for other two prisoners working in the maintenance sector. The cell area is 7.5 (3X2.5) square meter and the cell does not have any windows or ventilation. The cells do not have sanitary knots; both are old and damp, and unsuitable for human habitation.

Based on the monitoring results, it can be concluded that the space per prisoner in the living cells in most cases does not comply with the requirements of Article 15, paragraphs 2 and 3 of the Imprisonment Code.<sup>61</sup>

N2 and N18 cells, where 7 persons were placed at the time of our visit, space per person is of about 2 square meters. As for the N7, N9, N16 and N25 cells, which were inhabited by six, five and four prisoners, space per prisoner varies from 2.4 square meters to 3.6 square meters. N10 and N17 cells, inhabited by four prisoners, space per prisoner ranged from 2.25 square meters to 3 square meters. These calculations do not exclude the table, the bed and the toilet space.

Toilet space in the cells varies from 0.4 (0.63X0.69) square meters to 0.5 (0.62X0.78) square meters. Space held by a single row of the beds is approximately 1.3 square meters. Accordingly, in eight-bed 5,2 (1,3X4) square meters shall be deducted from the total space, as well as the toilet and table space for a total of about 1 square meter, which makes about 8.3 square meters. Obviously, in 8-bed cells, even at placement of no more than 4 prisoners, there's shortage of space. The same can be said of the four-person cells.

Cells of the establishment N7 have small windows (75X43 cm) covered by metal bars

61 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”. According to paragraph 3 of the same Article: “the living space per inmate of any temporary detention institution shall not be less than 3 square meters”.

and the air and sunlight actually cannot reach the cells through these windows. The ventilation system does not provide enough fresh air, and there's explicit lack of natural light in the cells.

Prisoners of the establishment N7 complained about the location and arrangement of the yard. The yards are small and located in a place where the air is not actually moving. Monitoring showed that the walking space is about 13 square meters (4.2X3.1). There are four of such spaces in the facility. Walking spaces are surrounded by the walls about three meters high and covered with metal bars and nets. Because of this, and considering that the area is situated between the buildings, sunlight and fresh air cannot reach these yards properly.

In addition, it should be noted that the facility N7 is special risk prison facility and its prisoners enjoy the right to walk one hour a day in the fresh air. Some of the prisoners who serve their sentences in the facility have the experience of chronic pulmonary diseases and tuberculosis in the past. In such conditions of life, their health conditions are aggravated and the risk of disease recurrence is increased.

Cell toilets of the establishment N7 are too small, there is no ventilation system and the flushing tanks are not installed. Although the toilet is isolated from the rest of the space of the cell, the open space remaining from above the door of the toilet, in the absence of the ventilation system guarantees the unpleasant smells to reach the cell. Toilet area is of between 0.4 (0.63X0.69) square meters to 0.5 (0.62X0.78) square meters. The prisoners say that some of them, due to their physical traits, are not able to normally satisfy their natural needs due to the narrowness of the toilet. Prisoners often have to open the door of the toilet and satisfy their natural needs in such a humiliating conditions. It should be noted that the beds are located in front of the door of the toilet and solitude virtually is impossible.

The establishment N7 does not have the infrastructure for long visits. Thus, the prisoners do not have the opportunity to enjoy a long date.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to close the establishment N7 due to the dire living conditions. According to the Ministry's reply to the recommendation<sup>62</sup> at this point the ministry cannot make a decision on the complete liquidation of the establishment, but in the near future, significant reduction of the number of the institution's inhabitants is planned via distribution of the relevant inmates to the institutions of appropriate risk. Comprehensive rehabilitation of the establishment N7 is also planned, with the abolition of the first-floor and significant reduction of the limit of inhabitation

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62 Letter N186/16 received by the Public Defender's Office on 11 February 2016

of the cells. It should be noted that in February 2016, 19 inmates were transferred from the establishment N7 to the establishment N6. With regards to the Ministry's position, it is important to note that considering the existing infrastructure of this establishment and its original function (built as an investigative isolator), the Public Defender has difficulty to imagine how the rehabilitation of the establishment can bring it into line with the standards established for custodial institutions. Therefore, the recommendation to close the establishment N7 remains unchanged.

#### **2.4.1.6. Establishment N8 of the Penitentiary Department**

The establishment N8 has 4 functioning residential blocks. The buildings have 2,4,6,8, and 10-place cells. The space per prisoner in the cells does not comply with the requirements set under paragraphs 2 and 3 of Article 15 of the Imprisonment Code.<sup>63</sup>

It should be noted that the European Committee for the Prevention of Torture, following their visit in 2012 issued the recommendation to the government to remove extra beds and ensure 4 square meters space per prisoner in multi-bed cells.<sup>64</sup> This requirement has not been fully implemented yet.

The artificial ventilation system is poorly functioning in the living cells. In some cells high humidity is observed. It should be noted that the establishment does not have the infrastructure for extended visits.

The establishment has 11 waiting cells. Reasonable reception and waiting section has 4 cells, where prisoners are originally placed when they enter the establishment. The waiting cells are located partially underground, resulting in insufficient lighting and ventilation in the cells. Sanitary conditions in the cells are unsatisfactory. During our visit, specific smells and large number of cockroaches were noticeable in these cells. Inmates were not allowed to linen, and were told that that did not enjoy the right to linen.

At the time of the visit of the Prevention Mechanism Monitoring Group,<sup>65</sup> the sanitary/hygienic conditions of the de-escalation rooms<sup>66</sup> were unsatisfactory. In particular, floor of cell N2 was full of scattered hair and dirt piles, and in cells N1 and N3 water leaked from the toilet bowl. The rooms have only artificial ventilation system, as the windows are not opened. Prisoners, in all three of the cells, were subject to constantly burning

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63 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”. According to paragraph 3 of the same Article: “the living space per inmate of any temporary detention institution shall not be less than 3 square meters”.

64 Report on the visit of 13-23 November 2012 to Georgia, CPT/Inf (2013) 18, para. 33.

65 24-26 November 2015.

66 There are three such rooms in the institution.

light, both day and night.<sup>67</sup> At the time of the visit<sup>68</sup> the inmates of the de-escalation rooms did not have their personal hygiene items (toothbrush, toothpaste),<sup>69</sup> linen, towel and pillow. Prisoners could not use their right to take a shower.<sup>70</sup> There is no video surveillance system in the isolated corridor in front of the de-escalation cells.

The N8 facility exercise yards are the bottom floor of the apartment buildings. The walking yards are similar to cells and are covered with a metal grid on the top. Chairs and inventory are not appropriate and there is generally depressing atmosphere.<sup>71</sup> The prisoners did not have the opportunity to exercise. According to them, they often do not enjoy the right to walk in the air, because the walk is offered at 7 or 8 o'clock in the morning.

The investigation rooms are located on the two floors of the administrative block of the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. There are 37 investigation rooms, 36 of which are equipped with a surveillance camera. This remaining one is where the representatives of international organisations generally meet with the prisoners.

There is no heating in the investigation rooms. The rooms do not have windows or central ventilation system either. The rooms are equipped with air conditioners, which in the second floor rooms operate with difficulties, or sometimes they do not function at all. Unfortunately, the above-mentioned problem stands since the opening of the N8 facility.

In 2014, the Public Defender addressed the Minister of Corrections with the following recommendations: to provide each prisoner of the establishment N8 with 4-square-meter area; to remove the extra beds from the cells; to ensure proper ventilation of the facility; to install the heating system and repair existing air conditioners in the investigation rooms, to install central ventilation system in the investigation rooms; to repair the roofs of the buildings in order to avoid water leakage on the from the ceilings of the cells; the prisoners must be allowed to enjoy the fresh air with the right of schedule during the day; to arrange a yard on the ground level; to provide chairs, exercise and other necessary equipment in the yards; to repair and properly equip the shower rooms.

67 Switching of the light in the rooms is regulated from the outside, by the employees of the institution.

68 24-26 November 2015.

69 According to the officers on duty to the de-escalation cells, they are not providing the prisoners with toothpaste and toothbrush for the interests of their safety, but these items are stored in the corridor commode, which did not prove true after we checked.

70 Also right to walk, making phone calls, receive visits, to use the shop, with the right to send correspondence.

71 Problems related to the exercise yards are also marked in the CPT report on the visit to Georgia in 2010, para. 81, available in English at the following address: <<http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>>

With regards to the above recommendations, it should be noted, that, although air conditioners were installed in the investigation rooms in 2015, to the extent that these rooms do not have windows and other means of natural ventilation, it is not possible to clean the air. Thus, it is necessary to ensure adequate artificial ventilation system. As for the other recommendations, they have not been implemented so far.

#### **2.4.1.7. Establishment N9 of the Penitentiary Department**

The establishment N9 has 1 residential building with 26 cells. During our visit, <sup>72</sup> the space of the living cells per prisoner did not comply with the requirements of paragraphs 2 and 3 of Article 15 of the Imprisonment Code.<sup>73</sup>

Living cells are lit both naturally and artificially. Cells are ventilated through the windows, but it is necessary to install artificial ventilation system. Laundry facility is not functioning and the prisoners are compelled to wash and dry clothes and linens in the cell, or in some cases, to send them to their family members for washing.

Establishment has 5 yards. All five are about the same size, 24-25 m<sup>2</sup>. They are partially roofed (1.5X3 m) and equipped with chairs and ashtray bins. To ensure physical activity of the prisoners it is preferable to equip yards with exercise tools.

According to the information Received from the establishment N9,<sup>74</sup> the quarantine and solitary confinement cells did not function in the establishment throughout the year. The establishment does not have the infrastructure for long visits, and the prisoners did not have the opportunity to enjoy a long-term visit.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to create extended visit infrastructure and to ensure proper artificial ventilation of residential as well as investigative rooms and showers. It should be noted that these recommendations have not been implemented.

#### **2.4.1.8. Establishment N 11 of the Penitentiary Department**

The establishment N11 has 1 residential building. Living cells are lit both naturally and artificially. Cells are ventilated by natural means. All the individual cells have a toilet and

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72 9 December 2015.

73 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”. According to paragraph 3 of the same Article: “the living space per inmate of any temporary detention institution shall not be less than 3 square meters”.

74 The letter N642/16 of the Director of the Establishment N9, received by the Public Defender’s office on 20 January 2016.

shower. There is also a common shower. According to the information received,<sup>75</sup> the repair works were carried out in the spring of 2015 in every cells of the establishment. The sanitary knots of the cells were completely renewed.

The short visits room of the facility also serves as the investigation room. There are several tables in the room, and the practice is that several prisoners receive their visitors simultaneously, which violates the privacy of the conversation. The teenagers have the opportunity to meet the members of their family without any barriers though, which is welcome.

The facility has two rooms allocated for extended visits, which is isolated from other buildings. At the time of our visit<sup>76</sup>, only one of these extended visit rooms was properly furnished, whilst the other is in need of some repairs. A video-conferencing facility also operates in the establishment, which was renovated and equipped with appropriate tools.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper artificial ventilation of residential as well as investigative rooms and showers, to eradicate the reasons of humidity in the living cells and to properly renovate them. It shall be noted that according to the information received,<sup>77</sup> the repair works were carried out in every cells of the establishment. The sanitary knots of the cells were completely renewed, which is welcomed. As for the relevant repairs of the extended visit room, this recommendation remains unfulfilled.

#### **2.4.1.9. Establishment N12 of the Penitentiary Department**

Infrastructural problems existed for years at the establishment N 12, as pointed out in detail in the 2013 Annual Parliamentary Report of the Public Defender. It should be noted that according to the information received from the establishment,<sup>78</sup> the following renovations were held in 2015: a room was allocated and renovated for the beauty salon; computer training rooms for prisoners were overhauled; 4th and 5th residential block bathrooms were renovated; the medical block has been repaired in July/August and the specialized rooms for “C” Hepatitis treatment program were allocated, the chief doctor’s room was renovated, a new medication storage and a pharmacist cabinet were created.

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75 The letter N741/16 of the Director of the Establishment N11, received by the Public Defender’s office on 21 January 2016.

76 11 March 2015.

77 The letter N741/16 of the Director of the Establishment N11, received by the Public Defender’s office on 21 January 2016.

78 The letter N11796/15 of the deputy director of the Establishment N12, received by the Public Defender’s office on 6 October 2015.



There are 7 residential blocks at this establishment, with different number of cells – 2<sup>79</sup>, 3, 4<sup>80</sup>, 5, 6<sup>81</sup>, 8<sup>82</sup>, 10<sup>83</sup> and 12<sup>84</sup>-place cells.

In some cells, the space allocated per prisoner is not in compliance with the requirements of paragraph 2 of Article 15 of the Imprisonment Code.<sup>85</sup> In the newly renovated residential block, in 12-place cell, where 11 prisoners were placed at the time of our visit, the cell area is 36.4 m<sup>2</sup>. The 4-place cells, in which 4 prisoners were placed the area of the room was 13.6 m<sup>2</sup>. In the old residential block in the 8- place cells, which housed 7 prisoners, the cell area was 26.7 m<sup>2</sup> and 23.8 m<sup>2</sup>.

The main residential block<sup>86</sup> is old and in need of major repairs. The building for the inmates enrolled in maintenance service is in even worse conditions. This applies both to infrastructure problems, as well as to sanitary and hygienic conditions. Because of amortized infrastructure, it is impossible to maintain proper sanitation in the cells. Maintenance service prisoners' cells have small windows,<sup>87</sup> thus they have no proper lighting and are not aired.<sup>88</sup> The corridor is dark, with the floors, walls and ceilings being in deteriorated conditions. The electrical networks need to be fixed in every cell of the main block, since the requisite safety standards are not protected.

It should also be noted that in the old residential buildings some of the cell doors / windows had built-in fans. In cells with no fans, artificial ventilation was complicated. There is no ventilation system in the old residential buildings and the building for prisoners involved in maintenance service.

In 4 cells on the third floor of the buildings there are no sanitary facilities. In case of placement of the prisoners in these cells there will be difficulties with use of the toilet at night, when the doors close. The cells of the old residential buildings do not have an individual sanitation knot, prisoners use the common toilets.

The establishment has one 18-seater waiting (quarantine) cell, with an area of 41.7 m<sup>2</sup>. Even at the placement of 11 prisoners in this cell will violate the standard 4 square meter per prisoner requirement of Article 15 of the Imprisonment Code.

79 The space of the 2-bed cells in the old residential block is 9.6 m<sup>2</sup>.

80 Space of the 4-bed cells in the new residential building was 13.6 m<sup>2</sup>.

81 The space of the 6-place cells in the new residential buildings is 17.5 m<sup>2</sup>, however in the view of protection of 4 m<sup>2</sup> per prisoner requirement, the number of actual inmates was less than 6.

82 In the old residential building approximately 25.6 m<sup>2</sup>/26 m<sup>2</sup>/18.5m<sup>2</sup>/28m<sup>2</sup>, as for the new building, the 8-place cell space is 19.8 m<sup>2</sup>, however in the view of protection of 4 m<sup>2</sup> per prisoner requirement, the number of actual inmates in all cells was less than designed for.

83 In the old building the space of the 10-place cell was 24.7 m<sup>2</sup>, but it was inhabited by 4-5 prisoners.

84 Space of the 12-bed cells in the new residential building is 36.4 m<sup>2</sup>.

85 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”.

86 Where there administration rooms are also situated.

87 N9 window – 0.47cmX0.36cm, N7 cell window – 0.65cm X 0.94cm, N11 cell window – 0.67cm X 0.70cm, N12 cell window – 0.78cm X 0.42, N3 and N8 cell windows – 1.02 cmX1.04cm.

88 N7, N9, N11, N12, N3 and N8 cells.

There are 4 solitary confinement cells at this establishment.<sup>89</sup> One of these cells is currently being renovated and thus temporarily out of use. All cells are under electronic surveillance. The space of the cells are 12.8 m<sup>2</sup>, 17.2 m<sup>2</sup>, 18.3 m<sup>2</sup>, walls and ceilings are plastered and painted. The cells are not provided with artificial ventilation. Each cell has a semi-isolated sanitary facilities. №1 and №3 cells have damaged toilets.

There is one investigation room in the establishment of the room, with an area of 17 m<sup>2</sup>; Room is equipped with 2 tables and 4 chairs; In the case of two simultaneous visits the confidentiality of the discussions will be violated. The natural lighting of the room is unsatisfactory.

Since August 23, 2015, the store of the establishment is supplied by LLC “Kalina Georgia”. According to the manager of the store, the store is supplied twice a week, however, due to increased demand for the products, it may be supplied three times a week. The store employs three persons.<sup>90</sup> It should be noted that no complaints about adequate supply of the products to the store were recorded by prison inmates. According to the manager of the store, the shop needs a six-counter refrigerators,<sup>91</sup> to import such kind of products, as fish, dip, meat and meat products - cutlets, kebab and other. Store is in need of air conditioning in order to keep the products at the necessary storage temperature.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper artificial ventilation of residential and solitary confinement cell as well as investigative room and showers. This recommendation, however, remains unimplemented.

#### **2.4.1.10. Establishment N14 of the Penitentiary Department**

According to the information received from the establishment,<sup>92</sup> the following renovations were undertaken throughout the year: in June 2015 the new hot water supply wiring was installed, the showers, pipes and faucets were changed, and common showers were divided into cabins In August 2015 the construction of the kitchen was completed, modern cooking pots, refrigerators and other equipment were acquired.

There are 4 residential buildings in this establishment. Cells have sufficient natural and artificial lighting. Central heating system is operational. Cells are ventilated only naturally. However, it should be noted that in 2015 ventilation hoods were installed in the cells.

89 Note: there were no prisoners in solitary confinement at the time of the monitoring.

90 The prisoners are not employed in the store.

91 During their operation of the store “Kalina Georgia” brought into a three-counter refrigerator, and a variety of consumer products.

92 The letter N890/16 of the Director of the Establishment N14 received by the Public Defender’s Office on 25 January 2016

The sanitary situation of the medical operating room is not satisfactory, and the room is isolated from medical reception only by a curtain.

Quarantine section consists of 2 parts, which are designed to accommodate 28 and 38 prisoners. The cell has concrete floor, the two-tier beds and individual lockers. Each cell has 3 windows, which have the inside metal grid, and the outside metal bars, limiting the penetration of natural light in the cells and preventing the air movement. The cells have no artificial ventilation.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper natural and artificial ventilation of residential, solitary confinement and quarantine cells, which was fulfilled only with regards to residential cells. Although, the problem of lack of natural and artificial ventilation remains in solitary confinement and quarantine cells, the recommendation with regards to the arrangement of the yards was implemented - in 2015 volleyball field was arranged, table tennis equipment installed and garden equipped with exercise tools, benches were installed in the second and third residential yards, which is a positive development. The requirement to ensure the privacy of showers was also fulfilled by the partition of the showers. The recommendation to separate the reception room of the Medical Unit from the operating room has not been met.

#### **2.4.1.11. Establishment N15 of the Penitentiary Department**

The space of the cells in N15 establishment is 17 m<sup>2</sup>-18m<sup>2</sup> and they are meant for 6 persons each. Space does not correspond to the requirements of Article 15, paragraph 2 and 3 of the Imprisonment Code.<sup>93</sup>

The windows of the living cells fully provide natural lighting and ventilation. Artificial ventilation system is not operating. There is central heating, flooring is of stone mosaic, and the walls are rough. The sanitary condition in the corridors and stairs of the residential building is not satisfactory.

Quarantine and solitary confinement cells are located in a closed-type residential building. In total there are 16 single cells, which do not have isolated sanitary facilities. Prisoners have to serve their natural needs in the cell without any sanitary node. Sanitation knot does not allow solitude. Meeting natural needs occurs under surveillance cameras. Sanitary knot does not have water flush.

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<sup>93</sup> According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”. According to paragraph 3 of the same Article: “the living space per inmate of any temporary detention institution shall not be less than 3 square meters”.

There are 38 telephones at the establishment,<sup>94</sup> available for prisoners to make telephone calls. Our visit demonstrated that the prisoners have to wait up to half an hour or more in the line before they can call.

On the first floor of the administrative building of the establishment, there's a room for short visits, which houses 33 brief cabins. The cabins are partitioned with glass windows and metal net.<sup>95</sup> Prisoners are deprived of any kind of physical contact with family members.

The laundry facility is operating at this establishment. It is located in the vicinity of the stadium. Laundry is in a one-story building, situated across from the common toilet facilities for general use. Laundry occupies two small rooms connected to each other. In one there are 2 washing machines, whilst the other room is used as dryer. There's no laundry drying machine or ironing equipment. In general, sanitary and hygienic conditions are not satisfactory. Due to the deficit of the washing machines, as well as the sanitary conditions of the building, prisoners for the most part do not use the laundry and do washing in the residential block toilet facilities and / or cells and dry in the common yard, in specially designated areas.

The storage facilities are located outside, in the amortized one-story building. Warehouse has damaged part of the roof, which leaks into the building in the rain and snow. Storage rooms are not arranged properly, there are not enough shelves. Sanitary conditions of the storage are generally unsatisfactory.

In accordance with the recommendation of the Parliamentary Report of the Ombudsman of 2014, 4 square-meter living space should have been ensured in N15 establishment, natural and artificial ventilation of basic living cells, as well as solitary and quarantine cells should have been provided for, plumbing and ventilation systems should have been fixed in the showers. It should be noted that these recommendations have not been implemented.

#### **2.4.1.12. Establishment N16 of the Penitentiary Department**

It should be noted that on July 16, 2015, N16 low risk prison was opened. Establishment has 3 residential buildings. Prisoners live in the "A" building on the first and second floors. Other buildings are free. At the time of our visit<sup>96</sup> each prisoner was provided with the requisite 4m<sup>2</sup> living space.

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94 Telephones are set at various places in the residential building, building facades on the walls.

95 From the side of the prisoners' cabin.

96 27 November 2015.

There is both natural and artificial ventilation system, ensuring proper ventilation of cells. Cells have central heating. Facility has a cell adapted for persons with disabilities. The sanitary and hygienic norms are preserved on whole territory.

The prisoners enjoy the right to walk without restriction, for which the facility has 3 yards. The convicts have the opportunity to benefit from the establishment of sports facilities (football, basketball) and two open football and volleyball stadiums. On the first and second floors the “A” building, there are separated common spaces, equipped with TV, the chairs, tables, and chess and checkers tables.

At the entrances of the first and second floors of the “A” building the complaint boxes are installed. On the first floor, the complaint box is in front of the room of staff on duty and there is a camera watching the box. On the second floor, the surveillance camera is installed directly above the box, which violates confidentiality.

#### **2.4.1.13. Establishment N17 of the Penitentiary Department**

There are 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 30, 32 and 34-place cells at the establishment N17.<sup>97</sup> The space of the cells does not correspond with the requirements of paragraphs 2 and 3 of Article 15 of the Imprisonment Code.<sup>98</sup>

Residential facilities are outdated and in need of major repairs. The sanitary conditions of the cells are unsatisfactory. The ventilation system cannot provide adequate ventilation in the cells.

The cells of the first floor of the third residential block were characterised with observable humidity. In one of the cell, on top of beds, parts of ceiling plaster were falling down, and a piece of cloth was stretched to accumulate the crumbling plaster.

At the time of the visit<sup>99</sup> 4 cells of the closed block did not have glasses in the windows. They were replaced by the polyethylene, resulting in low temperature in the cells. The sanitary conditions of the cells were unsatisfactory.

Facility operates two short visit rooms. Short visits are carried out via dividing the glass wall, and the room is equipped with phones. The prisoners are deprived of any kind of physical contact with their family members at short time visits.

97 The letter N829/16 of the director of the Establishment N17 received by Public Defender’s Office on 22 January 2016.

98 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner”. According to paragraph 3 of the same Article: “the living space per inmate of any temporary detention institution shall not be less than 3 square meters”.

99 7-8 December 2015.

10 rooms are allocated for long visits in the establishment. All rooms are identical, each with the space of 17 m<sup>2</sup>. Rooms are equipped with all the necessary furniture and equipment. The situation of the 6 rooms is satisfactory, while the rest of the 4 rooms are in need of repairs.

Attention should be paid to the sanitary conditions of the kitchen of the establishment. During the monitoring, it was found that the facility does not have dishwashing sink. Dishes are washed on the kitchen floor in the metal box.

Prisoners of semi-closed residential buildings can move freely across their residential buildings and pedestrian area of the yard during the day, while prisoners of the closed-type residential building of the establishment can enjoy a 1-hour per day walk. In the yards of the semi-closed residential buildings there are tables, chairs, playgrounds and the necessary equipment for exercise. Sports and recreational equipment is not provided in the yard of the closed regime building.

There are 4 investigation rooms on the first floor of the administrative building of the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that an audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting them during conversations.

According to the recommendations voiced in the Annual Parliamentary Report of 2014, the 4-square-meter space should have been provided for every prisoner in the facility, the sewerage system should have been fixed on the whole territory. In addition, appropriate natural or artificial ventilation should have been ensured in the basic cells, as well as solitary and quarantine cells. Despite the efforts, the problems still remain in the establishment.

## **RECOMMENDATIONS**

### **RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:**

- Abolish the establishment N7.
- Adopt all necessary means to solve the problem of water supply to the establishment N3.
- Create the infrastructure for long visits at the establishments N8 and N9.

- Provide a minimum 4 square meter living space per prisoner at the establishments N2, N3, N7, N8, N9, N12, N15, and N17.
- Remove extra beds from the cells of the establishment N3.
- Ensure adequate ventilation in the living cells of the establishments N2, N3, N6, N8, N9, 12, N15 and N17.
- Install central ventilation system in the investigation rooms of the establishments N5 and N8
- Ensure appropriate ventilation of the solitary confinement and quarantine cells, as well as the investigation rooms and showers at the establishments N2, N5, N6, N12, N14, N15 and N17.
- Ensure appropriate natural and artificial ventilation in the investigation and shower rooms of the establishments N9 and N15.
- Ensure the protection of sanitary norms in the de-escalation rooms of the establishment N8.
- Isolate the sections for solitary confinement and quarantine sections of the establishment N15.
- Take all necessary means to ensure protection of sanitary/hygienic norms in the laundry and corridors of the residential block of the establishment N15.
- Arrange the dishwasher sinks in line with relevant sanitary/hygienic norms in the kitchen of the establishment N17.
- In the renovated block of establishment N6 ensure the separation of the toilet compartment from the cell to ensure the isolation in the toilet.
- Provide clean bed linen to inmates at the establishment N2 on a regular basis and as necessary.
- Repair the roofs of the establishment N8 to avoid water leaking from the ceiling.
- Allow the prisoners to take their daily walks according to the daily agenda in the establishment N8.
- Arrange the yard on the ground level in the establishment N8 and equip it with benches, exercise and other adequate inventory
- Allocate the appropriate space for the yard at the establishment N3 and equip it in the manner to make the exercise possible for prisoners, arrange the sports field.

- Arrangement of the laundry block at the establishment N9 to ensure the accessibility of the clean linen and clothes to the inmates.
- Install the electronic surveillance equipment in the corridor to the de-escalation cells at the establishment N8.
- Provide for the confidential area with requisite space for the visits at the establishments N5 and N11.
- Arrange the investigation room in the manner preserving confidentiality in case of simultaneous visits at the establishment N12.
- Repair and equip the shower rooms at the establishment N8 with necessary equipment
- Fix the sewerage system in the shower rooms at the establishments N5, N15 and N17.
- Arrange the installation of the electric networks in accordance with the safety norms at the establishment N12.
- Secure repairs of the cells of prisoners enlisted in the prison maintenance service and of the old regime building at the establishment N12.
- Adopt all necessary measures to install adequate number of telephones at the establishment N15
- Allocate the room at the establishments N2, N3, N5, N6, N9, N11, N12, N14, N15, N17, N18 and N19 where the Public defender and members of National Prevention Mechanism will meet the inmates without any surveillance and in full protection of confidentiality.

#### 2.4.2. THE AGENDA AND REHABILITATION ACTIVITIES

According to the European Prison Rules, each prisoner shall be given the opportunity, on a daily basis, to exercise at least one hour in the open air, if the weather permits.<sup>100</sup> In bad weather they shall be provided with alternative training opportunities.<sup>101</sup> According to Article 14 of the Imprisonment Code of Georgia, the accused / convict has the right prescribed by law, to spend at least 1 hour on a daily basis in the fresh air (to take advantage of the right to walk).<sup>102</sup> Typically, in semi-open establishments the inmates can spend their days moving freely in the exercise yards in residential buildings, while closed prisons inmates have the right to walk for at least 1 hour a day.

100 Rule 27.1.

101 See *ibid*, Rule 27.2.

102 Paragraph 1.z.



It should be noted that the prisoners of the closed institutions where they spend 23 hours in the cells and their 1-hour walk happens to take place in the exercise yards similar to cells. This is likely to seriously affect their health. Accordingly, it is necessary to set up appropriate conditions for the presence of fresh air and exercise for prisoners and at the same time increase the length of daily stay in the fresh air. In the exercise yards of closed institutions, prisoners do not have the proper opportunities of physical activity, because there is no exercise equipment. Due to inappropriate setting of the exercise yards, in some cases, prisoners have refused to use the right of walk into the fresh air.

Public Defender has repeatedly noted in its reports that prison conditions shall ensure the re-socialization and reintegration of prisoners. Convicts serving prison terms shall obtain or increase the desired knowledge and skills, be allowed to participate in sports, artistic, intellectual and other events. All of this is necessary, in order to ensure that convict returns to society after serving the sentence as a full-fledged person.

According to Nelson Mandela Rules, the purposes of a sentence of imprisonment or similar measures depriving of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.<sup>103</sup> To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programs, activities and services should be delivered in line with the individual treatment needs of prisoners.<sup>104</sup>

Re-socialization process requires a comprehensive approach, which includes a well-thought-out action plan, which encompasses, along with the general measures, adoption of individual approach as well. The basic tools re-socialization that are used taking into consideration the sentence, the crime committed, the offender's personality, behavior and psychological state of mind, can be determined as: prescribed punishment, rehabilitation programs, employment of convicts, general and professional education, and public relations.

In order to maintain physical and mental health of all the prisoners, they should be provided with the opportunity to rest and cultural activities.<sup>105</sup> All of the penitentiary establishments shall seek to ensure that prisoners are provided with educational programs, which are as comprehensive as possible and meet their individual needs, taking into

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103 Rule 4.1.

104 See *ibid* Rule 4.2.

105 Nelson Mandela Rules, Rule 105.

account their aspirations.<sup>106</sup> A systematic program of education, including skills training, strengthening of the overall level of education of prisoners and encouraging crime-free life, shall be a key part of regimes.<sup>107</sup>

Throughout 2015 a variety of professional and vocational courses were held and are still being held in the prisons. Various types of events, including screenings, writers and other celebrities, poetry, chess tournaments, checkers, table tennis and more were introduced for the re-socialization of the prisoners.

Noteworthy that the rehabilitation programs were introduced at the establishments N2, N3, N5, N6, N8, N11, N12, N14, N15, N16, N17, N18 and N19. The prisoners were given the opportunity to participate in cultural and sports activities, acquire general / vocational education and look into the various trades. In this regard, the best example is the establishment N5. The rehabilitation activities of this establishment are provided in the table below.

N	Vocational Courses	Period	Number of Participants
1	Cosmetology	March/April	25
		October/November	21
2	Sewing	March/April	23
		December/ongoing	12
3	Felt Making	June/August	14
4	Hair stylist	July/August	15
		September/October	19
		November	20
5	Massage	September/October	18
N	Educational Programs	Period	Number of Participants
1	Bangkok Rules	March/April	24
2	Healthy Lifestyle	April/May	15
3	Operation of small businesses	May/June	16
		November/ongoing	16
		November/ongoing	8
4	English language	June/September	20
		November/ongoing	18
5	Theoretical course of driving license	October/December	48
6	Guide(tourism)	November/ongoing	13

106 European Prison Rules, Rule 28.1.

107 European Prison Rules, Rule 106.1.

7	Georgian language	November/ongoing	10
8	Hotel Personnel training	November/ongoing	10
9	Computer graphics	November/ongoing	7
10	Computer databases	November/ongoing	5
11	Office Software	November/ongoing	9
<b>N</b>	<b>Psycho-social rehabilitation activities</b>	<b>Period</b>	<b>Number of Participants</b>
1	Training of cognitive and social skills	July/September	5
		October/November	6
2	Psychological rehabilitation via music therapy	June/November	15
3	Psychosocial Rehabilitation of Victims of Violence through art therapy	June/November	12
4	Training- preparation for release	December/ongoing	12

The table below shows the activities in various penitential institutions in 2015 and the number of prisoners involved in these activities.

N	Psycho-Social Rehabilitation	N2	N8	N12	N14	N15	N16	N17
1	Healthy Lifestyle	45	18	17	8	10	28	35
2	Return to Society / Preparation for release	12		9	15		17	12
3	Stress Management	11	18	10	13			7
4	Cognitive and Social Skills	10		22			5	
5	Anger / aggression / conflict management/resolution		8		14			
6	Useful social skills / Positive thinking			11	16	28		10
7	HIV (AIDS)	50		13		12		
8	Tuberculosis	15	10	11	13	13		
9	Fight against human trafficking	10	24	11			25	19
10	Art-therapy	78			21		28	11

Apart from the activities listed in the above table the following educational / vocational and professional programs were held in prisons: English language, theoretical training

on driving license and computer programs,<sup>108</sup> Georgian language,<sup>109</sup> operator of small business,<sup>110</sup> guide (tourism),<sup>111</sup> church service chant and reading,<sup>112</sup> woodcarving,<sup>113</sup> embroidery,<sup>114</sup> hair-stylist.<sup>115</sup> The cultural / sports events also took place, including a meeting with writers and other famous people; Film screening and discussion; Tournaments of chess, checkers, football, basketball, table tennis, rugby; Staged performances; concerts and a variety of intelligent games - “What? Where? When?,” “Etalon,” poetry readings and meetings with clerics. These various programs and activities in the prison are undoubtedly welcome, but it is necessary for all the programs and activities to be the systematic nature and to be present in large numbers, especially in closed institutions.

As noted in the Parliamentary Report of 2014, although, the establishments N18 and N19 are the medical centres, there are some sections where the prisoners are placed for a long time, hence, it is important that these establishments implement certain activities. According to the information received from the establishments,<sup>116</sup> both agencies have taken steps towards the implementation of rehabilitation activities, although it is necessary to offer the prisoners as much as possible, and a variety of programs and activities. Only one program was held at the establishment N18 throughout the year<sup>117</sup> in October/November and only 4 inmates participated. As for the activities carried out at the establishment N19, please see the chart below.

Programme	Number of Participants
Woodcarving and Painting of Icons	4 convicts
English language	22 convicts

Unfortunately no activities were reported at the establishment N6<sup>118</sup> but for a tournament of chess and checkers. As for the establishments N7 and N9, during the year prisoners were not allowed to engage in valuable, interesting activities for them. This situation creates an unhealthy, stressful environment, which adversely affects the relationship of inmates and staff, as well as the order and security of the facility.

108 Establishments N2, N8, N11, N12, N14, N15, N16 and N17.

109 Establishments N2, N8, N11, N15, N16 and N17.

110 Establishments N2, N8, N12, N14, N16, N17.

111 Establishments N11 and N12.

112 Establishment N12.

113 Establishments N2, N11, N16, N17.

114 Establishment N2.

115 Establishments N12 and N15.

116 Letter N822/16 of the director of the establishment N18 received on 22 January 2016 and Letter N575/16 of the director of institution N19 received on 18 January 2016.

117 Letter N822/16 of the director of the establishment N18 received on 22 January 2016 did not specify the contents of this program.

118 While it is true that the establishment N6 was under repairs during the year, several convicts still served their sentences there.

In 2015, N3 facility held chess and checker tournament, carried out in the English language (4 convicted), the Georgian language (2 convicted), web design (4 convicts) and art-therapy (8 convicted) programs. It should be noted that in 2014, according to the Parliamentary Report, N3 facility had no rehabilitation and the Public Defender welcomes the establishment of the steps taken towards the rehabilitation of prisoners and hopes that rehabilitation activities will increase in the diversity and the involvement of prisoners.

2013 and 2014 Reports of the Public Defender addressed the Minister of Corrections, to ensure that a variety of re-socialization programs are introduced and implemented at the establishment N7 of the penitentiary department, as a temporary measure, before its final abolition. It should be noted that this recommendation has not been fulfilled. It is Necessary, that prisoners of closed institutions are allowed to be engaged in something of their interest, be it entertainment, arts, labor, educational and other activities, at least in their cells. It is also important, even in the view of limited possibilities that the institution promotes certain individual sports activities. For example, if requested, a prisoner shall be taken to the yard, where it will be able to train individually. For this purpose with the view of the interests of safety, it is possible to make elementary sports equipment available in a yard.

In the Parliamentary Report of 2014, the Public Defender advised the Minister of Corrections to take all necessary measures to introduce a wide variety of rehabilitation activities in all penitentiary establishments, to encourage the establishment of a social forum, with the participation of the prisoners and to plan and carry out various activities. Such measures are to be planned, taking into consideration the interests of the prisoners. In order to secure better involvement of prisoners in such activities, various forms of encouragement should be used. It should be noted that the above recommendations have not been implemented. The acute problem is the implementation of the rehabilitation programs in the penitentiary department establishments N3, N6, N7, N9, N18 and N19. This was also indicated in the Public Defender Parliamentary Reports of 2014 and 2013.

#### 2.4.3. EMPLOYMENT OF THE PRISONERS

According to European Prison Rules, Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.<sup>119</sup> Prison authorities shall strive to provide sufficient work of a useful nature.<sup>120</sup> As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.<sup>121</sup>

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119 Rule 26.1.

120 Rule 26.2.

121 Rule 26.3.

One of the positive developments of 2015, is the proposed amendment to the Imprisonment Code, according to which the convict, who is engaged in the individual working activities, is entitled, under the consent and control of the prison director and with the support of the establishment, to sell his/her products.

A number of inmates are engaged in individual activities in prisons, in particular preparation of different types of articles (crosses, enameling, woolen fabrics, and more.). The existing legislative record does not allow the accused / convicted to sell these works. By virtue of the proposed amendments, the accused / convict will be able to manufacture a variety of products and realize them under the control from the institution. The realisation will be held in accordance with the order of the Minister, likely through the online store and the money will be transferred directly to the accused / convict's personal bank account. The list of the allowable activities, the rules applicable to them and rules of realisation of individual manufactured item (product), will be set by the Minister of Corrections.

The bill specifies the general labor issues of the accused / convicted, in particular, if the penitentiary institution has employment opportunities, it can employ the accused / convict for small repair works. In this case, the Ministry plans setting up a small working group, which will train the prisoners in the relevant profession and provide the fulfilment of those small repair works, which will be held in the particular case of the penitentiary system. In this way the inmates will develop job skills, and will receive the corresponding amount of compensation for the work performed. This type of work will contribute to their re-socialization and rehabilitation.

Accused / convict employment-related issues and the procedure for remuneration, as well as the full list (including small repair works, and their delivery and acceptance procedure) of jobs which can be fulfilled by the accused/convict, shall be determined by order of the Minister.

On 16 July 2015 a new low-risk prison N17 was opened. According to the Order #71 of the Minister of Corrections<sup>122</sup> one of the functions of the institution is organising employment of prisoners. Manufacturing sector was established in the establishment in order to deal with the maintenance works. On 27 November 2015 our visit to the establishment revealed that none of the prisoners had been employed since the start of operation of the institution, when the main purpose of their transfer to this institution was to get them employed. As the visit revealed, certain prisoners took turns cleaning up their living cells and other areas, but none of the work was performed for the appropriate remuneration.

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122 the Order #71 of the Minister of Corrections On regulations of the establishment N 16, Article 3.2.d

In 2015, the prison inmates enrolled in maintenance service of the institutions fulfilled works such as parcel delivery and distribution of food for the prisoners, serving the church, washing, distribution of the food and consumer goods from the institution store, cleaning and library work. The convicts were paid for the work done, the amount of which is determined in accordance with their position.

Remuneration of those enrolled in maintenance	Gross Salary	Net salary
Head of the Service team	250	200
Deputy Head of the Service team	225	180
Service Personnel	200	160

Notable, that in contrast to other establishments, none of the inmates of the establishments N11 (Juvenile) and N18 (medical) were employed. In 2014, 804 inmates were employed in the prison system, while in 2015 the number of prisoners employed increased slightly and amounted to 873 inmates. As for the establishments by the employment of convicts, see the data in the table below.

Establishments	N2	N3	N5	N6	N7	N8	N9	N12	N14	N15	N17	N19	Total
2014	112	28	31	51	4	192	10	37	99	68	138	34	804
2015	101	21	37	26	4	247	7	32	92	60	219	27	873

Prison inmates enrolment in maintenance work is regulated by the “Rules of Convict’s involvement in the maintenance work and remuneration” established by the order of the Minister of Corrections N157. According to these Rules, enrolment of the inmate in the maintenance works of penitentiary establishment occurs on the basis of a written application of the inmate, by an order of the director of the institution.<sup>123</sup> Order of the Director on the enrolment of the convict in the maintenance service does not include the information as to the type of work to be done. This requirement is however prescribed by the Labor Code<sup>124</sup> and presents a material term of the employment agreement. The indefinite scope of work leaves the prisoners before the risk of having to do the works which were not known to them at the time of application.

The visits to the establishments during 2015 has revealed that a significant proportion of inmates enrolled in prison maintenance service, notwithstanding their will, have to work on weekends, holidays and nightshifts. Accordingly, it is necessary for all convicts

123 Order N157of the Minister of Corrections on the “Rules of Convict’s involvement in the maintenance work and remuneration”, Annex 1, Article 4.

124 Sub-paragraph 9.d.

enrolled in maintenance service to have their exact job description defined in the document attached to their order of enrollment. In addition, it is important that all the establishments have the registration form, which will be fixed for recording enlisted person's work schedule and the work done by the hour. This form will make it possible to determine how many hours of work have been performed by each inmate and whether they are to be paid for overtime.

## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS:

- Take all necessary measures to ensure that inmates of the closed prisons are allowed to stay in the fresh air for more than 1 hour
- Take all necessary measures to introduce a wide variety of rehabilitation activities in all penitentiary establishments, to encourage the establishment of a social forum, with the participation of the prisoners and to plan and carry out various activities. Such measures are to be taken with consideration of the interests of the prisoners, as well as various incentives be used to involve more prisoners in such activities;
- Take all necessary measures to ensure implementation of rehabilitation activities at the establishments N3, N6, N7, N9, N18 and N19;
- Take all necessary measures to ensure employment of inmates of the establishment N16.
- Determine that the enrolment orders of the inmates define the scope and type of maintenance works the prisoners have to perform
- Introduce the registration form for all establishments, which will be fixed for recording enlisted prisoner's work schedule and the work done by the hour. Determine the issue of the remuneration of the overtime work done by the prisoners

#### 2.4.4. REGIME, DISCIPLINARY CHARGES, INCENTIVES

According to the European Prison Rules, disciplinary procedures shall be mechanisms of last resort.<sup>125</sup> Whenever possible, prison authorities shall use mechanisms of restoration

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<sup>125</sup> European Prison Rules. Rule 56.1.



and mediation to resolve disputes with and among prisoners.<sup>126</sup> The severity of any punishment shall be proportionate to the offence.<sup>127</sup> Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.<sup>128</sup> Disciplinary punishment shall not include a total prohibition on family contact<sup>129</sup>

Disciplinary action should be carried out in accordance with the rule of law and the Nelson Mandela Rules. It should also be noted that Georgian legislation does not determine which disciplinary sanctions should be imposed on the offender in each case, which gives the leadership of the institution a wide discretion in the selection process of disciplinary punishment and increases the risk of disproportionate penalties.

The practice of the Penitentiary Department of the Ministry of Corrections in the application of disciplinary penalties is provided in the table below.

Institution	Placement in the Solitary Confinement Cells		Other Penalties		Overall	
	2014	2015	2014	2015	2014	2015
N2	127	143	83	153	210	296
N3	55	85	27	219	82	304
N5	3	1	52	66	55	67
N6	37	16	24	46	61	62
N7	0	0	145	255	145	255
N8	565	556	1058	1616	1623	2172
N9	0	0	3	3	3	3
N11	0	0	5	0	5	0
N12	5	6	7	13	12	19
N14	120	134	4	2	124	136
N15	119	114	131	287	250	401
N16	-	3	-	10	-	13
N17	74	126	239	65	313	191
N18	0	0	48	125	48	125
N19	27	17	14	9	41	26
<b>Total</b>	<b>1132</b>	<b>1194</b>	<b>1840</b>	<b>2870</b>	<b>2972</b>	<b>4064</b>

126 *ibid*, Rule 56.2.

127 *ibid*, Rule 60.2.

128 *ibid*, Rule 60.3

129 *ibid*, Rule 60.4

As outlined in the table, in 2015, compared to last year the use of disciplinary penalties has significantly increased in practice at the establishments N2, N3, N7, N8, N15 and N18, and slightly – at the establishments N5 and N14. It is a positive step that at the establishment N11 no juvenile has been subject to the disciplinary sanction and at the establishment N9 only 3 prisoners received such sanctions.

With regards to the use of disciplinary measures at the establishment N6 in 2015, it shall be noted that as of August 2014<sup>130</sup> the number of inmates at the establishment N6 was significantly higher than at present. In particular, from January 2014 the number of establishment inmates ranged from 487 to 547, and in August, due to the commencement of the capital repair works a massive transfer of prisoners to other facilities took place. Respectively, in 2015 the total number of prisoners in the facility ranged from 114 to 124 prisoners.<sup>131</sup> Based on the above, given the fact that the number of prisoners in the establishment N6 in comparison to the previous years, is 4 times less, there is increase in the use of disciplinary penalties.

It should be noted, that the Public Defender addressed the Minister of Corrections with recommendations in its 2014 Parliamentary Report, to develop the Guidelines on the use of disciplinary penalties, in order to ensure the use of uniform disciplinary penalties in all the institutions. Unfortunately, the Ombudsman's recommendations were not followed.

According to the data received from the penitentiary establishments, the confinement in the solitary cell as the disciplinary penalty is most actively used by the director of the establishment N14. According to statistics obtained from that establishment,<sup>132</sup> in 2015, solitary confinement as a disciplinary sanction was applied in 134 out of 136 cases. This is contrary to Article 88 (1) of the Imprisonment Code, according to which solitary confinement, as a disciplinary measure, is used only in special cases.

The solitary confinement cell was not functioning throughout the year at the establishments N7 and N9 of the Penitentiary Department and therefore, this form of disciplinary punishment was not used. There are no solitary confinement cells, due to the specifics of the institution, in the establishment N11 for rehabilitation of juveniles and N18 prison hospital.

According to second paragraph of Article 88 of Imprisonment Code, prisoners placed in solitary cells shall be deprived of long and short visits, telephone conversations, pur-

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130 January 2014 – 521 Prisoners; February – 528; March – 487; April – 502; May – 515; June – 547; July – 547; August – 493.

131 January 2015 – 118 Prisoners; February – 114; March – 120; April – 118; May – 118; June – 124; July – 121; August – 122.

132 The letter N890/16 of the Director of the establishment N14 received by the Public Defender's Office on 25 January 2016.

chase of food, which is carried out similarly in practice. CPT has recommended to the government of Georgia, to “take measures to ensure that disciplinary confinement does not amount to prohibition on family communication. A ban on any contact with the family as a form of punishment should be used only when a crime is related to such contacts”.<sup>133</sup> In this regard, in 2012, the Public Defender addressed the Parliament with the proposal of relevant modifications to the Imprisonment Code, while the 2013 and 2014 parliamentary report underlined the need for this article to change. However, Article 88 of the Imprisonment Code remains unchanged.

Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner’s mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.<sup>134</sup> According to the 2007 Istanbul statement on the use and effects of solitary confinement,<sup>135</sup> the use of solitary confinement should be completely banned with prisoners with mental health problems. It is prohibited to use solitary confinement with prisoners with mental or physical disabilities, when it is possible that such measure will aggravate their condition.<sup>136</sup>

2014 Annual Report of the Public Defender addressed the Minister of Corrections, to take appropriate measures to prevent placement of prisoners with mental health problems in solitary confinement cells, but in 2015, prisoners with the mental health problems were placed under solitary confinement at the establishments N2 and N3 of the Penitentiary Department. For example, one of the prisoners with mental health problems of N3 establishment was subjected to disciplinary sanctions for 5 times in the first 4 months of 2015, 2 out of which were the solitary confinement. Similarly, other prisoners, who had a personality disorder, were subjected to disciplinary sanctions 3 times in the first 4 months of 2015, including, in one case the solitary confinement.

According to European Prison Rules, punishment shall not include a total prohibition on family contact.<sup>137</sup> According to the Imprisonment code, simultaneous restrictions on telephone conversation, sending and receiving of the private correspondence and short visits is prohibited.<sup>138</sup> In 2015 study of the disciplinary punishment practice in the establishment N7, revealed that in 19 cases the prisoners were fully restricted the contact

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133 The CPT report on the visit to Georgia in 2010, para. 115, see the link: <[http://www.cpt.coe.int/documents/geo/2010\\_27-inf-eng.htm](http://www.cpt.coe.int/documents/geo/2010_27-inf-eng.htm)> [last accessed 20.01.2016].

134 Nelson Mandela Rules. Rule 39.3.

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

136 Nelson Mandela Rules. Rule 45.2

137 Rule 60.4.

138 Article 82, (5).

with the outside world,<sup>139</sup> 2 prisoners had been in such conditions twice. In one case, the convict-K.D.'s contact with the outside world was restricted in total for 91 days.

It should also be noted that following a visit to the establishment N7 by the members of the Special Preventive Group on 19 June 2015, the Public Defender addressed the Minister of Corrections, to take all necessary measures to ensure that the complete ban of family contact was not applied in N7 facility at the time of the disciplinary sanctions. The recommendation still has not been implemented since in the second half of 2015 the prisoners under disciplinary penalties had fully restricted the contact with their families.

According to paragraph 6 of Article 17<sup>2</sup> of the Imprisonment Code, long visits are not granted to convicts in the special risk prisons, as well as to the convicts, placed under quarantine, or who had imposed a disciplinary sanction and / or administrative detention. In practice, the above-mentioned norm is misinterpreted, since this paragraph deals with the case when the offender is sentenced to disciplinary punishment (disciplinary punishment has not expired) and the restriction of long visits cannot be extended to the case when the disciplinary action expires, even if convicted may be presumed to be under disciplinary action.

It is very important for prisoners to maintain sufficient contact with the outside world. First of all, they should be given the opportunity to maintain their relationships with family members and close friends. The guiding principle should be to promote contact with the outside world; any restriction of such contact must be based solely on the protection of important security interests or justified by lack of resources.<sup>140</sup> CPT mentioned in the report issued after the visit to Georgia that the restriction of the family contact, as a form of punishment, should be used only where the offense relates to such contacts, and only a very short period of time (more days, rather than weeks or months).<sup>141</sup>

In accordance with the above, it is necessary to amend Article 82 of the Imprisonment Code to retract all the ways of limiting the contact with outside world from the list of disciplinary sanctions, such as limitations to the telephone communication,<sup>142</sup> limitations to correspondence,<sup>143</sup> and ban on the short term visits.<sup>144</sup>

According to Nelson Mandela Rules, prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.<sup>145</sup> According to European Prison

139 Right to short visits, right to telephone calls, right to correspondence.

140 Second General Report of CPT, para. 51, CPT/Inf (92), published 13 April 1992, available at: <<http://www.cpt.coe.int/en/annual/rep-02.htm>> [Last accessed: 03.16.2016].

141 CPT Visit to Georgia. 119, CPT/Inf (2015) available at: <<http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf>> [Last accessed: 02.03.2016].

142 Imprisonment Code, Article 82, paragraph 1.t.

143 see *ibid* paragraph 1.i.

144 see *ibid* paragraph 1.m.

145 Rule 41.4.

Rules,<sup>146</sup> a prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.

In 2015, a total of 4064 disciplinary measures were used against prison inmates, with 38 orders on the imposition of disciplinary sanction were appealed against by 28 convicts<sup>147</sup>, 20 out of whom served their sentences at the establishment N7. As for 2014, only 3 inmates appealed against 3 disciplinary measures imposed upon them.<sup>148</sup> Therefore, we can say that compared to last year, the appeal of disciplinary penalties from prisoners is increased, however, noteworthy is the fact that the prisoners refrain from appealing the orders on the disciplinary charges, because they regard it as useless.

In the CPT's view, the prisoners should have an opportunity to listen to the radio or watch TV, and this should not be regarded as a privilege and should be the right of all prisoners.<sup>149</sup> According to paragraph 2 of Article 20 of the Imprisonment Code, accused/convicted persons, except for those placed in a solitary confinement cell, may be granted the right to listen to radio and watch TV during non-work times, as determined by the internal regulations of the establishment. With the consent of the administration and according to the restrictions of the establishment, an accused/convicted person or a group of accused/convicted persons may have personal radio or TV sets if their use does not violate the internal regulations of this establishment or disturb other accused/convicted persons. Accused/convicted persons may purchase these devices at their own expense or receive them in the form of a parcel.

According to Articles 63,<sup>150</sup> 66<sup>151</sup> and 66<sup>152</sup> of the Imprisonment Code, the right to use a personal TV set, computer or radio set is a form of incentive for prisoners, which is also provided in the Regulations of the penitentiary establishments established by the Order of the Minister of Corrections in 2015 (Semi-open, Closed and Special risk institutions). Public Defender considers that the use of television and radio should not be dependent on the good will of the administration. All the accused / convict shall have the right to use TV and radio without any prior permission and the director of the establishment should be able to restrict the rights for a certain period of time only in exceptional cases, on the basis of clearly defined grounds and the reasoned decision.

In addition, the conditions in which cell the prisoners have one TV or a radio in the cell, a disciplinary penalty in the form of withdrawal of the TV / radio receiver takes the form

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146 Rule 61.1.

147 Establishments N2, N3, N5, N7 and N9.

148 Establishments N6, N8 and N9.

149 Available at the following link: <<http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf>> [last accessed: 28.03.2016].

150 Subparagraph E.

151 Subparagraph V.

152 Subparagraph E.

of the collective punishment if the cell mates of the disciplined person will not be able to access TV or radio for some time and if the fellow cell mates will acquire will TV / radio, then a disciplinary action in the form seizing of a TV / radio loses the sense, as does such sanction. Usage of this disciplinary sanction<sup>153</sup> can have particularly direct effects on the wellbeing of the single cell prisoners. In closed institutions, in absence of rehabilitation, sports and cultural activities, TV / radio is one of the main entertainment means and at the same time, the main source of information for prisoners.

In 2015, administrative detention was used only in N7 establishment against 3 prisoners (on several counts against each of them). In 8 cases the administrative detention was applied for 1 day, while in one case it was applied for 3 days. Administrative detention was applied on the basis of covering the electronic and visual surveillance cameras by the prisoners.

Previous Annual Report of the Public Defender has submitted a proposal to the Parliament, to reduce the period of administrative detention to 15 days. By 2014 amendments to the Administrative Code the administrative detention period was reduced from 90 to 15 days. It is necessary to apply the same standard to prisoners and limit the usage of administrative detention in prison for a maximum of 15 days, which was not implemented yet.

In 2014, the report of the Public Defender addressed the Minister of Corrections to develop and introduce in all institutions of the form of a journal, in which the records would be kept on the usage of the statutory rights by the prisoners placed in solitary confinement cells (shower, walking, and receipt of hygiene items). It should be noted that this recommendation has not been taken into consideration.

#### **2.4.4.1. Incentives**

According to Article 66 of the Imprisonment Code, in the case of model behavior and honest attitude to the work, the administration of a closed type prison may allow certain forms of incentives for a convicted person. The decision to grant incentive is taken by the director of the establishment. Incentives may take the form of expression of appreciation, additional long or short visits, early lifting of warning or other disciplinary sanctions, etc.

Statistical data on the applied incentives per penitentiary establishment in 2014 and 2015 are provided in the table below.

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153 Article 82.1.d. of the Imprisonment Code: restriction of the use of permitted items for no more than 6 months.

Incentives	N2	N3	N5	N6	N7	N8	N9	N11	N12	N14	N15	N16	N17	N18	N19	Total
2014	209	127	129	85	5	351	16	60	15	90	267	----	383	0	41	1778
2015	270	47	147	127	0	359	6	42	33	184	579	52	462	8	8	2324

The statistical data in the table clearly shows that in 2015, compared to the previous year, incentives to the inmates have been increased. Significant increases are notable in N15, N2, N6, N14 and N17 establishments, which should be viewed as positive development. Incentives decreased at the establishments N3, N9, N11 and N19. During the reporting period, unfortunately, none of the prisoners was promoted at the establishment N7.

In 2014, the Parliamentary Report of the Public Defender addressed the Minister of Corrections, to increase the incentives to the inmates in prisons. This recommendation was implemented only as regards the establishments N15, N2, N6, N14 and N17. The Ombudsman considers that the frequent incentives to prisoners weaken prison subculture influence and promote their re-socialisation. Therefore, it is necessary that the establishments N3, N7, N8, N9, N11, N12, N16, N18 and N19 of the Penitentiary Department strengthen encouragement of prisoners.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- Develop the Guidelines on the use of disciplinary penalties, in order to ensure the use of uniform disciplinary penalties in all the institutions.
- Use disciplinary sanction as the last resort.
- Use solitary confinement as the disciplinary sanction only in special cases.
- Take all the necessary measures to prevent placement of the prisoners with mental health problems under solitary confinement.
- Take all necessary measures to ensure that the use of disciplinary penalty does not result in the complete restriction of the contact with the family.
- React with appropriate measures on the cases of breach of Article 82 of the Imprisonment Code at the establishment N7.

- Frequently apply incentives in different forms at the establishments N3, N7, N9, N11 and N19

#### PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- Amend Article 82 of the Imprisonment Code in the manner as to remove the norms which list the restriction of telephone communications, correspondence and short visits as the forms of disciplinary sanctions.
- Amend Article 88 of the Imprisonment Code and remove provisions prohibiting short and long term visits, telephone communications and purchase of food products for prisoners subjected to solitary confinement.
- In order to define the possession of TV and Radio as the right rather than privilege, amend the relevant articles of Imprisonment Code (Articles 63.e, 66.v and 66.e) and remove the right to possess the TV as the form of the incentive. Additionally, amend Article 82 of the same code and define that it is not allowed to seize the TV/Radio set or to restrict their usage as a disciplinary sanction.
- Limit the period of administrative detention in prisons to a maximum of 15 days.

## 2.5. PENITENTIARY HEALTHCARE

Right to health is an inclusive Right<sup>154</sup> and encompasses access to safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information and gender equality.

The right to health also includes a right not to be subjected to medical procedures without consent, to torture or other cruel, inhuman, degrading treatment or punishment. By virtue of the substance of the right to health, a person should have access to the health care system; disease prevention, treatment and control; medicines; reproductive health; basic health services (on equality footing and timely); health-related information and education. Health system services should be accessible, affordable and of high-quality.<sup>155</sup>

154 Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights and World Health Organization, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> [last visit on 17.03.2016].

155 General comment N° 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.



For effective exercise of the right to health, particular importance shall be placed on the preventive healthcare, which implies: facilitation to health and improvement of general living conditions; food; sanitation; intellectual and physical activities; targeted preventive measures in prisons focused on specific problems such as infectious diseases, mental health, drug addiction and violence.

Within the framework of the monitoring conducted in 2015, an emphasis was made on the effective functioning of the prison healthcare system and the existing challenges. In the course of monitoring, we interviewed the prisoners and the prison healthcare staff; we also inspected the conditions in medical units of the penitentiary establishments and the infrastructure at the penitentiary medical facilities.

Statistical reports and information provided by the Medical Department of the Ministry of Corrections and individual penitentiary establishments were used during the research, along with the official statistical data provided on the webpage of the Ministry of Corrections

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

- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997);
- The Optional Protocol to the above-mentioned Convention (2006);
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987);
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”) (United Nations; New York and Geneva, 2001 – 2004);
- Principles and case-law of the European Court of Human Rights;
- 3rd General Report on the CPT’s activities – healthcare services in prisons;
- The UN Standard Minimum Rules for the Treatment of Prisoners (1955);
- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1989);
- The European Prison Rules (2006);
- Recommendation No. R (87) 3 of the Council of Europe Committee of Ministers (1987);

- Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 20 April 1998);
- Consensus Statement on Mental Health Promotion in Prisons, WHO Regional Office for Europe Health in Prisons Project (The Hague, Netherlands, 18–21 November 1998)
- The UN international principles of medical ethics (1982)
- The World Medical Association: Declaration of Tokyo (1975), Declaration of Hamburg (1997), Geneva Declaration (1948), Declaration of Malta (1991, 2006), Helsinki Resolution (2003, 2007);
- A Guide to International Instruments and Mechanisms against Torture, International Rehabilitation Council for Torture Victims (IRCT) (as of 4 July 2007)
- Health in Prisons, A WHO guide to the essentials in prison health;
- The Madrid recommendation: health protection in prisons as an essential part of public health (WHO, 2010).
- Reforms implemented in the penitentiary healthcare system and current challenges are discussed below in the relevant chapters.

### 2.5.1. FUNDING OF THE GEORGIAN PRISON HEALTHCARE; ORGANIZATIONAL ASPECTS; IMPLEMENTED REFORMS

According to the information received from the Ministry of Corrections, the Ministry's Medical Department has three separate units in order to organise the work related to basic healthcare, special services and healthcare regulation: unit for primary healthcare and outpatient services, unit for specialized medical services, and the unit of regulation of the medical activity regulation.

It is noteworthy that by the Order N53 of the Minister of 25 June new regulations of the medical department were established. The new regulation defined and brought under the regulatory framework the activities of the territorial units of the medical department: the medical units of the penitentiary establishments, first-aid points of the pre-trial detention facility, tuberculosis treatment and rehabilitation centre, and the medical prisons.

Penitentiary Healthcare Standard, developed with participation of Council of Europe experts and adopted by Order N31 of the Minister of Corrections on “ Standards of med-

ical care in the penitentiary facilities standards, standards for the additional medical services for the persons with special needs, the package of basic penitentiary healthcare services of preventive detention and prison facilities and on approved list of medicines“; define the types of medical services provided by Government to inmates of penitentiary system.

According to the information received from the Ministry of Corrections, the medical department underwent a complete reorganization under the reform, and the health budget is increased, which is a positive trend.

In 2015 the net expenditure of the medical department and the medical service of the accused and convicted was 11 942 060 GEL, out of which the employees' salaries were 6 977 626 GEL; Medical expenses - 4 032 634 GEL, other expenses related to the work of medical department - 931 800 GEL. It should be noted that the expenditure is decreased compared to 2014 by 1 358 740 GEL<sup>156</sup>.

## 2.5.2. MEDICAL INFRASTRUCTURE

### 2.5.2.1. Establishment N18 for treatment of accused and convicted persons

The capacity of beds at the establishment N18 is 180 prisoners. In late December 2015, 110 patients were placed at this establishment. Chambers are designed for 1, 2, 3, 4 and 5 patients.

According to the information received from the medical department, the diagnostic ward of the establishment was functional during 2015 and provided the following: X-ray, echoscope, endoscopy (gastroscopy, colonoscopy, bronchoscopy), elastoscopy (fibros-can), shock room, laboratory (clinical, bacteriological, biochemical), sterilization room, a dental room, psychiatry/observation room, infections/TB, long term care unit/rehabilitation rooms, therapy, surgery block, department of critical medicine and surgery.

The establishment provides 24-hour services to patients in the areas of general therapy, neurology, cardiology, endocrinology, psychiatry, infections, tuberculosis, dermatology and venereology, surgery, oncology, traumatology, urology, ENT (ear, nose and throat), ophthalmology, resuscitation and other areas.

In 2015, in the establishment N18 visual surveillance was ongoing in 24 cells, in particular, in 4 observation cells, in 11 cells of psychiatry department, in 5 long-term care cells, in 1 cell of the therapeutic unit, 1 cell of the surgical unit, in 1 cell of anesthesia / resuscitation unit and in 1 cell of infectious Division. In 2014 Annual Report of the Ombudsman called the Minister of Corrections for reviewing the decision of the Director of the

<sup>156</sup> Total expenditures of the Medical Department in 2014 amounted to 13 300 800 GEL.

Penitentiary Department on installing surveillance cameras in all wards at the psychiatry unit, so as to ensure the privacy of patients. However, this recommendation was not followed, and every cell in the psychiatric unit is equipped with surveillance cameras.

In 2014, the public Defender also addressed the Minister of Corrections to install an appropriate ventilation system in the operating room and the X-ray room and ensure good working of the ventilation system at this establishment. According to the response received from the medical department, a ventilation hood was installed in the X-ray room, as for the operating room- a new ventilation system with 'Hepa' filters, which corresponds to the requirements of the Order № 385 of the Government of December 17, 2010 on "Rules of Medical Activity Licensing and Issuing the permit for Stationary Institutions" and technical regulations N83 of 16 January 2014 on the "Medical radiology diagnostic procedures and the protection of radiation norms in the treatment".

### **2.5.2.2. Medical Infrastructure of Penitentiary Establishments**

Healthcare services at penitentiary establishments are provided by 37 basic healthcare teams and 2 medical institutions. According to information received from the Medical Department of the Ministry of Corrections, the equipment of the basic healthcare teams encompass a defibrillator, a pair of scales, a stadiometer, a cardiograph, a glucometer, a blood pressure measurement device, an X-ray viewer, dental chairs, negatoscope, little manipulation equipment, the patient couch for examining, operating table, sterilizer, reflector / lamp, quartz lamp, medicine cupboard, iron table, tools and materials for a variety of surgical tools, desk / chairs, a washstand, a different number sewing needles and surgical material, hand-processing solutions.

TB Treatment and Rehabilitation Centre equipment includes X-ray, echoscope and laboratory, dental chair, small manipulations room, sterilization room, resistant TB unit, sensitive TB unit and stationary unit. N18 Establishment for Treatment of Accused and Convicted Persons is equipped with: X-ray, echoscopy, endoscopy (gastroscopy, colonoscopy, bronchoscopy), elastoscopy (fibroscan), shock room, laboratory (clinical, bacteriological, biochemical), sterilization room, a dental room, psychiatry/observation room, infections/TB, long term care unit/rehabilitation rooms, therapy, surgery block, department of critical medicine and surgery.

According to the information received from the Institution,<sup>157</sup> the unit for long-term visits was built in 2015; 7 rooms designed for the psycho-rehabilitation program "Atlantis" were repaired; a special ward for post-operative and health complications was repaired and re-equipped; living rooms with appropriate equipment were arranged for disabled

<sup>157</sup> Written response N739/16 of the director of the establishment N5, received by Public Defender on 21 January 2016.

persons according to their requisite specificities. According to the information received from the establishment N12,<sup>158</sup> the medical block has been repaired in 2015. The specialized rooms for “C” Hepatitis treatment program were allocated. The chief doctor’s room was renovated. New medication storage and a pharmacist cabinet were created.

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

Positive assessment shall be given to the work of regulatory unit of the medical department which checked the prison food, hygienic conditions, and medical units, including the X-ray apparatus, and medical waste management and production processes of the archival documentation.

According to the information received from the medical department, the monitoring of the regulatory unit revealed that at the establishments N2, N3, N5, N6, N8, N9, N11, N12, N14, N16, N18, and N19 X-ray rooms did not comply with the requirements of the technical regulations N83 of the Government of Georgia of 16 January 2014 on the “Medical radiology diagnostic procedures and the protection of radiation norms in the treatment”.

According to the inspection materials of the regulatory unit, the inspection of the establishments N5, N8, N9, N11, N12, N18 and N19 in 2015 revealed that the walls and floors of medicine storage facilities are surfaced in the manner which makes the wet processing impossible, thus violating the sanitary/hygienic technical regulations established for pharmacies under Article 1 of the Order N575 of 24 September 2014 of the Government of Georgia on “Technical Regulations - , sanitary and hygienic facilities / technical conditions of the pharmacy (specialized trading unit) and the retail trade “.

At the time of the visit of the Special Prevention Group<sup>159</sup> the medicine storage was inspected at the establishment N12. Storage was located in two small rooms. It is worth noting that the conditions of storage rooms did not comply with the requirements of the Order N575 of 24 September 2014 of the Government of Georgia. The surface of the pharmacy ceilings and wall did not allow processing and disinfection as required. Responsible for storage explained that it is planned to relocate the storage in the medical unit. During the visit of the new storage room repairs were ongoing.

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158 The letter N11796/15 of the deputy director of establishment N12, received by the Public Defender’s office on 6 October 2015.

159 The post monitoring report of the visit to the establishment N12 is available at: <http://www.ombudsman.ge/uploads/other/3/3456.pdf> [last accessed 21.03.2016].

The Public Defender approached the Ministry of Corrections with the recommendation to bring the drug storage of the establishment N12 in compliance with the Order N575 of 24 September 2014 of the Government of Georgia. According to the letter of the director of the establishment N12,<sup>160</sup> new storage was arranged on the territory of the medical unit.

In 2014, the Public Defender addressed the Minister of Corrections, to bring the prison medical units in line with the applicable standards. According to the response from the Medical Department, a list of all the inventory and equipment, which is out of order in all institutions was created together with indications as to whether they are in need of repair and / or the purchase of new ones and the demand was issued to acquire them. Equipment / apparatus is already purchased and they will be supplied to all medical units gradually. Although new medical equipment is a positive development, the problems that are still unsolved should also be noted, in particular, the disorganized ventilation systems and the absence of antistatic linoleum.

#### **RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:**

- Reconsider the decision on the installation of surveillance cameras in all psychiatry wards, in order to protect patients' privacy.
- Make the medical units of penitentiary establishments compatible with the standards applicable in the whole country, including by properly equipping these medical units and controlling the quality of their medical equipment, organizing the ventilation systems in good order and laying antistatic linoleum on the floors

#### **2.5.3. ACCESSIBILITY OF MEDICINE**

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

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160 Response N616/16 of the Director of the establishment N12 received by Public Defender on 18 January 2016.

There is a pharmacy storage in every penitentiary establishment and a person responsible for that pharmacy storage.<sup>161</sup> According to information received from the Medical Department, the tender is held at the beginning of each year, to purchase medicines on the list of basic medicines, and bought medicines are kept by provider. At the end of each month, the person responsible for drugs storage submits the request for medicines the supplies of which are set to be exhausted to Logistics Department, and the required medications are provided within 5 working days to the establishment. If the drugs prescribed by specialist doctors to the patient are not included in the penitentiary health-care basic medicines list, the chief doctor sends individual request to the medical and logistics departments, based on which, the drug is procured by the simplified purchase, in accordance with Article 10<sup>1</sup> paragraphs 1 and 3.d of the law of Georgia on State Procurement on the basis of the decree N2547 of the Government of December 30, 2014 on the “Acquisition of the medical care goods via simplified public procurement procedures by Ministry of Corrections. Prescriptions are necessary to take out the drugs from prison pharmacies.

The decree N31 of the Minister of Corrections of 22 April 2015 sets basic medicines list in the prison health care system, which defines the list of medicines, which state undertakes to provide to prisoners at its own expense. Cost of medicines and other related medical expenses for the Medical Department in 2015 amounted to 2 375 234 GEL. It should be noted that compared to 2014 medication costs increased by 124 545 GEL.

In 2015, the problem of substitution of drugs still remains an issue. During the reporting period, the prison visits revealed that the prisoners are protesting against the substitution of the doctor-prescribed medication by their analogies from the established basic medications list. Prisoners also complain, in general, about the lack of medications. In addition, the accused / convicts noted during the interviews with members of the Special Preventive Group that the families cannot afford anti-cold medicines.

It should be noted that during the visit of the Special Preventive Group to the establishment N3, they examined the patients’ medication supplies. The examination showed that some of the medicines prescribed to prisoners were not available at this establishment. In addition, the issue of expired drugs is problematic. For example, at the establishment N15 the group discovered expired medications in the dentist’s office<sup>162</sup>.

In 2014 the Public Defender recommended the Ministry of Corrections to take measures to ensure that prisoners have unimpeded access to basic prescribed medications; ensure that, in issuing prescriptions, doctors are not limited to issuing only those medications that are available at the penitentiary establishment. The response of the Ministry

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161 Pharmacist / Provisory / a person with high medical education.

162 DEXDUN (Dexamethasone sodium phosphate injection USP) 1ml 10 ampoule - 07/2015; Suprastin20 mg/ml 3 ampoule – 05/2013; Dexamethasone Darnitsa 1ml 3 ampoule – 10/2014.

of 9 February 2016 MOC11600111071 the prisoners, in case of refusal of the supplied medicines, the prisoners can acquire the prescribed medicine, including the branded medicines at their own expenses. In spite of this answer from the Ministry, there's still a problem in practice with acquisition and sending of such medicines inside the prison.

According to the findings of our monitoring, the healthcare personnel of penitentiary establishments are normally prescribing only generic medications available at the relevant penitentiary establishments at the expense of the state. For this reason, prisoners are precluded from buying branded medications with their own money. It is important for the prisoners to be able, in agreement with the doctor and on the basis of a relevant prescription, to buy a branded medication corresponding to the generic one initially prescribed by the doctor in the penitentiary institution's pharmacy or, where there is no pharmacy, to receive such medications from their family members.

### **RECOMMENDATION TO THE MINISTER OF CORRECTIONS**

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

#### **2.5.4. ACCESSIBILITY AND QUALITY OF HEALTHCARE SERVICES**

##### **2.5.4.1. Accessibility of the Doctors**

In *Kudla v. Poland* the European Human Rights Court held that Article 3 of the European Convention imposes an obligation upon the State to secure physical health of detained persons. In many of its judgements the Court stated that it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel is regular and systematic and involved a comprehensive therapeutic strategy.<sup>163</sup>

According to the information received from the Medical Department of the Ministry of Corrections, as of 31 December 2015 there are 9 716 accused/convicts in the penitentiary system, whilst the number of healthcare personnel consisted of 189 doctors (15 Chief doctors and 2 deputy chief doctors) and 233 nurses. In 2015, the Medical Department had a contract with the 54 specialised doctors.

<sup>163</sup> Inter alia, *Jashi v. Georgia*, Judgement of 8 January 2013, para. 61.



37 primary healthcare teams are operational in penitentiary establishments. The teams are composed of family doctors. During 2015, family doctors employed at these establishments issued medical advice to the prisoners 212 782 times (this figure was 214 567 in 2014 and 224 363 in 2013).

As regards the number of doctors and nurses envisaged by the staffing tables of penitentiary establishments, according to the information received from the Medical Department of the Ministry of Corrections, the number of family doctors and nurses increased in 2015 in comparison with 2014 which is a positive development.<sup>164</sup> The number of doctors and nurses according to penitentiary establishments is shown in the table below.

N	Establishment	Doctor	Nurse	Responsible for pharmacy storage
1.	Establishment N2	11	16	1
2.	Establishment N3	6	5	1
3.	Establishment N5	7	9	1
4.	Establishment N6	7	10	1
5.	Establishment N7	4	4	1
6.	Establishment N8	26	43	1
7.	Establishment N9	4	9	1
8.	Establishment N11	3	4	1
9.	Establishment N12	3	6	1
10.	Establishment N14	10	11	1
11.	Establishment N15	9	18	1
12.	Establishment N16	4	6	1
13.	Establishment N17	11	18	1

The Ratio of doctors and nurses envisaged by the penitentiary establishments' staffing tables to the number of prisoners according to institutions in 2015 is provided in the table below.

<sup>164</sup> In 2014, 103 doctors worked in the penitentiary establishments, in 2015- 189. Additionally, the number of nurses in 2014 was 136, and in 2015 - 233.

N	Establishment	The ratio of the number of prisoners <sup>165</sup> to the number of doctors	The ratio of the number of prisoners to the number of nurses
1	Establishment N2	127	87
2	Establishment N3	20	24
3	Establishment N5	42	32
4	Establishment N6	19	13
5	Establishment N7	17	17
6	Establishment N8	89	54
7	Establishment N9	9	4
8	Establishment N11	5	4
9	Establishment N12	89	44
10	Establishment N14	113	103
11	Establishment N15	189	94
12	Establishment N16	20	13
13	Establishment N17	172	105

The figures in the above table have been calculated by dividing the number of prisoners in each establishment by the number of doctors and nurses according to the establishment's staffing table. These data are valid as of the end of 2015. The table does not take into account the duty schedule of doctors and nurses but, nevertheless, it is clearly visible that ratio of the prisoners to doctors and prisoners to nurses is high at the establishments N2, N14, N15 and N17 .

In 2014, the Public Defender, addressed the Ministry of Corrections, to ensure a sufficient number of doctors and nurses for timely and adequate medical services in all penitentiary establishments. According to the response from the Medical Department of the Ministry of Health, according to the civil sector standard the family doctor and nurse team serve an average of 2,000 adult patients. During the implementation of Primary health care in the prison system the International Red Cross Committee recommended that the family doctor should serve no more than 1 500 inmates / defendant, as provided and implemented in accordance with the recommendation. The penitentiary system, the doctor / nurse ratio of prisoners in small establishments averaged 50 to 150, even in large facilities - from 300 to 500. Despite the fact that in 2015 the number of doctors and nurses has increased, yet it is not enough. Ensuring the equal ration of prisoners and doctors / nurses, as well as ensuring enough number of doctors / nurses is important to all facilities.

In 2015 the problematic practice of the establishments N2 and N3 subsists, namely,

165 The ratio is calculated based on the number of accused/convicts in the respective institutions as of December 2015

according to this practice, for a prisoner to receive treatment, he/she has to write an application for medical services and hand the application in to the controlling officer on duty. The controlling officer collects such applications during the day and files them with the establishment's chancellery where the applications get registered and get sent to the doctor of that establishment later. Only in urgent cases will the controlling officer deliver an application for medical services to the chancellery immediately. It is unclear, however, how a prison controlling officer who does not have medical knowledge will evaluate whether or not an individual prisoner's medical condition is urgent. The above-described procedure constitutes an additional barrier in the process of provision of healthcare services in prison and a breach of the principle of confidentiality. We therefore believe that the above-described practice needs to stop immediately.

According to the information received from the Medical Department of the Ministry of Corrections, invited doctors issued 37 445 medical consultations during 2015. Positive assessment shall be given to the fact that the number of such consultations is increased in comparison to 2014<sup>166</sup>. The number of medical consultations issued monthly is between 2210 and 4276. The study of the visits of specialist consultant doctors to the penitentiary establishments revealed that in some of these establishments frequency and regularity of such visits is not sufficient.

Medical documentation remains a problem in prison. It should be noted that in general, the medical files of prisoners are not unified, which creates the danger of loss of medical records. Also, in some cases, the record indicates neither the identity of the doctor-consultant to the prisoner, nor the time of consultation.

The enrolment of prisoners for consultation is recorded in the journal of the consultation, however, dates appear nowhere in the recording and therefore, it becomes impossible to determine how long the prisoner had to wait for consultation. It should also be noted that in general, all the prison medical units have the consultation records journal, although it is not the form approved by the Minister of Corrections, which would be uniform and created following the uniform rules for all the establishments. Therefore, it is necessary to approve a single special form, indicating the patient's name, date of request of consultations (as well as the identity of the person who determined the need for consultation), the specialist doctor the inmate wishes to consult and advice and recommendations after the receipt of such consultation, with the date specified. The monitoring demonstrated that at the establishment N12 the prisoner G.N. was enrolled for consultation with a dermatologist, but after the whole month the patient was still waiting for consultation of a dermatologist.

Dental care is also a problem in prisons. Dentist does not have an assistant, and often has to service 25-30 patients daily. The orthopedic services function with certain defi-

<sup>166</sup> In 2014 specialist doctors had held 30 726 consultations.

ciency. There are problems in terms of providing dental services for inmates at the establishment N2, in particular, there are cases when prisoners have severe pain, but they have to wait in line to see the dentist, which can last a week or more, since the prison employs only 1 dentist, who for an average serves 213 patients per month. In addition, the visit to the establishment N8 revealed the practice, that the appointments to the dentist are registered by the officers on duty, who do not have any medical background and qualifications.

In 2014, the rate of use of dental services was 17 090. We welcome the fact that in 2015 the rate has increased. In 2015, the prison dentist therapeutic dental service utilization rate was 11 822. Surgical dental service utilization rate – 4 225 and the rate of utilization of orthopedic dental services -1 819.

#### 2.5.4.2. Medical Referral

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

After a request is approved, depending on the number of the request in the list, a medical services provider is contacted and the patient is referred to the provider. If a request is rejected, the rejection is registered in the system and the relevant primary healthcare team is informed about the reasons of rejection. In 2015, 9016 referral requests got registered in the unified medical electronic system. The Medical Department rejected 859 cases after deliberation.

Establishment	Number of rejected cases
Nº2	23
Nº3	18
Nº5	95
Nº6	20
Nº7	34
Nº8	244
Nº9	1

№11	6
№12	52
№14	14
№15	159
№16	0
№17	159
№18	30
№19	4

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

According to explanations obtained from the representatives of the Medical Department of the Ministry of Corrections, scheduled referrals are impeded by barriers such as prisoners injuring themselves, going on hunger strike or arbitrarily stopping a treatment course. Another problem in regard to medical referrals is the capacity of civilian hospitals to deal with prisoners. According to the information received from the Ministry of Corrections, prisoners are contractually served by 51 civilian clinics. In addition, prisoners are served by the Centre for the Treatment of Tuberculosis and Rehabilitation (the establishment N19) and the Treatment Institution for Accused and Convicted Persons (the establishment N18).

According to the information received from the Ministry of Corrections, in 2015, 2292 referrals were made to the penitentiary hospitals, and **3992 referrals** were made to civil hospitals.

Number of the accused/convicts transferred to civil hospitals both in ambulatory or stationary (urgent, planned) in 2015			
Establishment	Urgent	Planned	
		Ambulatory	Stationary
№2	133	420	91
№3	75	131	14
№5	50	214	30
№6	12	58	6
№7	24	80	4
№8	102	331	26
№9	0	10	0
№11	1	13	3

№12	20	119	16
№14	55	434	103
№15	84	211	22
№16	4	2	6
№17	94	300	20
№18	130	355	47
№19	27	105	10
Total	811	2783	398
		3992	

Number of the accused/convicts transferred to N18 Establishment both in ambulatory or stationary (urgent, planned) in 2015			
Establishment	Ambulatory	Stationary	
		Planned	Urgent
№2	8	41	11
№3	0	20	7
№5	67	14	35
№6	42	35	14
№7	46	21	70
№8	283	225	178
№9	0	0	0
№11	6	1	6
№12	59	23	30
№14	4	34	8
№15	208	131	93
№16	2	2	1
№17	260	171	72
№19	36	15	13
Total	1021	733	538
		2292	

According to the paragraphs 2 to 4 of Article 1 of the Order N55 dated 10 April 2014 of the Minister of Corrections approving the “Rules of transferring accused and convicted persons to general-profile hospitals, the Treatment Institution for Accused and Convicted Persons and the Centre for the Treatment of Tuberculosis and Rehabilitation”, a prison doctor drafts a reasoned request for transferring a patient to the Treatment Institution and the Centre and sends the request to the Medical Department of the Penitentiary Department. The prison doctor’s reasoned request shall be registered in the

Medical Services Electronic Software (hereinafter, “the Software”). The prison doctor must inform the prison director about the request in writing. The Medical Department will examine the request within a reasonable time on the basis of the National Clinical Practice Recommendations (the Guidelines) and State Standard on Clinical Situation Management (the Protocol) approved or recognized by the Ministry of Labor, Health and Social Protection; where necessary, the request will also be examined against international guiding documents. If the request is granted, a patient who requires a scheduled medical service will be assigned a list number in the Software and a recommendation on his/her transfer to the Treatment Institution or the Centre will be sent to the prison director and the prison doctor at least a day before the actual transfer.

Paragraph 5 of Article 1 of the Order N55 determines how the waiting list is made. In particular, the Medical Department determines the list according to the location and the type of services requested (inpatient or outpatient). It is unfortunate that the Public Defender’s recommendation on improving the medical referral system for avoiding delayed provision of medical services as much as possible was rejected. In particular, we offered to take into consideration when constructing a waiting list the different grounds such as acute and chronic diseases, progress of the disease, aggravation of a patient’s health and other factors. We believe the electronic database of medical referrals needs to be improved because the current procedure of constructing the waiting list does not take into account patients’ individual needs and the patient’s number in the list depends not on clinical factors but on other criteria such as the number of waiting patients and the capacity of the relevant medical institution.

One of the main deficiencies of the medical referral procedure for planned treatment is that it does not take into consideration a situation where the health condition of a patient on a waiting list is deteriorating but the condition has not achieved the intensity level warranting the provision of urgent medical services under Article 3(s1) of the Law on Health Protection. It should be noted that some diseases develop very quickly and it may be too late to provide the urgent healthcare service when a person’s life is already in danger. The medical referral procedure does not envisage the possibility of sorting patients with such diseases as a priority in determining their number on the list. We welcome the fact that the delayed medical intervention was added to the classification of medical interventions (regular or emergency) in 2015, but it is not supported by the normative act. It is important that the order N31 of the Minister of Corrections of 22 April 2015 also introduces the delayed emergency medical intervention standard. The change shall also be made to the Order N55 of the Minister of Corrections on “The procedure of transfer of the accused/convicts to the general hospitals and Tuberculosis Treatment and Rehabilitation Centre “ and the record on the delayed emergency medical intervention shall be added.

The Special Prevention Group studied the issues of timeliness of the medical referrals at the time of monitoring of the establishments N8, N15 and N17. In conversations with members of the Special Preventive Group accused / convicts said that in many cases their withdrawal from the cells to receive medical services is delayed and additionally they do have the information, how long they'll have to wait to get medical care.

The Special group prison medical referral study found that there is a problem of the timely confirmation of the referrals through the unified electronic database problem by the medical department. It should be noted that in most cases the doctor promptly submits medical referrals in to the electronic database, although confirmation from the Medical Department, in some cases, it takes from 1 month to 6 months. It should be noted that the Section 4 of Article 8 of the Order №31 of 22 April 2015 by the Minister of Corrections determines the reasonable waiting period for planned services, determined by medical necessity, which shall not exceed the for the planned inpatient services 4 months and for planned outpatient services - 1 month. According to Article 2, paragraph 4 of the Order N55 of the Minister of Corrections of 10 April 2015, the Medical Department shall consider the referral within a reasonable time in accordance with practice approved or recognized by the recommended guidelines (guidelines), and the clinical management standards (protocols) of the Ministry of Labor, Health and Social Affairs and, if necessary, using international guidelines.

Noteworthy that in the view of the above procedures, the accused/convict may have to wait for treatment for months. It is possible that their health conditions deteriorate in this period. For example:

- Convict I.K. had the ophthalmologist consultation on 8 March 2015, the Chief Doctor submitted the referral request on 16 March 2015, which was approved only after 6 months, on 18 September 2015 and the inmate was taken to doctor only on 21 September;
- Convict Z.K. had a consultation on 15 October 2014, the request was sent to the Medical Department on November 14, the Department of Health has confirmed the request on December 26, while the prisoner was taken to the civilian clinic for necessary treatment in the manner of hip endo-prosthetics in August 2015 ( 1 year after consultation);
- Convict G.M. had the consultation of urologist on February 12 and was diagnosed with necessity of hydrocele emergency surgical treatment, but the request was sent to the medical department on February 18, and while the Medical Department has confirmed the request the same day, the prisoner was taken out for the operation on March 23;



- The establishment N15 prisoner G.K. 29 August 2014, after consultation was instructed to carry out the resection of the nasal septum. On February 28, 2015 the doctor sent a request to the Medical Department, which issued confirmation only at September 18, 2015. In December 2015, the sequence number of defendant's treatment in waiting list was 78;
- Convict Ch.A. was recommended on 18 August 2015 by a medical specialist to undergo allergic sample holding. On 21 August the doctor's request was sent to the Medical Department, which confirmed the same on December 7;
- Convict A.G. was recommended on May 7, 2015 as a result of consultation with an urologist, to undergo the surgical treatment of testicular. The doctor sent the request on May 14, while the Medical Department confirmed only on September 23;
- Convict B.C was on consultation on 2015 April 15, results of which stated that the convict has an umbilical hernia and inguinal hernia on the right and left area of the belly button. Since the patient's abdominal wall and has three hernia, which are driving up belly and hurt, as well as due to the threat of their incarceration, patient requires surgery in the near future. The chief doctor of issued the request to the medical department on April 20, while the Medical Department confirmed on October 7;
- Convicted Ch.G. was recommended on 25 July 2015, during a consultation, to undergo hemorrhoidal disease treatment. The chief doctor of the establishment sent a request to the Medical Department on July 30, which was confirmed on December 7;
- Convict G.M. was given recommendation on 14 August 2015 by the surgeon on the calculous cholecystitis, for which the chief doctor of the establishment sent a request to the medical department on September 29. Demand was confirmed on December 7;
- Convict K.Z. on February 27, 2015, was given recommendation to undergo bilateral phlebectomy. The chief doctor of the establishment sent a request to the medical department on June 19. On December 7, 2015 the Medical Department confirmed the request.

The 2014 Parliamentary Report also highlighted the fact that the exercise of the medical referral and medical services are dependent on the will of the prison director and head of the Medical Department - non-medical staff, which shall be regarded as a potential drawback to the health care delivery process. At the Public Defender's recommenda-

tion, this rule should have been abolished. The decision on the medical referrals should have been taken by the head of the Medical Department, after consultation with the Prison Director on the safety of the transfer of the prisoner. Ministry of Corrections did not accept the recommendation.

In 2014, the Public Defender applied to the Ministry of Corrections, to implement the change in the Order N55 of 10 April 2015 and specify that in case of transfer of the prisoner for outpatient services for short period to the civilian medical Institution, if the additional examinations prove necessary, to transfer the prisoner in the extraordinary manner and without another waiting list. According to the information received from the Ministry of Corrections, in case of necessity of additional examinations shows up at the time transfer of the prisoner for outpatient services for short period (the following days) to the civilian medical Institution, a prisoner is transferred if necessary, ahead of schedule in consideration of the patient's condition, medical records / recommendation. In addition, the issue of reflection of this practice in Order N55 of 10 April 2015 is being considered.

#### **2.5.4.3. Adequacy and Quality of Medical Services**

According to the European Prison Rules, medical services in prison shall be organised in close relation with the general health administration of the nation. Health policy in prisons shall be integrated into, and compatible with, the national health policy. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. Prisoners should have access to all necessary medical, surgical and psychiatric services including those available in the country.<sup>167</sup>

2014 Parliamentary Report focused on the need of integration of the prison health care to civil healthcare system. Although in organizing the prison healthcare system consideration should be given to the differences and difficulties inherent in the penitentiary system, implementation of the basic civilian healthcare standards in the penitentiary as soon as possible is of crucial importance for raising the penitentiary health services to a level equivalent to civilian health services. Furthermore, it is necessary to establish an effective mechanism of control over the quality of medical care.

The Order of the Minister of Health N 01-63/N dated 12 September 2012 "on improving the quality of medical services provided by inpatient clinics and the functioning of the internal system of patient safety evaluation" stipulates that inpatient clinics must set up their own internal structures to control quality and to ensure provision of patient-oriented, quality and effective services.

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<sup>167</sup> European Prison Rules, Rule 40.1-40.5.

The Quality Department monitors high priority matters such as permissions; functioning of physical infrastructure and medical equipment; personnel qualifications; sanitation, hygiene and epidemiology watching regime; implementation of the National Recommendations (the Guidelines) and Standards (the Protocols); nosocomial (hospital-acquired) infection control; maintenance of medical documents including statistics and referrals.

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

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

In consideration of all the above mentioned, the Public Defender addressed the Minister of Corrections with the recommendation to take all measures to enhance a mechanism for controlling the implementation of civilian healthcare standards in the penitentiary system; introduce an effective system for statistical data collection and analysis; pay more attention to statistical analysis results in designing the penitentiary healthcare action plan; effectively manage the procurement process and evaluate its cost-effectiveness and to assess the quality of penitentiary healthcare services using pre-determined and relevant indicators. According to the response of the Ministry of Corrections, Primary health care model has been successfully operating in all the institutions of the peni-

penitentiary department and all medical services are performed in accordance with existing standards. The standard of medical care was developed and approved by the Minister, which is in the process of implementation. NCDC has introduced the form of submission of the monthly statistics, uniform for the whole state. On December 30, 2015 the Minister of Corrections approved Order N8467 on the “The rules of operating the Ministry of Corrections’ statistics system - the terms of submission and the implementing service”. The steps taken by the Ministry are towards a positive side, but the prison health care still faces great challenges.

According to Article 3(s1) of the Law on Health, medical assistance is urgent if without such assistance a patient’s death, disability or serious aggravation of health is inevitable. According to the Order of the Minister of Health N01-25/n dated 19 June 2013 “on determining classification of medical interventions and approving minimum requirements for primary healthcare institutions”, there are 4 classes of medical intervention: an urgent (critical) intervention is an intervention to save a life, an organ or an extremity involving resuscitation and the intervention usually starts several minutes after the decision has been made. An emergency (without delay) intervention means intervention when a life-threatening medical condition has already started and/or deteriorated acutely. Such medical conditions are those that may entail a loss of life, organ or extremity, while the actual intervention could be fixating a fracture, pain management and relieving other heavy symptoms. Normally a decision on intervention should be made within no later than 24 hours after the first-category preserving treatment is completed. Emergency (without delay) intervention is an early intervention while a patient’s condition is stable and his/her life, organ or extremity is not under urgent threat but the intervention has to be carried out in several days (2-5 days). A scheduled intervention is the one scheduled for a date that is convenient for the patient, the doctor and the medical institution. Unfortunately, the standard established by the above-mentioned ministerial order N01-25/N is often breached and appropriate healthcare services are not accessible timely. Hence, we recommend that the penitentiary healthcare staff be guided with the aforementioned ministerial order in planning their medical interventions.

## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS

- Ensure adequate number of doctors and nurses in every penitentiary establishment so that healthcare services can be provided timely and adequately.
- Ensure that invited doctors visit the penitentiary institutions at proper intervals to timely and adequately provide the required medical services; ensure

timely provision of their consultations by neurologists, gastroenterologists and psychiatrists.

- With a view of ensuring timely provision of healthcare services, in determining a patient's list number in the medical referrals electronic database, take into account the nature of the disease and dynamic of its development; incorporate this new principle in the Order N55 of the Minister of Corrections dated 10 April 2014
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that only the Chief of the Medical Department of the Ministry of Corrections, after consulting with the Chairman of the Penitentiary Department on issues of security of patient transfer, is authorized to make decisions on transferring patients to both penitentiary medical facilities and civilian hospitals.
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 on "The procedure of transfer of the accused/convicts to the general hospitals and Tuberculosis Treatment and Rehabilitation Centre" and determine the reasonable time for the assessment of the referral registered in the unified electronic system by the Medical Department, in order to avoid undue delays in the treatment of the patients
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that prisoners do not wait for their turn on the list if they had been incompletely examined in an outpatient clinic or had been examined but require additional examination shortly (a few days) after their visit to the clinic.
- Take all necessary measures to enhance a mechanism for controlling the implementation of civilian healthcare standards in the penitentiary system; introduce an effective system for statistical data collection and analysis; pay more attention to the results of statistical analysis in designing the penitentiary healthcare action plan; effectively manage the procurement process and evaluate its cost-effectiveness. The quality of penitentiary healthcare services should be assessed using pre-determined and relevant indicators.

TO THE MINISTER OF CORRECTIONS AND MINISTER OF LABOR, HEALTH AND SOCIAL AFFAIRS

- Develop the plan of full integration of penitentiary healthcare into state general healthcare system via joint cooperation.

#### 2.5.4.4. Competence and independence of doctors; Confidentiality; Awareness of Patients

According to the Recommendation N(98)7 of the Committee of Ministers of the Council Europe, doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.<sup>168</sup> A doctor shall not be involved in an activity the purpose of which is not the protection of the prisoner's health.<sup>169</sup>

The problems related to the Competence and independence of the prison doctors subsist in 2015. With a view of raising the independence and competence of the penitentiary healthcare personnel, it is necessary to ensure professional independence of the healthcare staff. The medical ethics principles must fully be incorporated in the legal framework regulating the penitentiary system. Further, the healthcare personnel should be provided with continuous professional training; existing training modules should be enhanced. Finally, an effective mechanism should be created to evaluate and supervise the sustainability of training results. Clear job descriptions should be elaborated for the healthcare personnel.

The public Defender addressed the Minister of Corrections in 2014 with the recommendation to ensure professional independence and competence of the penitentiary healthcare personnel by fully incorporating the medical personnel's professional independence principle and the medical ethics principles in the legal framework regulating the penitentiary system, providing the healthcare personnel with continuous professional training, enhancing various training modules for them.

Positive assessment shall be given to a number of activities carried out by the Ministry of Corrections in the view of enhancing the professional independence of medical personnel, their competence and protection of medical ethics. Specifically, the training of the medical staff of the penitentiary system on national and international standards on the specificity of the treatment of prisoners. As well as by the working group for long-term training programs as well as medical personnel, medical personnel employed in the job descriptions of support staff functions to be discharged, but only the above measures fail to provide medical personnel with a high degree of independence and competence.

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168 Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 20 April 1998), paras. 19-20.

169 The UN international principles of medical ethics (1982), 3<sup>rd</sup> principle, available in English language only on the following link: <http://www.un.org/documents/ga/res/37/a37r194.htm> [last accessed 18.03.2016].

In order to ensure the strict adherence to the professional ethics by the prison medical staff the legal framework of the penitentiary system shall be reviewed. According to one of the most important principles of the professional ethics the doctor shall not participate in any activities, which are not directed to protection of the prisoner's health.<sup>170</sup>

According to the Special Preventive Group monitoring results, there is a certain attachment of the medical staff to the administration, violating the principle of confidentiality and impeding the process of medical care.

In the long term perspective, the integration of the penitentiary healthcare system with general healthcare system is important in the view of protection of professional independence.<sup>171</sup> In the short term, however, it is necessary that the regulatory unit of the Medical Department carry out strict supervision on the implementation of ethical principles by prison medical staff and treat violations adequately.

The monitoring conducted by the Special Preventive Group revealed that the medical unit infrastructure, in some cases, violates confidentiality. For example, at the establishment N12 medical unit is a two-room primary care, with the doctor's office and a room to get the drug – sophosbuviris.<sup>172</sup> In order to get to the second room of primary health care the patients have to go through the first primary health care room, and in order to get to the chief doctor's office and the room to get sophosbuviris, the patient has to go through both primary healthcare rooms. The layout of rooms violates the confidentiality of patient care. It should be noted that during the visit, the Special Preventive Group members had witnessed an incident in the first primary health care room. Namely, in the course of ongoing consultation with a prisoner, other prisoners were passing to another primary care room or the doctor's office. Similar problem subsists at the establishment N17, where the medical unit does not have a separate manipulation and procedure rooms, and there are problems of securing privacy of conversations with a doctor.

It is an established practice in remand facilities and closed prisons that prisoners request an appointment with the doctor through the prison staff who are not healthcare personnel and often times doctors examine prisoners and provide their consultation in the cells. This procedure contravenes the principle of confidentiality of the patient/doctor relations because the patient's medical complaints become known to non-healthcare

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170 The UN international principles of medical ethics (1982), 3<sup>rd</sup> principle, available in English language only on the following link: <http://www.un.org/documents/ga/res/37/a37r194.htm> [last accessed 18.03.2016].

171 CPT also noted the importance of this issue in the Report on their visit to Georgia, where it is emphasized that the integration of the penitentiary healthcare system with the Ministry of Labour, Health and Social Affairs is an important tool in the view of protection of professional independence.

172 At the time of our visit the room for sophosbuvir application was under repairs and not functioning.

staff of the prison and to other inmates.<sup>173</sup> Save for urgent cases, any medical examination and consultation should be performed in privacy, in observance of the confidentiality principle, in a doctor's office.<sup>174</sup>

The principle of confidentiality is breached also by Article 24.2 of the Georgian Imprisonment Code,<sup>175</sup> according to which a medical account of a prisoner's mandatory medical examination carried out on admission must be kept in the prisoner's personal (non-medical) file.

According to the Order N 198/N of the Minister of Labour, Health and Social Affairs of Georgia, dated 7 July 2002, on the „Rules of storage of medical records by medical institutions“, all completed medical files shall be saved in the archives of the medical institution.

The monitoring of the establishment N2 undertaken by the regulatory unit of the Medical Department in July 2012 revealed that there is a medical archive in the institution, however, in the archive room the documents are placed on the so called “prison beds”; medical records are not compiled or numbered in accordance with relevant rules, are not boxed, there's no information on the total number of files, etc., however they are piled in the alphabetic order; the room does not meet the requirements set for archives, requisite temperature is not protected and there's no humidity control, not enough shelves, except for archived documents, there are various non-archive items in the room (wheelchairs, computers, primary care journals, crutches, etc.). According to the Chief Doctor, a majority of documents archived (compressed until 2012) is stored in the special unit (packed in the prisoners personal affairs). To date the archive is unchecked, and it is unknown how many medical files are stored. In addition, there's no responsible for archives allocated in the medical unit of the establishment N2.

The archive does not function either at the establishment N3. Part of the Medical histories are stored in the primary health care room closet, with the active medical files (archived files are stored at the two lower shelves). None of them are described, numbered, in alphabetical order, etc., there's no information on the number of the medical files stored, etc. the other (larger) part of archived medical files are stored in the special unit for the room provided for documentation, where none of the requirements applicable to archives are met (not kept in relevant temperature and humidity, not enough shelves, room polluted, non-archive material, etc.). Medical documentation is boxed in 6 large boxes and placed in different parts of the room. The establishment N14 has the similar problem.

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173 Outtakes from the general report of the CPT(CPT/Inf (93)12), para.51.

174 *ibid.*, paragraph 35.

175 *ibid.*, paragraphs 50-51.



## RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- Ensure professional independence and competence of the penitentiary healthcare personnel by fully incorporating the medical personnel's professional independence principle and the medical ethics principles in the legal framework regulating the penitentiary system, providing the healthcare personnel with continuous professional training, enhancing various training modules for them, creating a mechanism for evaluating and supervising the sustainability of training results and elaborating clear job description.
- Ensure that the regulatory unit of the Medical Department carries out strict supervision on the implementation of ethical principles by prison medical staff and treat violations adequately.
- Make sure that a prisoner can contact the healthcare staff directly, without involvement of non-medical staff, including by installing calling buttons and obliging the healthcare staff to go round and inspect the cells every day in closed-type institutions.
- Take necessary measures to ensure that any medical examination and medical consultation takes place in privacy, respecting the principle of confidentiality, in a doctor's office, unless the situation is urgent and exceptional.
- Take all necessary measures to involve patients in the provision of healthcare services to them by properly informing them about the services to be rendered; ensure prisoner access to health protection information, including information related to preventative health care

## PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Amend Article 24(2) of the Imprisonment Code abolishing a provision, which states that a medical account of a prisoner's mandatory medical examination carried out on admission must be kept in the prisoner's personal (non-medical) file. This information in any case should be kept in the prisoner's medical records.

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

### 2.5.5.1. Mental Health

Protection of mental health constitutes one of the major challenges of the penitentiary healthcare. According to the information received from the Ministry of Corrections, the number of prisoners with mental and behavioral problems reached 1 031 in December 2015.

As explained by the medical personnel, a psychiatrist receives the list of prisoners wishing to get an appointment with the psychiatrist from the primary healthcare doctors. However, in a number of cases, they refuse to put some prisoners on the appointment list despite their requests, because they think the prisoners are simulating. Due to the above reason, the prisoners often cannot receive sufficient psychiatric service.

Identification of prisoners with personality disorders constitutes a problem. Therefore, it is crucial to improve access to psychiatric services, as well as to deepen collaboration of the psychiatrists, psychologists and social workers. These efforts should help improve the mental illness identification rate and provide adequate psychiatric assistance to the prisoners with mental problems in the differentiated regimes. Patients suffering from acute psychosis should be treated not in the penitentiary institutions but in the mental facilities. At the same time, adequate outpatient services should be introduced.

According to the information received from the Ministry of Corrections, in 2015, 12 825 consultations were carried out by the psychiatrist and 8 235 patients were involved in the mental care. During 2015, 104 prisoners were placed in inpatient facilities for involuntary psychiatric assistance. It is worthwhile noting that the number of prisoners placed inpatient facilities for involuntary mental assistance has decreased compared to 2014.<sup>176</sup>

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

Due to the fact that there is no effective mechanism for identifying mental health problems, prisoners who injure themselves, breach the prison regime or commit other disciplinary violations are punished with disciplinary sanctions instead of being provided with timely and adequate psychiatric assistance. Amendment to the Imprisonment

<sup>176</sup> In 2014, 174 patients were placed in inpatient facilities for involuntary psychiatric assistance.

Code which obliges a prisoner to reimburse treatment expenses if he/she willfully or negligently injures himself/herself<sup>177</sup> also extends to the prisoners with mental problems who injure themselves. We believe the right approach to prisoners with mental problems who injure themselves should be therapeutic, not punitive.

Prevalence of mental illnesses among the prison population is mostly caused by drug addiction and overuse of psychoactive substances in the penitentiary facilities. In 2015, 313 prisoners were involved in the methadone programme, while the same index in 2014 was 382. Decrease of the number of prisoners involved in the methadone programme in 2015 indicates that considering the scale of drug addiction in the penitentiary system, provision of the above service to the prisoners cannot sufficiently meet the existing demand.

In 2014 the Public Defender recommended the Minister of Corrections to introduce replacement therapy programmes to deal with opioid addiction, however, this recommendation was not fulfilled. It is noted in the response received from the Ministry that introduction of the above treatment can start only in 2017. It is not noted why is it impossible to introduce the replacement treatment for opioid addiction before 2017 or what processes are ongoing and what are the steps taken in this regards.

The medical personnel should draw special attention to the issuance of the psychotropic drugs. For example, it was revealed during the visit to the Penitentiary Establishment N7 that the prisoners are supplied with the medicines by the doctor on duty which provides them with the prescribed medicines during the day. It should be noted that a nurse is not attending the process of receiving psychotropic drugs.<sup>178</sup> Accordingly, there is no control on the use of psychotropic drugs which creates the risk of their misuse. Namely, it is possible to pass the medicines to the cellmate or to collect the medication and to receive a couple of pills at the same time, which might have a negative impact on the patient's health.

In the process of protecting mental health, of paramount importance is the protection of an individual's interests, respect for his/her dignity and provision of care in as humane environment as possible. According to the General Comment of the UN Human Rights

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

178 According to paragraph 12 of the Decree N150/N of the Minister of Labour, Health and Social Affairs of Georgia dated 21 July 2003 on "the Rules of Purchase, Storage, Record Keeping, Preparation and Use of the Narcotic Drugs, Psychotropic Substances and Precursors in the Approved Emergency and Ambulance Service" (Annex N5), "substances under special control are injected to the patients with the presence of a doctor and a nurse (or a doctor)."

Committee,<sup>179</sup> prolonged solitary confinement of the detained or imprisoned person may amount to torture or other cruel, inhuman or degrading treatment. According to a report of the UN Subcommittee on Prevention of Torture, prolonged solitary confinement may amount to an act of torture and it should not be used in the case of minors or the mentally disabled individuals.<sup>180</sup> According to the 2007 Istanbul Statement<sup>181</sup> on the use and effects of solitary confinement, the use of solitary confinement cell in relation to the mentally ill persons should be absolutely prohibited.

In his Parliamentary Report of 2014, the Public Defender addressed the Minister of Corrections with the recommendation to take relevant measures against the placement of prisoners with mental problems in the solitary confinement cells, however, Public Defender's recommendation was not taken into consideration and there were cases when the individuals with mental problems were placed in the solitary confinement cells. In 2015, the facts of placing the prisoners with mental problems in the solitary confinement cells were revealed in the penitentiary establishments N2 and N3. For example, in the establishment N3, one of the prisoners with mental problems was subjected to the disciplinary sanctions 5 times during the first 4 months of 2015, out of which the prisoner was placed in the solitary confinement cell twice. Similarly, the second prisoner, who suffered from the personality disorder, was subjected to the disciplinary sanctions 3 times during the first 4 months of 2015, including, in one case, to the placement in the solitary confinement cell.

All necessary measures should be taken in order to avoid placing mentally ill prisoners in solitary confinement cells and to ensure timely and adequate psychiatric assistance to such prisoners.

### **The Case of D.Ph.**

Special attention should be paid to the case of D.Ph., individual placed in the penitentiary establishment N7 to serve the life imprisonment. According to the findings of the Psychiatric Commission of the Ministry of Corrections dated 16 July, 3 December and 23 December 2014, convicted D.Ph. has a psychotic mental disorder. The Commission found that it is reasonable to subject the convict to the forensic psychiatric examination and that he/she is in need of involuntary psychiatric treatment. It is noteworthy, that

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

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

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

on 2 December 2014 the prisoner had the last consultation with the psychiatrist, was diagnosed with the organic delusional disorder and was recommended to undergo a psychiatric examination.

It should be noted that despite a number of conclusions of the Psychiatric Commission, the convict D.Ph. could not be subjected to the sufficient psychiatric treatment. The medical documentation of the prisoner reveals that despite a number of proposals throughout 2015, the prisoner refuses to receive medical assistance.<sup>182</sup> The documentation also demonstrates that the convict refused the consultation with the multidisciplinary group.

According to the letter received from the Ministry of Correction on 25 September 2015, on 11 August 2015 the convict was subjected to the forensic psychiatric examination in the penitentiary establishment N7. It is noted in the examination report that the results of the forensic examination should be assessed as a clinically complex forensic case. It is impossible to reach the solution or answer the questions set in the resolution, in the outpatient forensic psychiatric examination format. Therefore, it is necessary to subject D.Ph. to the in-patient forensic psychiatric examination in the LEPL Levan Samkharauli National Forensic Bureau. It is indicated in the letter that the penitentiary establishment N7 has to apply to the Tbilisi City Court regarding the involuntary psychiatric examination of the convict.

The Tbilisi City Court has refused to receive the petition of the penitentiary establishment N7 on D.Ph.'s involuntary psychiatric examination since found that there were no grounds for accepting the petition.

#### **2.5.5.2. Cases of Death, Suicide**

In 2015, 12 prisoners died in the penitentiary system. Sharp decline of the death cases in the penitentiary system should be positively assessed.<sup>183</sup> According to the information received from the medical department, the reason of death was multiple organ failure, suicide, heart failure, hepatic encephalopathy, cerebral blood circulation disorder (ischemic type), paralysis of the vital centres. As in the previous year, the majority of prisoners died of cardiovascular failure. It is necessary to draw special attention to the screening and early detection of the cardiovascular and respiratory system diseases in order to provide timely and adequate medical assistance.

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<sup>182</sup> Relevant protocols are drafted on this matter. The last time the convict was offered a medical assistance was on 19 August 2015.

<sup>183</sup> In 2014, 27 prisoners died in the penitentiary system.

## The Case of M.D.<sup>184</sup>

The Office of the Public Defender of Georgia studied the case of the deceased convict, M.D. It is noteworthy that on 26 July 2014, the convict underwent a heart surgery in the Kutaisi Intervention Medical Centre. However, due to the purulent wound, another surgery was conducted in the Medical Facility N18 and one more surgery was carried out in the O. Gudushauri National Medical Centre on 9 November 2014. The information obtained by the Public Defender's Office reveals that the convict was repeatedly transferred to the O. Gudushauri National Medical Centre.

It is worthwhile noting that on 30 December 2014, the convict M.D. was subjected to the medical examinations in the Acad. Z. Tskhakaia West Georgian National Centre of Interventional Medicine. The following is noted in the record of the doctor on duty of the penitentiary establishment N14, dated 30 December 2014: "The Convict was diagnosed with the chest wall abscess, sepsis, transfer to the penitentiary department N18 is recommended."

On 16 January 2015, the Office of the Public Defender of Georgia, in order to receive a detailed information on M.D.'s state of health, addressed the medical department of the Ministry of Corrections with the letter N04-19/294. With letter N31500191416 of the medical department, the Public Defender's Office was informed that the patient has not been diagnosed with sepsis on any stage of the disease. It is noteworthy that on 6 April 2015, the convict was diagnosed with sepsis in the O. Gudushauri National Medical Centre. In addition, the diagnosis of severe sepsis is recorded in the conclusion of the board of doctors, dated 8 April 2015.

The convict M.D. due to the grave health condition, was released from sentence by the decision of the joint permanent commission of the Ministry of Corrections and the Ministry of Labour, Health and Social Affairs of Georgia on 15 April 2015 at 21:00, and on 16 April 2015 at 07:00 died in the O. Gudushauri National Medical Centre.

Special importance has the protection of the right to life of individuals placed in the closed facilities. The State is responsible for the protection of the right to life of the individuals (accused/convict) placed in custody/penitentiary establishment (including the medical institution of the penitentiary facility) and in case of violating the above right, for the effective investigation.

In addition, for the protection of the right to health of the individuals placed in the penitentiary system, the measures taken by the State and the quality of the concrete medical assistance (effectiveness, adequacy) and the results in relation to each individual accused/convict is significant. The right to health of the prisoner should be adequately

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184 The present case is not included in the death rate of the patients in the penitentiary facilities, since the patient deceased a few hours after the release, in the O. Gudushauri National Medical Centre.

protected in custody and to this end, qualified examinations and provision of the relevant medication should be provided.

The European Court of Human Rights, in the case against Bulgaria has found the violation of the right to life since the delayed medical treatment has become a decisive cause of death.<sup>185</sup> In the case *Keenan v. UK* the European Court of Human Rights discussed the quality of treatment the applicant underwent in custody and held that the provided medical treatment, which meant the daily attention for the doctor and receiving the medicines, also, the visual supervision of the prisoner, was not adequate and violated Article 3 of the European Convention.<sup>186</sup>

On 17 April 2015, the Public Defender addressed the Chief Prosecutor of Georgia with the recommendation N04-19/2995 regarding the alleged crime committed by the medical personnel of the penitentiary establishment N17 and O. Gudushauri National Medical Centre, since a number of questions are inquired by the circumstance that despite the record of the doctor on duty of the penitentiary establishment N14 made on 30 December 2014 (the convict was suffering from sepsis), after 9 months (till death) of having a purulent wound (despite the permanent treatment) from the heart surgery conducted on 26 July 2014 in the Kutaisi Intervention Medical Centre, the convict was diagnosed with sepsis in O. Gudushauri National Medical Centre on 6 April 2015, a few days before death.

On 21 May 2015, in response to the letter N13/32702 received from the Chief Prosecutor's Office of Georgia on 21 May 2015, investigation has started in the first unit of the Didube-Chughureti Division of the Ministry of Internal Affairs on the criminal case N002200515002, on the death of the former convict M.D. in the O. Gudushauri National Medical Centre, the crime foreseen by Article 116 Part 1 of the Criminal Code of Georgia.

In the Parliamentary report 2014 the increase of the suicide cases was underlined (7 cases of suicide were revealed). Positively should be assessed the sharp decrease of suicide rate. In 2015, only 2 cases of suicide were revealed in the penitentiary system. It is noteworthy that the penitentiary establishments have a suicide prevention programme, in which 56 convicts, among them 50 men, 4 women and 2 juveniles have been involved in 2015. However, the suicide prevention programme does not cover all establishments and no special normative framework for its functioning is at place.

Brief information about each case of suicide is provided below:

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185 The case *Anguelova v. Bulgaria*, application no. 38361/97, 13 June 2002, paras. 125-130.

186 *Keenan v. UK*, Application no.27229, paras. 179-186.

## **D.T.**

In the penitentiary department N8, on 7 July 2015, at around 15:45, a doctor was called to the convict in the cell. The patient was taken out of the toilet unconscious. The patient's neck had strangulated chute. The prisoner was placed on his back and started taking resuscitating measures. The patient was cyanotic, with no pulse either on the periphery or main blood vessels. Also did not have any breathing movements or a corneal reflex. The ambulance was also called. The patient was transferred to the reasonable acceptance and placement unit where the resuscitation measures were continued by the ambulance, but without a result. Biological death was recorded.

According to the report N003957615 received from the National Forensic Bureau, the reason of death of the convict D.T. is a mechanical (strangled) asphyxia, developed as a result of the loop pressure on the neck organs.

The convict's body had injuries received while being alive: left eye lid bruise, two notches on the surface of the outer corner of the left eye with the bruises around, a bruise on the right cheekbone area, incision on the left leg at the top third of the front surface of the shin, these injuries were light and did not cause the death. Furthermore, these injuries are developed in the period close to death.

According to the information received from the Ministry of Corrections, on 4 April 2015 the convict was examined by the doctor who noted that the patient complained of heart-waving, anxiety, restlessness. He was diagnosed with nervousness. The doctor prescribed Valerian pills and korvalol. The patient was given advice on healthy lifestyle and was subjected to the monitoring by the nurse. The further consultations and examinations revealed the gallstone disease. The convict was prescribed Drotaverin and the surgeon's consultation, also, the screening on markers of Hepatit C and B, which he refused. Despite the fact that the convict complained of nervousness and restlessness during the consultation carried out on 4 April 2015, he was not visited by the neurologist, or a psychiatrist.

## **I.S.**

According to the information received from the medical department, on 16 May 2015, the day the convict was placed in the establishment N2, he underwent initial medical examination and the anamnesis revealed that he was a frequent user of narcotic drugs. The prisoner has not addressed the doctor regarding the health problems before. The accused has not addressed the psychiatrist either and did not receive psychotropic medication. Tuberculosis was not diagnosed in the last 5 years and therefore, the treatment was carried out. Visual examination did not reveal any bodily injuries.



On 31 May 2015, at 7:10, the doctor on duty was summoned in the cell. The accused was lying on back in the corridor, in front of the cell. Constriction foramen was on the front and side surfaces of the neck. Pulse could not be found on the spoke and carotid arteries, eye pupils were areactive. Suicide by hanging was reported. The doctor on duty did not consider it necessary to take reanimation measures.

According to the report N N003157915 received from the forensic examination bureau, the reason of death of the accused I.S. is the mechanical asphyxia developed as a result of loop pressure on the neck organs. The body of the accused had injuries received during life: multiple incisions on the middle third of the shin's front surface and around the outer spans of the left ankle that were developed as a consequence of pressure with a dense-blunt object in the nearest past before the death. In case of examination of a living person, the above injuries are light and have no causal link with death.

It is important to conduct an effective investigation on each fact of suicide and to find out where the prisoners were incited to suicide.

#### **RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:**

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

#### **PROPOSAL TO THE CHIEF PROSECUTOR OF GEORGIA**

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

## 2.5.6. WORKING CHARACTERISTICS OF A JOINT PERMANENT COMMISSION OF THE MINISTRY OF CORRECTIONS OF GEORGIA AND THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

The rules of procedures of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia has special importance for the prisoners that are suffering from the incurable disease<sup>187</sup> or are the elderly inmates.<sup>188</sup>

The Commission consists of the representatives of the Ministry of Labour, Health and Social Affairs of Georgia and the Ministry of Corrections of Georgia. The objectives, composition and responsibility of the Commission is determined by the statute approved by the joint order N181/N01-72/N of the Minister of Corrections of Georgia and the Minister of Labour, Health and Social Affairs of Georgia dated 18 December 2012.

The present chapter will focus on the release process of the convicts suffering from grave and incurable diseases and its results.

It is worthwhile noting that the Commission reviews the documentation reflecting the health conditions<sup>189</sup> and independently makes a final decision on the question of release of the convict. Based on the request from the chairperson of the Commission, the Secretariat of the Commission ensures the invitation of the qualified doctor specialist of a relevant field through the medical professional associations and taking into consideration the diagnostic group in order to study the state of health of the convict.<sup>190</sup>

The invited doctor specialists study the medical documentation of the convict, in case of need, conducts the clinical examination of the patient and prescribes para-clinical examinations. The Commission decides on the submission of a second medical opinion regarding the studying and diagnosing the convict's health condition by the invited doctor specialists and on the course of disease and the severity of the state of health.<sup>191</sup>

Special importance has the legal nature of the Commission's decision the procedures of

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187 The list of those grave and incurable diseases which constitute the ground for the release of prisoners from serving a sentence is determined by the Order N01-6/N of the Minister of Labour, Health and Social Affairs of Georgia dated 15 February 2013.

188 According to Article 4 para 11 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia, the Commission reviews the applications only in cases when the female convict is 65 years old and more and the male – 70 years old and more, if he/she is not sentenced to life imprisonment and not less than a half of the sentence is already served.

189 Article 4 para 6 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

190 Article 4 para 7 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

191 Article 4 para 8 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

its adoption and enforcement.<sup>192</sup>

The decision of the Commission is an individual legal act that should be substantiated and based on:

- The assessment of the health condition of the convict;
- The relevance of the convict's state of health with the special list of grave and incurable diseases which constitute the basis for the release from the sentence;
- Suitability of serving the remaining sentence.

Consequently, besides the fact that the Commission studies the health conditions of the concrete convicts, it also assesses the feasibility of serving the remaining sentence by the convict. Therefore, the Commission enjoys the discretion<sup>193</sup> in the process of deciding on the release of the prison from sentence due to the state of health.

In the reporting period, the Public Defender of Georgia became interested about the certain details of activities of the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia and in order to study the question, requested information from the Commission on 24 December 2015 and 18 January 2016. Namely, how many prisoners were released by the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia in 2013, 2014 and 2015 due to the grave and incurable diseases (indicating the dates of release and identification data of the convicts).

The Office of the Public Defender of Georgia was informed with the letters dated 20 and 28 January 2016 that in 2012-2015 the Commission issued 155 positive opinions out which 107 – due to the sickness.

On 29 January 2016, the Public Defender of Georgia has requested information regarding the above 107 individuals from the LEPL Public Service Development Agency.

The Office of the Public Defender of Georgia was informed with the letter of the LEPL Public Service Development Agency dated 10 February 2016 that to that date, 55 persons were already deceased. Information regarding the death of the other individuals could not be found in the electronic database of the Agency due to the lack of information regarding the alleged date and place of death.

192 Article 6 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

193 According to Article 2 para 1 sub-paragraph k of the General Administrative Code of Georgia, "Discretionary power" means the authority, which provides an administrative agency or official with some degree of latitude in regard to choosing the most reasonable decision among several decisions in compliance with public and private interests."

The Office of the Public Defender of Georgia has compared the dates of issuance of the positive decisions of releasing the prisoners due to the grave and incurable diseases by the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia and the dates of deaths. The analysis demonstrated that the death in a number of cases was revealed in a month or moreover, in a few days after the decision of release was issued by the Commission. In many cases - on the second day from the release.

The Public Defender of Georgia considers that the work of the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia should be transparent as possible and its decision should be clearly substantiated. Despite the fact that the Commission uses its discretionary power while deciding upon the release of the prisoner and discusses the feasibility of serving the remaining sentence, its decisions should not leave the feeling of injustice and should not be perceived by the society as a measure for reducing the death rate/statistical data of the prisoners in the penitentiary system.

#### **2.5.6.1. Management And Prevention Of Especially Dangerous Contagious Diseases**

According to the data obtained from the Ministry of Corrections, in 2015, screening on tuberculosis was carried out in 58 208 cases (in 2014 – in 64 672 cases). 56 new and 72 recurrent cases of tuberculosis were revealed.

In 2015, 38 prisoners were suffering from the multi-resistant tuberculosis (36 prisoners in 2014). 16 cases of the terminated treatment were revealed (18 cases in 2014). Positively should be assessed the referral of the patients to the public hospitals for the examination/treatment of the coexistent disease in 2015, while the same number in 2014 amounted to 10 which is a very low figure. The above data demonstrates that the progress in terms of tuberculosis control continues.

In his Parliamentary Report of 2014, the Public Defender focused on the problems related to the infection control measures and treatment of its coexistent diseases in the establishment N19. Recommendation was issued on the above matter. According to the response received from the Ministry of Corrections, in accordance with the State Guideline Principles of TB control, for the proper management of infection control, it is necessary to provide disposable medical supplies continuously. The establishment is ensured with the respirators from the National Center for Tuberculosis and Lung Disease. Disposable gloves and masks are provided by the Ministry.

In 2014, the Public Defender addressed the Minister of Corrections with the recommendation to place the prisoners suffering from tuberculosis in the Tuberculosis Treat-

ment and Rehabilitation Center. According to the response received from the medical department, to this date, 80 accused individuals/convicts suffering from tuberculosis are placed and undergoing the treatment for tuberculosis in the penitentiary system. Among them, the majority of the prisoners (73 accused/convicts) are placed in the Tuberculosis Treatment and Rehabilitation Centre N19. The rest of the patients, due to the security reasons, are placed in different establishments, where the conditions for their treatment are created and the anti-tuberculosis treatment of the diseased accused individuals/convicts is carried out in accordance with the State programme guidelines under the supervision of the doctor specialists of the relevant field. Therefore, the above recommendation was not fulfilled.

Order №01-5/N of the Minister of Labour, Health and Social Affairs of Georgia dated 31 January 2014 on “ Approving the Programme on Prevention, Detection and Treatment of Hepatitis C in Prisons and other Detention Institutions“ regulates the issues related to the treatment of the convicts with interferon. According to the information obtained from the Ministry of Corrections, in 2015, 5500 prisoners were subjected to the hepatitis examinations (in 2014 – 8711). 308 convicts received the treatment throughout the year.

The Public Defender, in his Parliamentary Report of 2014 issued a recommendation to amend the Order №01-5/N of the Minister of Labour, Health and Social Affairs of Georgia dated 31 January 2014 on “ Approving the Programme on Prevention, Detection and Treatment of Hepatitis C in Prisons and other Detention Institutions“ in order to ensure every accused/convict with the anti-viral treatment in case of medical indication demonstrating the need for treatment. Unfortunately, the above recommendation was not fulfilled, since the accused individuals still have no access to the anti-viral treatment.

It is noteworthy that the foreign citizens and stateless prisoners placed in the penitentiary establishments do not have access to the Hepatitis C treatment with Sofosbuvir, which is ensured in the framework of the State Programme on Providing Measures for the Management of First Stage of Hepatitis C. According to Article 2 of the Decree N169 of the Government of Georgia of 20 April 2015, beneficiaries of the Hepatitis C management programme are the individuals holding citizenship document of Georgia. On 9 December 2015, the Public Defender addressed the Government of Georgia with the recommendation N13-2/1446 to establish the discrimination fact based on citizenship and the degrading treatment in the semi-open and closed establishment N17 of the penitentiary department. It is important that the foreign nationals and stateless persons placed in the penitentiary system should have access to the Hepatitis C treatment by Sofosbuvir like the persons holding the Georgian citizenship.

According to the response letter MOC91600170588 received from the Ministry of Corrections on 1 March 2016, in accordance with the Decree N169 of the Government of Georgia dated 20 Aprils 2015 on Approving the Hepatitis C Management Programme, the beneficiaries of the programme are all accused/convicts placed in the penitentiary establishment, however, due to certain technical reasons, foreign citizens cannot involve in the above programme. The response received from the Ministry reveals that the Ministry of Corrections of Georgia has an active communication with the Ministry of Labour, Health and Social Affairs of Georgia in order to solve the above problem.

In 2015, the number of prisoners examined on HIV/AIDS is decreased. In 2015, 5 500 prisoners were subjected to the examinations on HIV/AIDS, in 2014 – 9 081. During the current year, 17 new cases of HIV were revealed. During the year, 75 patients, among them 12 new, were involved in the anti-retroviral treatment for HIV/AIDS.

The following issues remain to be problematic in the penitentiary system: thoroughly following the requirements of infection control, ensuring the cold chain in line with the legislation, disinfection and sterilization of the medical tools, objects and materials of multiple use, allocation of safe boxes and relevant containers for collecting sharp objects and used syringes.

The examination conducted by the Regulation Agency for Medical Activities revealed that in the establishments N5, N6, N16 and N18 of the penitentiary department the disinfection and sterilization process is carried out with certain deficiencies which should be eradicated in order to efficiently direct the process. None of the above-mentioned facilities has personnel that has undergone a special course on infection control. In the room where the procedures are conducted, there was no anti-bacterial soap, dispenser with anti-septic solution or the paper to dry the hands. The tools are not divided into critical, semi-critical and non-critical categories since no relevant training was conducted, information was not provided about the necessity of the above process. Control of pre-sterilization processing of tools is not conducted. They have the so called sterilization indicators, therefore, sterilization process is carried out without the control with the indicators. The tools are not placed in the packages and as noted by the personnel, the reason is the lack of the packing materials. Dental cabinets do not have the closet/table for the storage of the sterile instruments. In the establishments N5 and N6 there are no bactericidal lamps in the dental cabinets.

Establishments N5, N6, N16 do not have the steam sterilizer, the so called autoclave; however, autoclaves are purchased and in the nearest future will be brought in every establishment according to the need. In the establishment N18, the central sterilization facility has a steam sterilizer, the so called autoclave, which is used in the working process, however, as noted by the head doctor and the deputy head doctor, the above

sterilizer is partially out of order and in need of reparation. The so called sterilization process registration journal should be printed and brought to the establishments N16 and N18. The above journal is being produced at this stage, however, not in line with the established rules.

In the establishments N6, N16 and N18 there are significant infrastructural deficiencies – no relevant space is allocated for the pre-sterilization processing, which, in turn, should be equipped with the washing bag, table, shelves and etc. No instruction on the preparation/use of the disinfectants is written out.

The lack of access to the information on the preventive health care for the prisoners is striking. According to the information received from the Ministry, the prisoners have access to the brochure “ABC of the Penitentiary Health Care” printed by the Medical Department in 2013, which includes the information on penitentiary health care in 10 languages. Despite the fact that this kind of brochure exists, it was revealed during the visit of the Special Preventive Group to the penitentiary establishments that these brochures are not accessible to all prisoners.

## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS OF GEORGIA:

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

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

- To amend Decree 01-5/N of 31 January 2014 of the Minister of Labour, Health and Social Affairs of Georgia on approving the rules for approval and Implementation of the programme on prevention, detection and treatment of viral

Hepatitis C in the penitentiary facilities so that the inmates have an access to an antiviral treatment based on the medical evidence.

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

- To ensure the treatment of the foreign citizens and stateless persons placed in the penitentiary institutions with sofosbuvir based on the medical need.

## 2.6. SPECIAL CATEGORIES

### 2.6.1. JUVENILE PRISONERS

During the reporting period, the Special Preventive Group and the Child's Rights Centre of the Public Defender were constantly studying the legal status of the accused/convicted juveniles.

According to Article 79 para 1 of the Juvenile Justice Code, an accused minor under pre-trial detention, shall be placed in the juvenile section of a detention facility, and a convicted minor who has been sentenced to imprisonment shall be placed in a juvenile rehabilitation facility. Services in detention and prison facilities where accused or convicted minors are placed shall meet the requirements for the health care of minors and shall respect the dignity of minors. It is noted in the commentaries to rule N19 of the Beijing Rules that during the placement of the juvenile prisoners, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.<sup>194</sup>

A juvenile convict who has not reached the age of 18, must be placed in a rehabilitation institution for juveniles N11.<sup>195</sup> Juvenile accused/convicts are also placed in the establishments N2 and N8 of the penitentiary department. In January 2015, 80 prisoners were placed in the penitentiary system.<sup>196</sup> Positively should be assessed the reduction of the number of prisoners at the end of 2015. At the end of December 2015, 35 prisoners were placed in the penitentiary system, out of which 15 were accused and 20 – convicted.<sup>197</sup>

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194 United Nations Standard Minimum Rules for the Administration of Juvenile Justice , Rule N19, available at: <http://www.un.org/documents/ga/res/40/a40r033.htm> [Last Visited on 11.03.2016].

195 Imprisonment Code, Article 68, Para 1.

196 33 accused and 43 convicts.

197 Statistics published on the web page of the Ministry of Corrections, Available at: <http://moc.gov.ge/ka/saqarthvelos-sasjelaghshrulebisa-da-probaciis-saministros-sistemis-statistikis-2015-tslis-angarishi> [Last Visited on 11.03.2016].



Positively should be assessed the entry into force of the Juvenile Justice Code in 2015. The Code establishes the features of administrative and criminal responsibility of juveniles, peculiarity of administrative and criminal proceedings involving the juveniles, special rules for serving the sentence and other measures. The objective of the Code is the protection of the best interests of juveniles, resocialization-rehabilitation of the juveniles who are in conflict with the law, prevention of the new crime and protection of order.

Article 21 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) sets the rules for placement of the juvenile offenders in a detention facility, while Recommendation of the Committee of Ministers<sup>198</sup> to member states on the European Rules for juvenile offenders subject to sanctions or measures holds that the placement of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners minors must be kept separately from adults.<sup>199</sup>

Despite the fact that the juvenile inmates are placed in the separate building in the establishments N2 and N8, they still have means of communication with the adult inmates, for instance, when the former are taken to a lawyer or a legal representative. The same also applies during the visit to the dentist cabinet, which is common for the juveniles and adults. In addition, adult convicts employed in the prison maintenance service are distributing the food in each cell, despite the fact that they are carrying out this activity under the supervision of the prison personnel.

According to Article 94 of the Juvenile Justice Code, immediately upon the admission of an accused or convicted minor to a detention/prison facility, the administration of the facility shall allow him/her to read written information about his/her rights and obligations, including the procedure for filing complaints and appeals determined by the law. An accused or convicted juvenile shall be provided with the information in a form understandable to him/her.

In the penitentiary establishment the juvenile is informed of his/her rights by the social worker. A written form is developed, which describes the rights and responsibilities of the accused and the juvenile confirms with the signature that he/she has read the form. In this regards, in his 2014 Parliamentary Report the Public Defender has addressed the Minister of Corrections. According to the received response, with the financial as-

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198 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [Last Visited on 15.03.2016].

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

sistance from the European Union, the handbook on the rights of the accused/convicted juveniles was updated and published. The social workers of the establishment were provided with two trainings for the juvenile inmates on the topic of “the Rights of the Juvenile Convicts” in the institution N11. Nevertheless, still problematic is provision of the information on their rights and responsibilities to the accused/convicts. It is necessary to provide the juvenile prisoners with the information regarding their rights and responsibilities in a language they understand.

It is possible to temporarily transfer the juvenile accused/convict to another institution based on the order of the Director of the Penitentiary Department only if it is necessary for the security of that inmate or the other juvenile.<sup>200</sup> In 2015, due to the security reasons, based on the secret letter of the Director of the Penitentiary Department, 12 convicts were transferred to the facilities N2 and N8. It is noteworthy that none of them were subjected to the disciplinary sanctions. During the conversation with the trustees of the Public Defender, the juvenile convicts have repeatedly noted that they were not aware of the reason of their transfer. In addition, no concrete term is determined for the transfer of the juveniles.

It should be noted that all convicts transferred to the facility N2 due to the security reasons, were registered in the school and were involved in the educational process. One of the juveniles was registered to pass the school-leaving examinations (CAT), however, the juveniles’ unit of the penitentiary establishment N2 was not informed of this and therefore, the convict was not given the possibility to pass the exams. It is worth noting that the transfer to the penitentiary establishment N2 and N8 significantly impedes the rehabilitation process of the convicts.

In the rehabilitation process of the juvenile convicts their involvement in the rehabilitation and educational activities bears special importance. The educational process in the establishments N2 and N8 only ensures the continuity of education, while rehabilitation activities are not as diverse as in the rehabilitation institution for the juveniles.

Positively should be noted that in 2015, disciplinary sanctions were not used against the juvenile convicts. As for the incentives, for the good behavior and involvement in the rehabilitation activities, gratitude was announced to 42 convicts, which constitutes a positive practice that should be continued and strengthened.

The juveniles should observe the personal hygiene and the establishment should ensure them with the necessary means.<sup>201</sup> The UN Rules for the protection of juveniles specify that authorities of an institution are responsible for providing juveniles with clothing

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200 Juvenile Justice Code, Article 89.

201 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 65.4, available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [Last Visited on 15.03.2016].

suitable for weather and necessary for health, while the Council of Europe Committee of Ministers recommends<sup>202</sup> that “juveniles who do not have sufficient clothing of their own should be provided with such clothing by the institution.”

In his Parliamentary Report 2014, the Public Defender recommended the Minister of Corrections to ensure all juvenile prisoners of the facility N11 with the sufficient number of hygienic items. According the response MOC11600111071 received from the Ministry on 16 February 2016, the juvenile convicts placed in the facility N11 are provided with the items for personal hygiene twice a week, and in case of need, more often. Positively should be assessed the issue of provision of hygienic items to the juveniles and it is important to maintain the above practice.

According to Article 82 of the Juvenile Justice Code, “an accused or convicted minor shall be provided with regular medical examinations, required medical treatment, preventive medical services, and special medical items.” During the reporting period, 21 convicts were transferred from the facility N11 to the medical establishment, out of which 13 were transferred to the Medical establishment for accused and convicts N18 and 8 were transferred to the public hospitals. In 2015, no case of tuberculosis was revealed in the institution N11.

According to Article 79 para 2 of the Juvenile Justice Code, “to protect the best interests of minors, detention and prison facilities shall have sufficient, qualified and trained personnel (pediatrician, doctor, nurse, psychologist, psychiatrist, social worker, etc.). In his Parliamentary Report of 2014, the Public Defender addressed the Minister of Corrections with the recommendation to ensure the relevant number of the psychologists. Positively should be assessed that in 2015, the facility had 2 psychologists.

In line with Article 90 para 3 of the Juvenile Justice Code,<sup>203</sup> based on the application, 3 convicts who reached the age of 18, were kept in the rehabilitation facility for the juveniles. One of the convicts was released after serving the sentence in 2015, calendarly.

According to the recommendation of the Committee of Ministers of the Council of Europe,<sup>204</sup> a juvenile in an institution, shall enjoy various activities and events as per an

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202 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: Article 66.2; Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [Last Visited on 15.03.2016].

203 To re-socialise a convicted minor, or to provide general education and vocational training, a convicted person who has attained the age of 18 may, upon his/her personal application, be kept to serve his/her sentence in the same facility where he/she was serving the sentence before reaching the age of majority. The decision on this matter shall be made by the director of the Penitentiary Department based on the petition of the director of the facility.

204 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 79.1 and 79.2. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [Last Visited on 16.03.2016].

individual plan which aims to prepare a juvenile for the release through less severe custody and his/her integration in the society. It is noteworthy that in the facility N11, the rehabilitation programmes are carried out by the institution's social services and non-governmental organisations. It should be mentioned that during the reporting period, majority of prisoners were involved in a number of programmes. Besides, the juvenile inmates were also involved in other crafting courses.

The recommendation developed by the Committee of Ministers of the Council of Europe<sup>205</sup> in 2008 specifies the key directions of activities to be carried out by the regime, namely: studying at school, vocational training, work and occupational therapy, citizenship training, social skills and competence training, aggression-management, addiction therapy, individual and group therapy, physical education and sports.

According to Article 35 of the Constitution of Georgia "everyone shall have the right to education and the right to free choice of a form of education." Article 7, Paragraph 4 of the Law of Georgia on General Education obliges the State to 'provide general education in penitentiary institutions in compliance with the rules set out in the Imprisonment Code,' while Article 14, para 1 sub-paragraph B of the Imprisonment Code enshrines that 'an accused/convict shall have the right to receive general and vocational education'.

According to Article 49 of the Order N118 of the Minister of Corrections of Georgia dated 27 August 2015, on Approving the Statute of the Rehabilitation Facility of Juveniles, the institution is obliged to create the conditions that will allow the convicts to receive general and vocational education. General education is provided in the facility according to the programme approved by the Minister of Education and Science of Georgia. The above should ensure the achievement of the goals set by the national educational plan. This educational program is not subject to the conditions and timetable of the national educational plan.

There is a school at the Institution N11 affiliated with one of Tbilisi's public schools. The school implements a sub-programme of general education for juveniles. The programme provides opportunities for juveniles to not only complete general education through equivalency examinations but also to obtain a certificate (attestat) after passing attestation examinations.

The school is located in a separate building, which also has a library and working rooms for the social workers. The educational programme covers the grades from 8 to 12 and accordingly, inmates who are in the 7<sup>th</sup> or the lower grade cannot fully engage in the educational process.

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205 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 77. Available in English at: <https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM> [ბოლოს წაწახი 16.03.2016].

According to Article 2 para 'n' of the Law of Georgia on General Education, a complete general education in Georgia consists of three levels: primary education (six years), basic education (three years) and secondary education (three years). In accordance with Article 9 para 1 of the same law, gaining of a primary and basic education shall be mandatory. In addition, Article 84 para 2 of the Juvenile Justice Code enshrines that the elementary and basic education should be provided to the accused or convicted minors. Despite this provision in the law, it is voluntary to go to school. The institution is trying to establish certain benefits so that the convicts have a desire to go to school.

The maximum duration of the lessons is 30 minutes. There are 5 lessons per day with the 5 minutes breaks. The above difference is justified by the fact that the convicts should not be overwhelmed, tired from the educational process. The teachers are oriented on the fulfillment of the main tasks during the lesson and do not give independent extracurricular homework. At the end of the reporting period, 12 pupils were officially registered in the school.

Unlike the Institution N11, general education programmes running in the Institutions N8 and N2 are not affiliated with any public schools and therefore, no document certifying the completion of the programme is issued. The main objective of the programmes offered by these institutions is to ensure continuity of the education process as long as a juvenile has a status of a convict. As a result, the offenders do not demonstrate strong interests towards the programme and often skip classes.

It is noteworthy that the juvenile prisoners often face problems when it comes to the enrollment in classes as it entails a series of procedures and requires the active participation of the parents. Often parents cannot afford travel to Tbilisi to sign a document. It should also be noted that in some cases the schools where juvenile offenders had attended classes prior to entering the system, are reluctant to accelerate the process and refrain from partnering with a school affiliated to the Institution N11.

The standard minimum rules for the treatment of prisoners specifies that juvenile education should be obligatory and authorities of an institution must pay special attention to its administration. According to the rule "All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect."<sup>206</sup>

The accused/convicted juveniles placed in the penitentiary system often encounter problems while registering for the national exams. Namely, the juvenile should be registered by the parent, however, there are a number of cases when the family cannot manage this, therefore, the role of the social service is very important in this regards. In 2015, 2 entrants were placed in the institution and both of them wanted to pass the

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206 The Standard Minimum Rules for the Treatment of Prisoners, Rule 77.

Unified National Examinations. However, there were not registered. Accordingly, it is important to actively involve the teachers and representatives of the social service agency of the institution in the process.

The UN Standard Minimum Rules for the Administration of Juvenile Justice promulgate the importance of the contact with the outside world for the juvenile offenders and specify that: ‘all measures should be taken to ensure juveniles’ contact with the outside world which is an integral part of fair and human treatment and of great importance for their reintegration into the society.’<sup>207</sup> In the Rehabilitation Institution of the Juveniles N11 the convicts enjoy the legal right to short and long term visits, video and phone visits. There are two furnished rooms designated for the long term visits. However, a fee related to exercising the right to long term and video visits represents a barrier in this regard.<sup>208</sup> In 2014, 909 short visits and 19 long term visits were conducted in the facility N11. In 2015, the number of the short visits was decreased; however, the number of the long term visits has been increased. During the reporting period, 653 convicts used the right to the short term visit and 29 inmates – to the long term visit.

#### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- Ensure all juvenile prisoners with appropriate clothing;
- Provide all juvenile prisoners with hygienic items;
- Take the relevant measures to place all juvenile inmates in the rehabilitation facility for the juveniles;
- Ensure the transfer of the juvenile convicts to the other institutions due to the security reasons, as an extreme and temporary measure;
- Ensure all juveniles with the possibility to receive the proper education, including the higher education.

#### 2.6.2. LEGAL STATUS OF THE FEMALE INMATES

Besides the penitentiary establishment N5, the female prisoners are placed in the establishments N2 and N3. At the end of the reporting period, 52 accused and 257 convicted women were placed in the penitentiary establishments. Out of them, 294 prisoners (46

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207 The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Rule 59.

208 Article 4, para 1 of the Order N132 of the Ministry of Corrections of Georgia adopted on 22 July 2014, on *Approving the Rules for the Long-Term Visits for the Convicts.*

accused and 248 convicts) were placed in the establishment N5, 9 inmates (2 accused and 7 convicts) – in the establishment N2, 3 accused in the establishment N3 and 3 prisoners in the Medcail Establishment N18 (1 accused and 2 convicts).

In 2015, within the framework of the National Preventive Mechanism of Georgia, with participation of the Gender Equality Department of the Public Defender's Office, the monitoring of the institution N5 was conducted. The objective of the monitoring was to reveal the needs of the female inmates and to prepare the recommendations based on the assessment. In order to achieve the above objective, the monitoring team referred to the national legislation as well as the standards established by the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (The Bangkok Rules).

Recommendations were prepared based on the results and were sent together with the special report of monitoring to the Ministry of Corrections for further reaction. A number of recommendations were fulfilled by the Ministry of Corrections, which had a positive impact on the conditions of the female accused/convicts placed in the establishment.

Despite the fact that the overall situation in the Institution N5 is satisfactory, there still remain few serious problems. Still problematic is the procedure of full strip searches<sup>209</sup> upon admission during which women have to get completely naked. In addition, what is particularly traumatizing for them is that they are asked to do squats. It is worth noting that such searches are conducted every time when prisoners leave the establishment and when they come back. Because of this practice which many prisoners find beyond their dignity, female inmates often refuse to receive medical care outside the establishment or attend the court hearings.<sup>210</sup>

In his Parliamentary Report of 2014, the Public Defender of Georgia addressed the Minister of Corrections with the recommendation to receive the female prisoners without violating their dignity. According to the response MOC31600018644 received from the Ministry on 11 January 2016, the above procedure is carried out while placing the inmate in the establishment, also, if the accused/convict has temporarily left the penitentiary institution on the grounds established by law and is returning back. The response

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209 Decree 97 of the Minister of Corrections of May 30, 2011 on *Approving the Statute of re-trial Detention, Semi-open and Closed-type Prisons, Medical Establishment and Tuberculosis Treatment and Rehabilitation Centre*, Article 32, Para 9.

210 According to Rules 19 and 20 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

received from the Ministry revealed that the issue of searching the female prisoners was reviewed and from 1 September 2015, during the full personal searches, the statute will determine the question of inviting a doctor specialist in case of need. It can be noted that the Public Defender's recommendation was not fulfilled. It is significant that the full search and aggressive (invasive) bodily examination should be substituted by the alternative searching methods, like scanning, in order to avoid the possible harmful psychological and physical impact.<sup>211</sup>

Positively should be assessed the decreased practice of using the placement in the solitary confinement cell as a disciplinary sanction, however, the cases of transferring the inmates to the cell type dwellings have been increased.<sup>212</sup> From January to December 2015, 67 inmates were subjected to the disciplinary sanctions, 1 prisoner was placed in the solitary confinement cell, inmates were transferred to the cell type dwelling in 14 cases, in 2 cases – the contact with the outside world was restricted (restriction of the short term visit – in 1 case, restriction of the telephone conversation – in 1 case). In other cases a reprimand and a warning was used.

During the reporting period, from the establishment N5, 219 prisoners were transferred to the different medical establishments. Out of them, 37 inmates were referred to the medical establishments N18 and N19 and 182 inmates – to the public sector hospitals. The Medical Unit of the establishment N5 houses a doctors' office, also the cabinets of surgery, gynecology, a dentist's, a room for manipulations and intensive observation. Also, the medical staff are qualified to take samples for TB and HIV/AIDS tests.

In the health care sphere the issue of receiving the timely medical service still remains to be a problem. The question of conducting a planned surgical treatment of the female inmates should be taken into consideration. Like the male prisoners, the female inmates are registered in the unified electronic database of the medical department of the Ministry of Corrections of Georgia. There are a number of cases when the patients have to wait for the surgical treatments for months, which causes the deterioration of the health conditions. It should be noted that if the patient has a menstrual cycle during her turn of treatment, she is not taken to the surgery and has to re-register. It is necessary to establish a separate referral line for the female accused/convicts.

According to Rule 6 para 'c' of the Bangkok Rules, the health screening of women prisoners shall include comprehensive screening to determine primary health care needs, and also shall determine: the reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues.

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211 The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 20.

212 In 2014, in the facility N5, 3 inmates were placed in the solitary confinement cell and 8 – in the cell type dwellings.



In terms of protecting the reproductive health of women, significant problems are in the establishment N2 related to health care. Namely, the establishment does not have a gynecologist; therefore, the consultation of a gynecologist is problematic in this institution. In case of need, the female inmates are transferred to the public hospital, which is related to certain procedures and delay.

Still problematic is the carrying out of hygienic procedures for the female prisoners. Female inmates constitute a special category with specific requirements. It is critical that these needs be assessed regularly and special programs developed on a regular basis. Prisoners have access to showers from 11:00 to 20:00. Cells in the institution are not heated adequately and in spite of the fact that the convicts have to do dishes and wash clothes, also take care of their personal hygiene during late hours, they do not have hot running water in their cells. Constant contact with cold water has a negative impact on a women's health. It is noteworthy that the Ministry of Corrections of Georgia did not take into consideration the recommendation of the Public Defender of Georgia related to the provision of hot water in the cells.

Positively should be assessed the provision of person hygienic items. It is noteworthy that the facility did not ensure the female inmates with the hygienic pads and those, who could not afford buying them, were forced to use other, often unhygienic items. The above problem was solved and the institution ensured the provision of hygienic pads to the inmates in need.

Public Defender's report of 2014 paid attention to the condition of mothers and children in the establishment N5. The recommendation was issued to the Minister of Corrections to improve the transportation conditions for mothers and children. According to the response received from the Ministry of Corrections, the escort service autopark and office in line with the western standards was opened in July 2015. The cars placed in the autopark are differentiated according to the categories and allocated for the juvenile, female and adult men convicts of all risks.

In the living unit for the mothers and children of the establishment N5 there are 12 rooms and 1 common room for the entertainment of children. In 2015 4 mothers and 4 children were placed in the institution. Separation of mothers and children after the latter reach the age of 3 is a critical problem.<sup>213</sup> Existing procedures are particularly painful for both children and their mothers. In order to protect the best interest of the child, it is crucial to ensure that the system will ease the procedures for children leaving the institution at the age of three. Separation should be flexible and needs based rather than rigid as the child's best interest must be the first priority while making such decisions.<sup>214</sup>

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213 Imprisonment Code of Georgia, Article 72.

214 Convention on the Rights of the Child, Article 3.

Provision of children with clothing remains to be problematic. In the course of the visit to the establishment it was noted during the interview with the mothers who are placed with their children that the children do not have sufficient clothing, especially the shoes, therefore, they do not take children outside in the cold weather. Warm boots and coats are of special need. The Ministry of Corrections of Georgia referred to the assistance of the Georgian Orthodox Church and other unitary measures related to the above matter, however, did not discuss more effective and sustainable ways of solving the problem.

Women prisoners should be given the possibility to implement various measures in order to ensure the guardianship. In this case the Bangkok Rules give the opportunity of temporary release of the female inmates for a reasonable time. Any decision should be taken in line with the best interests of the child, which should be balanced with the public interest typical to the penitentiary system.<sup>215</sup>

In his Parliamentary Report of 2014 the Public Defender has addressed the Ministry of Corrections with the recommendation to improve and revise the standards of children leaving the institution in line with the best interests of the child. According to the response received from the Ministry of Corrections, the social worker and a psychologist of the facility meet the child and a mother and contact the Social Service Agency in order to find a guardian. It was noted in the response that in October 2015, with the support of the UNICEF, the meeting took place, which was attended by the representatives of Government, as well as Non-Governmental organizations. According to their explanation, it is planned to conduct another such meeting for regulation of the above issue in accordance with international standards and best practice. It should be noted that this is not sufficient and it is necessary to take effective steps. The Public Defender's Office will further observe the process of children's withdrawal from the establishment and its compliance with international regulations.

In the living building designated for mothers in the institution N5, still problematic is the lack of products to prepare adequate meals for themselves and their children. There are cases when they take food intended for other prisoners. It is important to solve the problem of children's nutrition in accordance with the State's standards, since the State is obliged to take care of the children who are placed in the institution under its control. The Public Defender of Georgia has addressed the Ministry of Corrections with the recommendation related to this matter in his Parliamentary Report of 2014. According to the response MOC11600111071 received from the Ministry on 9 February 2015, in case of a mother's request, nutrition products for children are issued additionally. At the same time, mothers are provided with the nutrition products to prepare the meals. Besides, with the UNICEF and the Ministry of Labour, Health and Social Affairs of Georgia,

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215 The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 52(2)(3).

the standard on nutrition and sanitary-hygienic conditions of children under the age of 3 is being developed for the first time in Georgia. The above standard will be approved in the nearest future.

It is important to involve the mothers placed with their children in various programmes and events. Due to the fact that in case of need they cannot leave the child with anyone, the problem arises in case of their participation or deterioration of their state of health.

It is of utmost importance to ensure the maximum contact of the female prisoners with the outside world. Positively should be assessed the creation of the relevant infrastructure for the long term visits in the institution N5.

According to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the prison administration must acknowledge that women prisoners representing various religions and cultures have specific needs.<sup>216</sup> Prison administration should ensure the availability of those programmes and services that meet their special needs. A process of the development of such programmes must be designed in a participatory manner with an active participation of the interested groups.

The prison environment should be comfortable rather than disturbing for the female prisoners. The prison might cause discomfort in general but the environment should not violate religious or other beliefs or restrict them beyond reasonable limits. It must be kept in mind that women prisoners do not have only gender-specific needs and therefore, authorities must consider all individual specifics, which require special treatment of the female prisoners. When it comes to women prisoners who are foreign citizens the right to communication with relevant consular representatives and exercise their religious beliefs are of particular importance.

Issues related to the conditions of LBT prisoners deserves special attention. It is worth noting that the situation of the female LBT prisoners is strikingly different from that of the male GBT prisoners. One of the key differences is related to the practice of their placement and acceptance by the other inmates. GBT prisoners are placed separately and other inmates have restricted communications with them, while in the institution for the female inmates, there is no separation as there are no security and safety threats, which would require such intervention.

It should be noted that neither the prison administration nor the inmates speak of any conflicts occurring on the grounds of gender identity or sexual orientation, or of any cases involving discrimination or inappropriate treatment. In fact, the prison administration

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216 The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 54.

does not have sufficient information for the risk assessment. A social worker does not work with the LBT prisoners to provide special assistance. It was revealed as a result of the monitoring that the risk of self-damage is higher among the LBT female prisoners, however, there are no specialized schemes developed by the psychologist in place.

#### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- Take all necessary measures to carry out the personal searches without insulting the dignity of the inmates;
- To provide the cells for women with the heating and hot water;
- To ensure the separate electronic database for the female inmates for the timely and effective implementation of the planned medical services;
- To ensure the children living in the facility with the proper clothing and footwear;
- Revise and improve separation procedures involving convicted mothers and their children so that the child's best interests are protected through the adaptation with the outside world and minimizing trauma of separation for children;
- Revise a nutrition standard for mothers and children so that there is a sufficient amount of food;
- In case of need, that might be caused by the involvement of the mother in various activities or her illness, the service of a caregiver or an assistant to take care of the child should be ensured;
- Undertake measures to raise the awareness of the prison staff on LBT rights, international standards and potential risks related to placement in closed institutions;
- Intensify the work of psychologist and a social worker with the LBT prisoners and other female inmates in order to foster acceptance among the non LBT prisoners and prevent potential risk of self-isolation and damage.

### 2.6.3. PRISONERS SENTENCED TO LIFE IMPRISONMENT

Individuals sentenced to life imprisonment belong to a particularly vulnerable group of prisoners. Therefore, their treatment should promote their dignity and strengthen a sense of responsibility.<sup>217</sup> The Public Defender in his reports has repeatedly underlined that existing conditions within the penitentiary institutions do not ensure their adequate resocialisation and reintegration into the wider community.

Life sentenced prisoners are placed in the establishments N3, N6, N7 and N8 of the penitentiary department. During the reporting period, positively should be assessed the pardoning of 3 female convicts by the President, who were sentenced for life imprisonment.

According to the recommendation of the Council of Europe Committee of Ministers, the prison administration should seek to ensure that prisoners are explained the prison rules and routine and their rights and responsibilities, including the right to make personal choices in as many of the affairs of daily prison life as possible. In addition, life sentenced prisoners should be offered adequate material conditions and opportunities for physical, intellectual and emotional stimulation and have a maximum contact with the outside world.<sup>218</sup>

It is noteworthy that in the penitentiary institution where the persons sentenced to life imprisonment are placed, diverse and systematic rehabilitational activities are not carried out. During the reporting period, in the establishment N7, not a single rehabilitation programme was implemented. In the establishment N6 one checkers tournament took place. Besides, the inmates sentenced to life imprisonment are not given the possibility of employment. The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, in the report of 2015 focuses on the importance of employment and different activities in order to support the physical and mental health of the imprisoned individuals, especially the ones who are sentenced to life imprisonment.<sup>219</sup>

It is worth noting that a long term imprisonment, and in particular the life sentence, is unlikely to achieve its objectives unless adequate measures are undertaken to ensure the transition of convicts to the major directions and steps of social life.<sup>220</sup> It should be

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217 Standard Minimum Rules for the Treatment of Prisoners, rules 65 and 66.

218 Management by Prison Administrations of Life-sentence and Other Long-term Prisoners, Recommendation REC (2003) 23 adopted by the Committee of Ministers of the Council of Europe on 9 October 2003, Para. 21-25.

219 The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Report on the Visit to Georgia, 6 November 2015, A/HRC/31/57/Add.3.

220 The Economic and Social Council, in its resolution 1992/1 of 6 February decided to dissolve the committee on crime prevention and control and to establish the Commission on Crime prevention and criminal justice as a functional commission of the Council, as requested by the General Assembly in its resolution 46/152 of 18<sup>th</sup> December 1991. The commission held its first session from 21 to 30 April 1992.

underlined that the Georgian legislation does not promulgate specific approaches required for the resocialisation and reintegration of life sentenced prisoners. Therefore, there is no practice of developing individual action plans and set of indicators for inmates sentenced to life imprisonment. According to the recommendation of the Committee of Ministers of the Council of Europe, the member states must ensure that individual plans are developed for life sentenced and long-term prisoners.<sup>221</sup>

In 2014, the Public Defender has recommended the Ministry of Corrections to ensure the individual plans of serving the sentence to the inmates sentenced to life imprisonment. According to the response received from the Ministry, implementation of the individual planning has started in the penitentiary system. If the classification of convicts and the individual planning of serving the sentence starts in accordance with the danger risks, the plan will be implemented equally, according to the risks based on behavior and not on the term of the sentence.

According to Article 64 of the Imprisonment Code of Georgia, the prisoner is serving a life sentence in the closed establishment. It is important that life sentenced prisoners, under the relevant supervision, have communication with their families and friends with regular intervals both in writing and visits. The Georgian Imprisonment Code provides rules that life sentence prisoners have the right to 2 long-term visits annually and the possibility of 2 more long-term visits as an incentive.<sup>222</sup> As stated by the European Committee for the Prevention of Torture in its report,<sup>223</sup> the number of visits should not depend on the type of the facility or the crime committed. It is important to allow the life sentenced prisoners more short and long term visits, which will support the maintenance of close ties with the family members and rehabilitation.

It is worth noting that in some of the institutions of the penitentiary department there is no adequate infrastructure for the long-term visits and prisoners are transported to the other facilities. However, there were cases when the requests for long-term visits were turned down because of the infrastructural problems.<sup>224</sup>

#### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- Develop action plans tailored on individual life sentenced prisoners for their resocialisation and reintegration in the society;

221 Recommendation (2006)2 of the Committee of Ministers to Member States on European Rules for Prison (adopted on January 11, 2006 by the Committee of Ministers). Available at: <http://www.ombudsman.ge/uploads/other/1/1225.pdf> [Last Visited on 17.03.2016].

222 Article 65(1)(d) of the Imprisonment Code of Georgia.

223 Visit of the the European Committee for the Prevention of Torture to Georgia, CPT/Inf (2015) Available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last Visited on 14.03.2016].

224 The above is discussed in details in the chapter dedicated to the Contact with the Outside World.

- Ensure that prisoners participate in diverse activities focused on rehabilitation;
- To give the possibility of employment to the life sentenced convicts placed in the penitentiary institutions;
- Ensure full support to life sentence prisoners to maintain ties with their families.

#### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code and increase the number of short and long-term visits for the inmates sentenced to life imprisonment.

#### 2.6.4. ACCUSED INDIVIDUALS IN DETENTION

According to Article 3 para 19 of the Criminal Procedure Code of Georgia, the accused is a person against whom there is a probable cause suggesting that he/she has committed an offence provided for by the Criminal Code of Georgia.

The accused in detention is placed in the detention facility except the cases determined by the Georgian legislation and/or in case of existence of the mixed type facility. In the mixed facility the accused should be separated from the convicts as a minimum by the separate living spaces.<sup>225</sup> In the reporting period, the accused persons were placed in the penitentiary establishments N2, N3, N5, N6, N7, N8 and N9. In December 2015, 1 316 accused individuals were in detention, out of them – 52 accused were women.

According to the Imprisonment Code of Georgia, immediately upon the admission of an accused/convicted person to a facility, the designated person shall inform him/her of the rights and obligations.<sup>226</sup> According to para 119 of the UN Standard Minimum Rules for the Treatment of Prisoners, Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her. It is noteworthy that the majority of prisoners placed in the penitentiary facility, including the accused, are not aware of their rights.

Accused individuals should be placed separately from the convicts.<sup>227</sup> It should be noted that placing the convicts and the accused together constitutes a problem in the penitentiary establishments N2, N3 and N8. The accused individuals and convicts were placed together in the above facilities during the visit of the Special Prevention Group. Besides, the cases of conflicts were revealed in the penitentiary establishment N2. In one case

225 Imprisonment Code of Georgia, Article 9.

226 Imprisonment Code of Georgia, Article 97, para 1.

227 Nelson Mandela Rules, Rule 119.

there was a confrontation among the convict and an accused, which is particularly important since according to the law, the accused and convicts should be placed separately in the institution and it is not clear how did they meet and in what circumstances arose the conflict.

According to Article 15 para 3 of the Imprisonment Code, a living space standard per an accused person in a detention facility shall not be less than 3 square metres. In accordance with the recommendation of the European Committee for the Prevention of Torture, all inmates should be ensured with the space of 4 sq.metres.<sup>228</sup> The Public Defender Considers that it is important to ensure each convict with not less than 4 sq.metres living space. According to the recommendation of the European Committee for the Prevention of Torture, it is necessary to take decisive steps for the creation of diverse activities and rehabilitation programmes for the accused and convicts in detention. It is noteworthy that rehabilitation activities are not foreseen for the accused placed in the penitentiary institution. The accused individuals in detention have the right to take a walk for not less than 1 hour per day.<sup>229</sup> Other activities are not foreseen for the above category. While being in the cell, the accused have not possibility to engage in the activities of their interest. It is important to involve the accused individuals in the rehabilitation activities, which will have a positive impact on their health and well-being.

According to Rule 99 of the European Prison Rules, the accused should have the visits and be allowed to have contact with their families and other persons in the same way as the convicts. They should have additional visits and additional access to the other forms of communication. The accused is placed in the closed establishment where the level of stress is specifically high and maintaining close ties with the family has special importance.

The UN Special Rapporteur in the 2015 report on the visit to Georgia focuses on the presumption of innocence of the individuals in detention and underlines the importance of the accused individuals' contact with the family.<sup>230</sup> According to Article 123 of the Imprisonment Code of Georgia, Until 1 January 2016 an accused person shall enjoy not more than 4 short visits a month, by the permission of the prosecutor and investigator. Positively should be assessed that until 1 January 2016 an accused person shall enjoy not less than 4 short term visits and that the above right can only be restricted by the decision of a prosecutor or investigator. For maintaining close ties with the family of the accused it is important to increase the number of short-term visits. Besides, it is significant to make changes in the Georgian legislation and give the accused individuals in detention the possibility to use the long-term visits.

228 Visit of the the European Committee for the Prevention of Torture to Georgia, para 119, CPT/Inf (2015) available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last Visited on: 02.03.2016].

229 Imprisonment Code of Georgia, Article 14, para 1, sub-paragraph G.

230 Report on the Visit of the UN Special Rapporteur, 6 November 2015, [Last Visited on: 2.03.2016].



## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS:

- To increase the time of being on fresh air for the accused individuals in detention;
- To take all necessary measures to ensure the involvement of the accused individuals in various valuable, interesting to them, events.

### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code and determine the 4 square metres as a minimum living space for the accused;
- To make a relevant amendment to the Imprisonment Code and in line with the investigation interests, give the accused individuals in detention possibility to use the long-term visits.

### 2.6.5. VULNERABLE GROUPS

As it is known, GBT persons constitute a specially vulnerable group. The risks of discrimination, violence and stigmatization is high in the penitentiary institutions.

Within the framework of the visits<sup>231</sup> carried out throughout 2015, the conditions of GBT<sup>232</sup> and most vulnerable groups<sup>233</sup> of the penitentiary establishments were studied and the existing risks and possible facts of harassment were revealed.

Persons, whose liberty is deprived, are under the complete control of the State, therefore, constitute one of the most vulnerable categories and the State is obliged to protect them. In particular, to protect their health and well-being.<sup>234</sup> States are responsible for protecting prisoners' security and dignity. States should take special measures for the protection of lesbian, gay, bisexual and transgender individuals. Should ensure that they do not become the victims of rape or other form of violence neither from the prisoners nor from the personnel.<sup>235</sup>

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231 Together with the Special Prevention Group, the Departments of Criminal Justice, Gender Equality and Equality of the Public Defender's Office of Georgia participated in the monitoring.

232 Gay, bisexual and transgender individuals.

233 Prisoners from the maintenance unit, responsible for cleaning.

234 European Court of Human Rights, 22 November 2011, paras 71-72, Makhradze and Sikharulidze v. Georgia, European Court of Human Rights, 16 October 2008, Renolde v. France, para 83.

235 Council of Europe, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Marich 31, 2010, § 4;

As interpreted by the European Court of Human Rights, the prohibition of discrimination has special importance when the different treatment is related to the imprisoned person; The State in this case has a narrow margin of appreciation and the principle of proportionality not only requires that the applied measure should be proportionate to the pursued aim, but also obliges the state to demonstrate that the means were necessary in concrete cases.<sup>236</sup> When the reason of differentiation is a more intimate sphere, for the justification of a differentiated treatment should be the especially weighty arguments.<sup>237</sup> Besides, the Court noted that if the prisoner should be isolated from the other prisoners, he/she should be placed in a place that fits his/her medical needs and well-being.<sup>238</sup> The States, according to Articles 14 and 3 of the Convention have a responsibility to investigate whether the measures taken are based on the discriminatory treatment that caused the complete isolation of the prisoner from the prison life.<sup>239</sup>

On 6-9 November 2006, during the meeting held in Indonesia, the expert group developed the “Jakarta Principles” which constitute the recommendatory rules of international human rights law related to the sexual orientation and gender identity.<sup>240</sup> Despite the fact that these rules are not of mandatory nature, their implementation in practice has a special importance in terms of elimination of discrimination and protection of fundamental human rights. Rule N9 of the principles concerns the treatment of LGBT prisoners. According to the above rule, the State is obliged to protect a detained individual from marginalization and all forms of violence due to his/her sexual orientation.

In the framework of the monitoring the methodology and approach of the personnel of the penitentiary establishments had been studied in detail in relation to the prisoners enlisted in the prison maintenance service, responsible for cleaning. Due to the security reasons, above individuals are separated and placed in the so called maintenance section.

The criminal sub-culture and informal rules have been applied in the penitentiary establishment for decades. The prison maintenance service sections of the establishments<sup>241</sup> are divided into two parts. One part is responsible for distributing food and providing the prisoners with the products from the establishment’s shop. The other part is responsible for cleaning. They are placed separately. The individuals involved in the maintenance service, responsible for cleaning are cleaning the yards, corridors, sanitary knots and showers. They are paid 200 GEL for the above work.<sup>242</sup>

236 European Court of Human Rights, 27 May 2013, *X v. Turkey*, para 57.

237 *Ibid*, para 50; European Court of Human Rights, 21 October 2010, *Alekseyev v. Russia*, para 108; European Court of Human Rights, 2 March 2010, *Kozak v. Poland*, para 83.

238 European Court of Human Rights, 9 October 2015, *Martzaklis and others v. Greece*, para 71.

239 European Court of Human Rights, 27 May 2013, *X v. Turkey*, para 55.

240 Available at: [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm)

241 Except the facilities N5, N11, N16 and N18.

242 The income tax – 20% is paid from the above amount.

Placement of prisoners in the maintenance service is in some way an isolation by which the prison administration is trying to avoid the tensions among the prisoners. This is exactly why the prisoners responsible for cleaning constitute a vulnerable group and their placement happens in a following way: before transferring to the institution, the administration has the information regarding the prisoners and when there is even a doubt that a person might have had a sexual interaction voluntarily or forcibly with the person of same sex, that person will definitely be placed separately from the other prisoners – in the maintenance part or in a closed establishment. Otherwise, that person will be under a serious risk from the other prisoners. Besides, the persons who have committed violent sexual offenses might be placed in the same part. Attention should be paid to the placement of those persons who became victims of violence due to the various reasons. They call it “spoiling.” Those individuals, while serving the sentence, and throughout their entire life are stigmatized and together with the above-mentioned groups are excluded from the society both in the system and outside.

According to the informal prison rules, the persons placed separately, responsible for cleaning should not have a physical contact or verbal communication with the rest of the convicts. Based on the established rules, it is forbidden to talk to them, to take items from their hands, to shake hands with them or greet them in any way, to utilize the inventory used by them and generally, to be in the same space with them. Therefore, the above individuals cannot be involved in the rehabilitation or other events of the institution. This kind of classification from the facility’s administration is justified by the security reasons and is considered that this is the only way to protect the interests of the prisoners and the general regime of the establishment. This kind of prisoners have a distinctive sign in the institution – they are wearing a special maintenance uniform, which has two grey lines on the trousers. The rest of the inmates recognize them and know that should not go close to them.

The monitoring results demonstrated that the persons involved in the prison maintenance work, responsible for cleaning do not constitute self-identified GBT persons. However, they are identified with GBT persons by the other prisoners and due to the influence of the criminal sub-culture are discriminated on this ground. Persons responsible for cleaning are referred to with the offensive terminology by the other inmates. Unfortunately, it should also be noted that some personnel of the administration also refer to those prisoners with the offensive language. As observed by the Special Prevention Group, the above is also caused by the influence of the criminal sub-culture existing in the penitentiary institutions.

During the conversation with the prisoners in charge of cleaning, their frankness was hindered by stigmatization and self-censorship. The members of the monitoring group had an impression that the persons responsible for cleaning did not wish to talk about

the offensive circumstances in which they have to live. There is also an impression that everyone adapted to the existing rules and no one has the wish, hope or ability to fight them.

It is worth noting that during the placement in the facility, if the prisoner wishes to live with some other inmate in the cell, the administration takes it into consideration if there are no problems related to the protection of the prisoner's security. However, if before the placement, the prisoner was registered in the maintenance service of the other establishment, that inmate will by all means be placed separately from those inmates, who are not involved in the maintenance service.

In July 2015, the low risk institution N16 was opened. In this establishment, according to the Order N70 of the Minister of Corrections dated 9 July 2015, are placed the convicts whose sentence was determined to be served in the low risk establishment. As noted by the deputy director of the institution, the principle of functionality of the above institution is providing equal conditions for all prisoners so that they are not divided in different castes and groups. All prisoners are responsible for cleaning and maintenance of housing. The institution offers to them various trainings and work, which is equally obligatory for everyone. This is why the establishment does not have a maintenance part. In order to ensure the above arrangement, before transferring to the establishment, in line with the above-mentioned order, the prisoners are assessed. If any prisoner refuses to comply with the rules of the institution, that inmate will be immediately transferred to another facility. As it is known, the prisoners of the penitentiary facilities, due to the criminal sub-culture, are divided into several groups. These groups are headed by the individuals who have authority and refuse to perform various activities in order not to lose the above authority. These kinds of prisoners are not placed in the establishment N16. As noted by the deputy director of the establishment, there is a risk that they will have a bad influence on the other inmates, will not divide the work equally and will try to establish the rules of criminal sub-culture through the oppression of the others and division by categories, which essentially contradicts the goals of the institution. He also noted that the institution cannot accommodate individuals employed in the maintenance unit of the other establishments, responsible for cleaning and GBT individuals, since the prisoners placed in the establishment N16 will not agree on living, working and studying in the same space with these prisoners due to the above-mentioned sub-culture rules. Despite the fact that there is a possibility that the above individuals fully comply with the criteria<sup>243</sup> of placement in the establishment, they still might be refused to be transferred to the low risk institution.

Prisoners placed in the maintenance section, in charge of cleaning, placed in the semi-

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<sup>243</sup> Individuals employed in the maintenance service of the other institutions, those responsible for cleaning and GBT individuals.

open establishments, due to the informal prison rules, cannot freely walk in the yard during the day, use the sports pitches, enter the church or exercise with the others. In some of the establishments, they have a small territory near the living block and the administration has developed the special rules of taking a walk/using the yard. For instance, in the establishment N12, the individuals in charge of cleaning have separate hours for walking. Their living block closes an hour later than the other blocks and opens one hour earlier. The individuals of the maintenance service can walk in the yard safely only during this period. During the day, they are allowed to take a walk only on the small territory in front of their living block. That space does not have necessary recreational conditions.

If the individuals involved in the maintenance service, responsible for cleaning are excluded from the maintenance service, they are no longer allowed to stay in the semi-open facilities despite the fact that they are sentenced to imprisonment in this kind of institution. This circumstance is caused by the above-mentioned, informal rules, according to which they should not have any physical or verbal communication with the rest of the convicts.

It is noteworthy that the establishment N12 has a barber whose service is not available for the prisoners responsible for cleaning, since the barber won't be able to serve other prisoners after touching those inmates, due to the above-mentioned sub-culture. The hours of using the shop are also divided. Certain time intervals are set when the individuals placed in the maintenance section are given the opportunity to buy the items they want.

In the penitentiary establishments they have separate rooms for the long-term visits so that the rest of the inmates do not accidentally appear in the rooms used by them, which, due to the criminal sub-culture, is unacceptable for the prisoners. Unlike the closed type establishments, in the semi-open institutions the individuals in charge of cleaning are not allowed to use the common shower during the day since other inmates are exercising their right to take shower at that time. Although the inmates responsible for cleaning need to take shower during the day due to the specificity of their work, they have to wait till the evening, which, apparently, creates discomfort for them.

In 2015, the prisoners responsible for cleaning were less involved in the social and cultural events. The head of the social department of one of the establishments justified this circumstance in a following way: other inmates would not take part in the group activities together with them and the separate group was not created in the maintenance part due to the lack of interest. Otherwise, the administration was ready to plan separate sports events and other various trainings for them. However, as noted by the prisoners themselves, they have not received this kind of offer from the administration and

if they had the opportunity, they would participate in various activities with pleasure.

Every place used by the prisoners, especially the bedrooms, should fully comply with sanitary requirements. In addition, sufficient attention should be paid to the climate conditions, particularly to the cubic contents of air, the minimum space, heating and ventilation.<sup>244</sup> In every establishment where the prisoners live and work the windows should be of the sufficient size so that the inmates have the possibility to read and work in the daylight and should be constructed in a way that the provision of fresh air should be ensured, whether the artificial ventilation system exists or not. Artificial lightning should be sufficient for the prisoners to read or work without the risk of deteriorating their eyesight.<sup>245</sup>

In the establishment N12, the living block of the prisoners involved in the maintenance service is outdated and needs renovation. The inmates are buying the ventilators at their own expense in order to cool the rooms. In winter, they use the electric heaters. The cells do not have the sanitary knots or water. In the maintenance section block there is one shower and kitchen that are available for the prisoners for 24 hours, since the cells are not closed. Several convicts noted that the sanitary knots are not enough for the inmates and they often have to stand in line to take care of their personal hygiene. In one of the cells, with the space of 6.29 square metres, 2 inmates were living. Besides, the cell is not in fact aired since the window is too small. The convicts stated that they have been recently transferred to the Establishment and that is why they are temporarily placed in this cell. They have also noted that in the nearest future, it is planned to transfer one of them to another cell.

In the establishment N6, 2 barracks are allocated for the prisoners involved in the maintenance service, responsible for cleaning. The buildings are depreciated, however, the living conditions are satisfactory. Prisoners in charge of cleaning are in better conditions compared to the rest of the prisoners since the institution is closed and other inmates are taken out of the cells only during the walk. While the movement is not restricted for the inmates of the maintenance service, responsible for cleaning.

In the establishment N7, the inmates of the maintenance service, responsible for cleaning are living in one cell. The cell is located on the first floor of the institution, which is under the land surface from one side. There is no natural light or artificial ventilation in the above cell, the lightning is only artificial. The cell does not have a sanitary knot. The cell is damp and outdated, in fact not compatible for living.

During the monitoring carried out in the establishment N6, the living conditions of the prisoners from the maintenance service, responsible for cleaning was also checked. The condition in the cell accommodating 3 prisoners who refused to work is unbearable.

<sup>244</sup> Nelson Mandela Rules, Rule 13.

<sup>245</sup> *Ibid*, Rule 14.

Administration considers them as a marginalized group. The door of the cell's sanitary knot cannot completely isolate it from the cell and therefore, there is a specific smell in the cell. The natural ventilation is insufficient in the cell and the artificial one is not functioning at all.

Representatives of administration of the establishment N12 have explained to the members of the monitoring group that only one training was held for them, which covered the topic of vulnerable groups, including the GBT prisoners. The institution does not have the guideline principles that include the rules of treatment of the above individuals, however, they consider the existence of this kind of document reasonable.

During the conversation with the prisoners, the members of the monitoring group received the information that the administration is threatening the inmates to transfer them to another institution in order to avoid the risks of self-harm. The Special Prevention Group finds this kind of threats unacceptable since the transfer to the other establishment cannot eradicate the reasons of self-harm. Moreover, it has some kind of a punitive nature and might cause a further escalation of the situation. Self-harm can be caused by the numerous factors, including: the feeling of protest, behavioral or mental disorders, grave psychological condition and etc. Timely and adequate intervention of the medical person, social worker and a psychologist of the establishment has utmost importance in this kind of cases.

It is noteworthy that the psychologist of the establishment N12 explained that the prisoners of the maintenance service are not in need of special treatment and they enjoy the service of the psychologist like the others. It should be noted that the GBT prisoners, when they are isolated and abused, have a high need for the psycho-social rehabilitation measures. Therefore, it is important that the administration of the Institution N12 assess correctly the needs of the vulnerable prisoners and focus more on the improvement of the psychological services provided to them.

Treatment of each prisoner should be based on respect for their, as of human beings' inherent dignity and values. Every inmatd should be protected from torture and inhumane and degrading treatment or punishment that can in no way be justified.<sup>246</sup>

During the visit to one of the institutions,<sup>247</sup> the transgender individual<sup>248</sup> who was placed separately was interviewed. The above person's clothing or hairstyle was not different from that of the other inmates'. In order to avoid aggression from the other prisoners, that individual has cut the hair short, however, the other inmates often addressed that prisoner with offensive, discriminatory words; The case of violence also took place

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246 Nelson Mandela Rules, Rule 1.

247 The facility is not specified due to the confidentiality reasons.

248 The above prisoner was not employed in the maintenance service, but was identified as LGBT individual.

from the prisoners. As noted by the above-mentioned convict, the confidentiality of the health condition is violated in the establishment since the nurse is referring to the prisoner as infected with AIDS in front of the other inmates. In addition, the convict has noted that it is not pleasant when the administration is addressing him with the nickname. Although he chose a woman's name for himself, he doesn't want the administration to refer him with this name. He considers that the administration is obliged to respect his wish and during the communication should use the name and surname that is indicated in his identity documents.

According to the all above-mentioned, it can be concluded that the prisoners employed in the maintenance service, responsible for cleaning are isolated in the penitentiary establishments, excluded from the prison life, stigmatized and at the same time, there is a high risk of violence against them. There is an impression that the employees of the institution take into consideration the informal prison rules and thus, demonstrate a conciliatory attitude towards the situation. Solution of the problem is less likely in this situation. Therefore, first and foremost it is necessary to timely acknowledge the problem and search for the ways of solving it. It is important to consistently take decisive steps for the eradication of the existing informal prison rules and for establishing the prison management attitude based on human rights.

## RECOMMENDATIONS:

### TO THE MINISTER OF CORRECTIONS:

- Develop a strategy and guideline principles, which will ensure the prevention of discrimination and elimination of the discriminatory segregation of the GBT prisoners based on sexual orientation and gender identity;
- Take special measures for the awareness raising of the personnel of the penitentiary institutions – on the possible risks of the GBT individuals, international standards and their placement in the closed type establishments;
- Take all necessary measures, including increased control of the fulfillment of their duties and responsibilities by the staff of the institution and the usage of disciplinary sanctions, in order to avoid discriminatory, stigmatizing and degrading treatment of the vulnerable groups placed in the institution;
- Take all necessary measures so that the GBT individuals and those employed in the maintenance service, responsible for cleaning, are safely involved in various rehabilitational, educational, sports, cultural and other events planned in the institutions;



- Ensure involvement of the international organizations and groups of civil society working on the GBT issues in the process of developing and implementing the special programmes;
- Take all necessary measures in order to strengthen the work of the psychologist and a social worker with the prisoners in the maintenance service to increase the acceptance among the prisoners and to prevent the self-isolation and self-harm. It is significant to talk with the inmates specifically on the adverse effects of the informal prison rules, which leads to violence against prisoners, their abuse, stigmatization and exclusion;
- Take all necessary measures so that all convicts enjoy the walking yard equally.
- Take all necessary measures to involve the prisoners employed in the maintenance service and the GBT inmates in the rehabilitation programmes.

#### 2.6.6. REPRESENTATIVES OF ETHNIC AND RELIGIOUS MINORITIES, FOREIGN CITIZENS AND STATELESS PERSONS

The foreign citizens and representatives of ethnic or religious minorities placed in the penitentiary institution, constitute a particularly vulnerable group. The language barrier is a specific problem with this kind of prisoners due to which the majority of the above inmates knows nothing about their legal rights. According to rule 38.3 of the European Prison Rules, linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

At the end of 2015, 368 foreign citizens and stateless accused/convicts were placed in the penitentiary institutions. See below the table demonstrating the monthly number of foreign citizens and stateless persons:

Month	Accused/Convicts
January	265
February	287
March	260
April	271
May	269
June	276
July	276

August	311
September	307
October	338
November	383
December	368

According to para 54 of the Nelson Mandela Rules, upon admission, every prisoner shall be promptly provided with written information about: His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints. Paragraph 61 of the same Rules stipulates that prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter. In 2015, the service of translation was used in 435 cases in the penitentiary establishments.<sup>249</sup>

It is noteworthy that the majority of the foreign language speaking prisoners is not aware of their rights. In most of the cases the inmates are not informed on their rights, since the employees of the establishment's social service do not speak the language. The communication is also difficult with other employees of the institution.

Article 14 (1) (c) of the Imprisonment Code of Georgia enshrines the right of the prisoners to a meeting with close relatives, with a defence lawyer, with representatives of a diplomatic mission or a consular office, and with other diplomatic representatives. According to Article 62 of the Nelson Mandela Rules, Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. In accordance with para 37.1 of the European Prison Rules, prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state. It is worthwhile noting that during the conversation with the Special Preventive Group, the prisoners of the penitentiary institution N8 explained that in a number of cases, they cannot address the consular office or diplomatic representatives of their countries since the meeting with the social worker is difficult and besides, they cannot use the telephone.

According to Rule 68 of the Mandela Rules, Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other

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249 The above amount does not include the data of the facilities N14 and N17, since the relevant information was not provided by the institutions.

person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. It should be noted that during the conversation with the Special Preventive Group, the foreign citizens of the penitentiary institution N8 stated that they were not aware whether their family members knew about their detention or not.

The prisoners should have the possibility to regularly get acquainted with the most important segment of the news through the newspapers, periodic or special news publications, radio, lectures or other means that are allowed and controlled by the administration.<sup>250</sup> News programmes, newspapers and other informational means are not accessible to the foreign language speaking prisoners in the languages they understand. For instance, as explained by the foreign language speaking accused placed in the establishment N8, they are in the informational isolation, since only one entertainment channel is available on TV in Turkish language, other Turkish and Azerbaijani channels are disabled.

According to the European Prison Rules,<sup>251</sup> prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. During the conversation with the Special Preventive Group, the convicts of the penitentiary institution N8 who are not Orthodox noted that in many cases they avoid meals with meat since they do not know what it is made of. It is important to take into consideration the needs of representatives of various religions.

Every accused/convict has the right to enjoy the necessary medical service. In case of need, the treatment means allowed in the penitentiary institutions should be accessible to the accused/convicts.<sup>252</sup> The foreign citizens and the prisoners of the penitentiary establishments who do not speak Georgian encounter problems related to the accessibility of medical services. For instance, during the visit of the Special Preventive Group to the establishment N8, the foreign citizen convicts noted that despite the numerous requests, they cannot manage to meet the doctor; therefore, they cannot receive adequate medical treatment.

According to the European Prison Rules, Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.<sup>253</sup> It is specified by the Mandela Rules that prisoners should enjoy the same standards of health care that are available in the community.<sup>254</sup> Foreign nationals and stateless persons encounter problems regarding their involvement in treatment of Hepatitis C through Sofosbuvir. Clear example of the above is the case of the convict K.K. placed

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250 Nelson Mandela Rules, Rule 63.

251 Rule 22.1.

252 Imprisonment Code of Georgia, Article 24.

253 European Prison Rules, Rule 40.3.

254 Nelson Mandela Rules, Rule 24.

in the penitentiary institution N17. The prisoner is suffering from the viral hepatitis C (I genotype), liver fibrosis F4, cirrhosis stage K74, as well as the 2nd stage of diabetes. According to the doctor's recommendation, the patient needs treatment with sofosbuvir, which is accessible through the State programme on ensuring the measures of managing the first stage of Hepatitis C. However, the prisoner is refused to be treated with Sofosbuvir, since he is not the citizen of Georgia. In this case, the right of the accused to be provided with the adequate medical assistance is violated, which constitutes discrimination. The Public Defender has addressed the Government of Georgia with the recommendation to make the treatment with Sofosbuvir available to the foreign citizens and stateless persons in need, who are placed in the penitentiary system, like to the citizens of Georgia.

## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To take all necessary measures to inform all prisoners about their rights in the language they understand;
- To ensure all foreign citizen prisoners with the translation service free of charge;
- To ensure the availability of various foreign TV Channels and other informational means;
- To take into consideration cultural and religious characteristics while preparing the meals;
- To take all necessary measures to equally ensure the foreign citizens and stateless persons with the penitentiary health care services. In addition, ensure the provision of information regarding the penitentiary health care services in the language they understand and eliminate the linguistic barriers in the process of medical assistance.

## 2.7. CONTACT WITH THE OUTSIDE WORLD

In its recommendations, the European Committee for the Prevention of Torture emphasizes the importance of maintaining regular contact with the outside world for every prisoner serving a sentence. "The guiding principle here is the support to maintaining contact with the outside world. Any decision to restrict such contact must be deter-

mined by the security risks or issues related to material resources.”<sup>255</sup>

Rule 88 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) refers to the issue of maintaining the relations of the prisoner with the society. In particular, the treatment of prisoners should aim at their integration into the society. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners. Every institution should have a social worker charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Certain steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule 106 of the Nelson Mandela Rules refers to the issue of maintaining the relations of the prisoner with the family members. Namely, special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

According to para 24.4 of the European Prison Rules, the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal manner as possible.

According to Article 46 para 3 of the Imprisonment Code, a convict shall serve a sentence in an institution closest to his/her place of residence or to that of a family member. Exceptions are made if the placement is impossible because of overcrowding of the institution, or when the placement in another institution is preconditioned by a health condition of a convict, for the protection of his or her safety or upon consent of a convict.

It was revealed during the monitoring of the penitentiary institutions conducted by the Special Preventive Group during the reporting period that the right of prisoners to the family visits cannot be fully exercised because of various reasons. More specifically, one of the most common barriers is the presence of glass partitions and absence of conditions for the protection of confidentiality during the family visits. In addition, the problem of ignoring the place of residence while placing the convicts should also be underlined.

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255 Resolution parts of the general reports of the European Committee for the Prevention of Torture (CTP), Strasbourg, August 18, 2000. P. 37.

### 2.7.1. SHORT-TERM VISIT

Well-being of prisoners and their reintegration after having served their sentence are largely determined by an extent to which they maintain relations with their families and friends. Direct contact and communication with families greatly contributes to the rehabilitation of the prisoners.

Article 17, para 2 of the Imprisonment Code determines a limited circle of those persons who are allowed to visit a convict for a short-time. In particular, the accused/convict is allowed to the short-term visits upon a written request filed by the latter with the following individuals: close relatives (child, spouse, a partner, a parent (adoptive parent), step-mother, stepfather, in-laws, stepchild, adopted children and their descendants, grandchildren, sister, brother, niece, nephew and their children, grandfather, grandmother, great grandparents (both paternal and maternal), uncles (maternal and paternal), aunts, cousins, also a person with whom a convict lived with in a same household for a year before imprisonment). According to Article 2<sup>1</sup> of the same Article, with the consent of the chairperson of the Department, an accused/convicted person may be granted the right to meet with the persons who are not specified in paragraph 2 of this article.

The Imprisonment Code regulates matters related to the right of convicts to short-term visits. More specifically, according to Article 60<sup>2</sup> (2)(b), a convicted person serving a sentence in a low risk establishment shall enjoy 4 short visits a month, and 2 additional short visits a month as an incentive. According to Article 62 (2)(b) of the same Code, a convict serving a sentence in a semi-closed institution has the right to two short-term visits per month and to one more short-term visit as an incentive. As for the female prisoners, in accordance with Article 72 para 5 of the Imprisonment Code, a convicted woman shall enjoy 3 short visits a month, and 1 additional short visit a month as an incentive.

The Imprisonment Code also determines the issue of enjoyment of the short-term visits by the prisoners placed in the closed type establishments and special risk detention facilities. According to Article 65 (1)(B) of the Imprisonment Code, a convicted person serving a sentence in a closed type establishment shall enjoy 1 short visit a month, and 1 additional short visit as an incentive. In accordance with Article 66<sup>3</sup> (2)(b) of the same law, a convicted person placed in a special risk establishment may enjoy 1 short visit per month and 1 additional short visit as an incentive.

According to Article 17, para 7 of the Imprisonment Code of Georgia, a short-term visit should last 1-2 hours. A short visit is taking place solely under the visual control from the representative of the administration. Exceptions are allowed only under the terms stipulated by the Georgian legislation.

According to Article 87 (1)(a) of the Juvenile Justice Code, a convicted minor may enjoy 4 short visits a month, and 2 additional short visits a month as an incentive.

It is worth noting that in most penitentiary institutions such visits are implemented in spaces with glass partitions. In such cases prisoners are deprived of the opportunities of physical contacts with their family members. Exceptions may be allowed upon a consent of a director of an institution when such circumstances as a convict's severe health condition, meeting with an underage child of a convict arise. Although physical partitions are necessary in specific cases, it is important to acknowledge physical contact as a norm. In addition, any decision on restricting physical contacts must be reasonable, justified and proportionate to the reason behind such restrictions. Besides, decisions to restrict physical contact must be subject to regular revisions. Otherwise, such interference in prisoners' private and family affairs shall not be justifiable.

The European Court of Human Rights deliberated on this issue while hearing a case *Messina v Italy*.<sup>256</sup> The case originated in an application filed by a citizen of Italy Antonio Messina (the Applicant). The Applicant alleged that his right to respect for his family life on account of the restrictions on family visits while he was a prisoner, of his right to respect for his correspondence on account of the fact that it was intercepted by the prison authorities, and of his right to an effective remedy against the decisions to extend the period for which he was to be subject to the special prison regime (which stipulated the restriction on the number of visits by the Applicant's family members with maximum two visits a month) were violated. The restrictions also implied supervision on visits (prisoners were separated from visitors by glass partitions). The Court considers that these restrictions represent interference in the Applicant's right to family life promulgated by Article 8 of the Convention. The Court notes that the regime laid down in section 41 bis is designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimize the risk that they will maintain contact with criminal organisations. In particular, the Court holds that as the Government points out, before the introduction of the special regime, imprisoned Mafia members were able to maintain their positions within the criminal organisation, to exchange information with other prisoners and the outside world and to organise and procure the commission of serious crimes both inside and outside their prisons. In that context, the Court takes into consideration the specific nature of the phenomenon of organized crime, particularly of Mafia type, in which family members often play a crucial role. Moreover, numerous state parties to the Convention have high-security regimes for the dangerous prisoners. These regimes are also based on separation from the prison community, accompanied by tighter supervision.

The Court indicates in its judgement that the Italian judiciary reasonably considered such

<sup>256</sup> European Court of Human Rights, *Messina vs Italy*, 28 September 2000.

measures to be necessary to achieve the goal. This refers to the critical circumstances of the investigations of the Mafia being conducted by the Italian authorities. However, the Court considered that the extension of the special regime may have violated the right of the Applicant guaranteed by Article 8 of the Convention. The European Court of Human Rights ruled that the right of the Applicant guaranteed by Article 8 of the Convention was not violated by imposing restrictions over the visits of his family members. However, interception of the Applicant's correspondence did breach the above-mentioned right.

According to Article 123 of the Imprisonment Code of Georgia, till 1 January 2016, an accused has the right to enjoy no more than 4 short visits per month with the permission of an investigator or prosecutor. Positively should be noted the amendment to the Imprisonment Code, according to which "until 1 January 2016 an accused person shall enjoy not more than 4 short visits a month, by the permission of the prosecutor or investigator."<sup>257</sup> Due to the interests of investigation and security, the employee of the detention facility, who visually observes the short visit of the accused, can immediately stop it." The above amendment will have a positive impact on the maintenance of close ties between the detained individuals and their families.

According to Article 121<sup>1</sup> (3)(a) of the Imprisonment Code of Georgia, during the stay of an accused/convicted person in a general hospital, his/her close relatives (child, spouse, a partner with whom he/she has a common child, parent (adoptive parent), step-parent, spouse's parent, adopted child, stepchild and his/her descendants, grandchild, sister, brother, nephew/niece and their children, grandmother, grandfather, uncle (mother's and father's brother), aunt (mother's and father's sister), cousin, and the person with whom he/she lived and ran common household for the last one year before being placed in a detention/prison establishment), on the recommendation of the doctor in charge and with the consent of the chairperson of the Department, may visit the accused/convicted person according to the procedure and with the frequency established by the Minister.

In his Parliamentary Report of 2014, the Public Defender of Georgia has underlined the question of using the short term visit by the convict T.Ph. Namely, since 22 October 2013, the convict T.Ph. has been placed in the Centre of Cellular Technologies and Therapy (K. Mardaleishvili Medical Centre). According to the provided medical documentation, he is suffering from a grave and incurable illness. Nevertheless, the convict is not allowed to be visited by the family. However, positively should be assessed the fact that at the end of 2015, the convict T.Ph. was allowed to meet the grandchildren.

According to Article 46 (3) of the Imprisonment Code of Georgia, a convicted person shall, as a rule, serve his/her sentence in a prison facility of the relevant type, located

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<sup>257</sup> Imprisonment Code of Georgia, Article 77.



closest to the place of his/her residence or the place of residence of his/her close relative, except as provided by the paragraph 4 of this article.

One of the impediments to the realisation of the right to visits is the ignorance of places of residence while making decisions on placement of prisoners in the penitentiary institutions. Prisoners from Eastern Georgia who serve their sentences in penitentiaries located in Western Georgia are the ones who most often experience problems related to the rights to visits. This category of prisoners also have problems related to the meetings with their lawyers.

According to Rule 24.1 of the European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. According to Rule 24.5 of the same Rules, prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. It is noteworthy that the convicts in the closed establishments N8 and N9, due to the lack of infrastructure, cannot exercise the right to long-term visits. In addition, the prisoners placed in the special risk establishments are not allowed to have long-term visits.

The European Committee for the Prevention of Torture stressed in its report<sup>258</sup> that all sentenced prisoners should have the same possibility for contact with the family despite the type of the institution he/she is serving the sentence. The entitlement of one visit per month is not sufficient to enable a prisoner to maintain good relations with his family and therefore, it is important to amend the legislation and allow the convicts placed in the closed type facilities and special risk institutions to have additional short-term visits.

Overall, in 2015, 40 897 short visits were paid in the penitentiary institution. It should be noted that in 2015, compared to 2014, the number of short-term visits has been decreased.

See below the table demonstrating the number of short-term visits:

Penitentiary Institution	The Number of Visits 2014	The Number of Visits 2015
Institution N2	6020	5859
Institution N3	276	450
Institution N5	1374	1593

<sup>258</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015, available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last Visited on: 02.03.2016].

Institution N6	2077	453
Institution N7	345	507
Institution N8	7950	8935
Institution N9	552	426
Institution N11	909	653
Institution N12	1690	1575
Institution N14	2940	3286
Institution N15	7863	7545
Institution N16	-	167
Institution N17	12067	8791
Institution N18	35	245
Institution N19	533	412
Total	44631	40897

## 2.7.2. LONG-TERM VISITS

According to Article 8 para 1 of the European Convention on Human Rights ,everyone has the right to respect for his private and family life. Article 23 of the International Covenant on Civil and Political Rights stipulates that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. The right of prisoners to long-term visits is a part of protection of the above right. Maintaining close relations with their families helps prisoners in smoother reintegration with their families and society after the serving the sentence.

According to Article 17<sup>2</sup>, para 1 of the Imprisonment Code, a long-term visit is a co-habitation of convicts with persons defined by paragraph 2<sup>59</sup> of the same article in a room located on the premises of the institution. According to Article 60<sup>2</sup> para 2 (e) of the Imprisonment Code, the convict who is placed in a low risk detention facility may enjoy 6 long-term visits per year and 3 additional long-term visits as an incentive. Article 62 (2) (e) of the same law stipulates that a convict, who is serving a sentence in a semi-open detention facility, is entitled to 3 long-term visits per year and 2 additional long-term visits as an incentive.

According to Article 65 (1)(d) of the Georgian Imprisonment Code, a convicted person serving a sentence in a closed type prison facility may enjoy 2 long visits a year, and 1 additional long visit as an incentive.

259 Based on a written application of a convicted person, he/she may be granted the right to enjoy a long visit with his/her child, adopted child, stepchild, grandchild, spouse, a person with whom he/she has a common child, parent (adoptive parent), grandmother, grandfather, sister and brother.

There is no adequate infrastructure for the long-term visits in the establishment N8 and only the prisoners sentenced to life imprisonment may exercise their right to long-term visits. As a rule, life-sentenced convicts are transported to the establishment N6 once a month for the long-term visits upon prior arrangements with the family members.

Like the penitentiary establishment N8, there is no proper infrastructure for the long-term visits in the establishment N7. It should be noted that inmates of the establishment N7 who are sentenced to life imprisonment are not able to exercise their right to long-term visits.

In terms of violating the right to a long-term visits noteworthy is the case of the convict V.A. sentenced to life imprisonment. The convict has not exercised the right to a long-term visit since 2012. In this regards the Public Defender of Georgia has addressed the Ministry of Corrections and the Penitentiary Department with a number of letters<sup>260</sup> and recommendations,<sup>261</sup> however, the recommendation has not been fulfilled and the prisoner still has not enjoyed the above right.

In his Parliamentary Report 2014, the Public Defender of Georgia has recommended the Minister of Corrections to ensure the relevant infrastructure for the long-term visits in all penitentiary institutions. The above issue remains to be problematic in the closed type establishments,<sup>262</sup> however, positively should be assessed the creation of the relevant infrastructure for the long-term visits in the penitentiary institution N5.

The European Prison Rules attach great importance to the right of the prisoners to communicate with the families as often as possible through the visits.<sup>263</sup> The above rules underline the circumstance that the visits should be organized in a way so that the prisoners are allowed to maintain and develop family relations in a normal environment.<sup>264</sup> The right to a long-term visit constitutes a significant possibility for maintaining and strengthening the ties between a prisoner and the family and it serves the interests of both parties.

Contact with the family is a fundamental human right. This means that the visit of the prisoners and their family members should not be considered as a privilege. It is noted in rule 43 (3) of the Mandela Rules the means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

According to Article 17<sup>2</sup> paragraph 6 of the Imprisonment Code, Convicted persons placed in a special risk prison facility shall not be granted the right to a long visit. The

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260 Letter 03-3/9073 sent from the Public Defender's Office on 10 July 2014 and Letter 03-3/9788 sent on 28 July 2014.

261 Recommendation N03-3/12102 sent from the Public Defender's Office on 29 September 2014.

262 Institutions N7, N8, N9 of the penitentiary department.

263 European Prison Rules, Rule 24.1.

264 European Prison Rules, Rule 24.4.

provision in the Imprisonment Code that prohibits the convicts placed in a special risk facility to use the long-term visits constitutes a direct blanket restriction, which does not give the possibility of considering a legitimate goal.

Prohibition of direct contact for a long period of time can be justified when there is a real and continuing security risk at hand.<sup>265</sup> The state does not have the freedom to impose general restrictions, without determining whether the certain restriction is appropriate or necessary in a specific case.<sup>266</sup> In the case of *Trosin vs. Ukraine* the domestic legislation imposed automatic restrictions regarding the length of visits of the life-sentenced prisoners and did not offer them any flexible system in order to determine the necessity and relevance of the above restriction in relation to each particular case. The Court noted that the above regulations cannot be rigid restrictions, therefore, the States should develop a proportionality assessment technique in order to give the Government the possibility to balance and take into consideration the peculiarities of individual and social interest in each case.<sup>267</sup>

In the case *Khoroshenko vs. The Russian Federation* the Court held that the prison regime, which allowed only two short-term visits in 10 years violated the prisoners right to private and family life. The Court has emphasized that while analyzing its cases, it has consistently taken the position that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty. The principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned.

Prohibition enshrined in the Imprisonment Code is more of a punitive nature rather than a security measure. The European Committee for the Prevention of Torture has noted in its report on the visit to Georgia that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts and only for the shortest time possible (days, rather than weeks or months).<sup>268</sup> The UN Special Rapporteur has noted with the concern the fact that the right to the long-term visits can be restricted while applying the disciplinary measures.<sup>269</sup>

According to the all above-mentioned, the possibility of having contact with the family, including the long-term visits should constitute a norm for the prisoners of all kinds of

265 The European Court of Human Rights, 17 April 2012, *Horych v. Polan*, paras 117-132; Case N13621/08 ;

266 The European Court of Human Rights, 8 October 2008, *Moiseyev v. Russia*, Case N62936/00 ;

267 The European Court of Human Rights, 23 February 2012, *Trosin v. Ukraine*, Case N39758/05 ;

268 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para 119, CPT/Inf (2015) Available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last Visited on: 02.03.2016]

269 The Report of the UN Special Rapporteur's Visit, 6 November 2015, para 97. [Last Visited on: 02.03.2016]

institutions. The exception can be made if this kind of contact is related to the crime or the above restriction is necessary to ensure the safety and security in a particular case. Thus, it is necessary to amend the Imprisonment Code and to reflect the above principles comprehensively.

According to Article 17<sup>2</sup> (6) of the Imprisonment Code, convicted persons placed in a special risk prison facility, and convicted persons, who are in quarantine, or those upon whom have been imposed disciplinary measures and/or administrative detention, shall not be granted the right to a long visit. This paragraph addresses the case when the convict is under the disciplinary sanction and its term is not expired. Restriction on the long-term visit should not cover the case when the term of the disciplinary sanction is expired, even if the convict can be considered as being sanctioned. It is noteworthy that in 2015, still problematic is the above paragraph’s incorrect interpretation according to which a convict placed in a solitary confinement cell under the disciplinary sanction was not allowed to enjoy the right to the long visit for a year.

According to Article 4 of the Decree N132 of July 22, 2014 of the Minister of Corrections, the long-term visits are carried out at the expense of the convict or a guest in a non-cash payment. The price of each long-term visit constitutes 60 GEL, and in case of a juvenile convict – 30 GEL. According to Article 4 paragraph 4 of the same Decree, visitors who are registered beneficiaries in the unified registry for socially unprotected households are exempt from paying fees for visits.

Despite the fact that the socially vulnerable families enjoy the benefits, some prisoners are hampered by the grave economic conditions of their families and cannot enjoy their legal right to the long-term visit, which has a special importance for maintaining close ties with the family.

See below the table demonstrating the number of long-term visits in 2015 according to the institutions<sup>270</sup>

N	Penitentiary Institution	The Number of Long-Term Visits	The Number of Prisoners in 2015 (Average Rate)
1.	Institution N2	963	1487
2.	Institution N3 <sup>2</sup>	43	161
3.	Institution N5 <sup>3</sup>	2	275
4.	Institution N6 <sup>4</sup>	163	123

270 Institutions N7; N8; N18 and N19 have no adequate infrastructure for the long-term visits.

271 Long-term visits in the facility N3 started from May 2014.

272 Long-term visits in the facility N5 started on 31 December 2015.

273 Including the life-sentenced prisoners transferred from the institution N8.

5.	Institution N11	29	37
6.	Institution N12	208	354
7.	Institution N14	1003	1234
8.	Institution N15	1712	1808
9.	Institution N16	28	51
10.	Institution N17	1808	1949

According to Rule N99 of the European Prison Rules, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, also they may have additional access to other forms of communication unless there is a specific prohibition for a specified period by a judicial authority in an individual case. Accordingly, the Imprisonment Code should be amended in a way to define the rules for untried prisoners to be able to receive long-term visits, while paying due attention to the interests of investigation.

The European Court of Human Rights has discussed the above issue in its case of *Varnas vs. Lithuania*.<sup>274</sup> The case concerns the complaining of the Lithuanian citizen Thomas Varnas, who was refused by the prison administration while serving his sentence to use the long-term visit due to the fact that only convicts could enjoy the above right.

The European Court of Human Rights did not accept the arguments of the Respondent State according to which the accused individuals in detention did not have the right to enjoy the long-term visits due to the interests of investigation. The Court noted that the Applicant's spouse did not constitute an accused in a criminal case, neither a witness and there was no information about her participation in the crime, therefore, the long-term visit of the Applicant and his spouse could in no way hinder the investigation process. The Court found violations of Article 8 (right to private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. While discussing the matter the Court also relied on the position of the European Committee for the Prevention of Torture with respect to the rules of enjoyment of the right to the long-term visits in Lithuania.

According to Article 72 of the Imprisonment Code of Georgia, a convicted woman may enjoy 1 family visit per month. In accordance to Article 17<sup>3</sup> (2) of the same law, female convicts may enjoy the family visits with – a child, adopted child, spouse, parent, adoptive parent, sister and a brother. Visits shall take place in a specially designated room on the premises of an institution for maximum 3 hours. According to the letter MOC51600040146 received from the penitentiary establishment N5 in response to the letter N03-1/10778 of the Public Defender of Georgia dated 31 December 2015, the establishment does not have the adequate infrastructure for the family visits.

<sup>274</sup> The European Court of Human Rights, *Varnas v. Lithuania*, Judgement of 9 December 2013.

In his Parliamentary Reports of 2013 and 2014, the Public Defender addressed the Minister of Corrections of Georgia with the recommendation to create proper conditions for the convicted women to enjoy the right to the long-term visits. Positively should be assessed the creation of the proper infrastructure for the long-term visits on 31 December 2015 in the establishment N5.

### **2.7.3. VIDEO VISITS**

According to Article 17<sup>1</sup> of the Imprisonment Code, convicted persons placed in a prison facility, except for those placed in a special risk prison establishment and those specified in Article 50(1)(f) of this Code, may enjoy a video visit (direct voice and visual teleconference) with any person.

Video-visits play an important role in maintaining relations between the prisoners and their family members and positively contributes to the processes of resocialization of the former. Video visits are of particular importance as both family members and friends and other persons closer to a convict may enjoy it.

According to paragraph 2 of the Decree N55 of the Minister of Corrections dated 5 April 2011, convicts are eligible to one video visit per ten calendar days from 10:00 to 18:00 during the working days and with the maximum duration of 15 minutes.

According to Article 17<sup>1</sup> (4) of the Imprisonment Code, a fee is established for a video visit, which shall be paid to the account of the National Agency of Probation and is used to accomplish its purposes and functions. By decision of the Minister, video visits may be held free of charge. However, part 4<sup>1</sup> of the same Article makes a reservation that persons defined in Article 17(2) of this Code, who are registered in the Integrated Database of Socially Vulnerable Families and whose social and economic status index for receiving a subsistence allowance is below the threshold determined by the Government of Georgia, are exempt from video visit fees.

Fees for the video-visits are paid by a convict, his/her legal representative or a person willing to participate in a video-visit. The Minister of Corrections makes a decision on selecting the institutions to provide video-visits to convicts, the number of the video-visits, duration, and the amount to be paid for such visits and procedures for the implementation.

It is noteworthy that only 5 penitentiary institutions (N5, N11, N15, N16 and N17) have adequate infrastructure for the video visits. The table below provides information on video visits carried out in 2015:

N	Penitentiary Institution	The Number of the Video Visits
1.	Institution N5	11
2.	Institution N11	0
3.	Institution N15	122
4.	Institution N16	0
5.	Institution N17	210

In his Parliamentary Reports of 2013 and 2014, the Public Defender of Georgia has addressed the Minister of Corrections of Georgia with the recommendation to ensure all institutions of the penitentiary department with the adequate infrastructure for the video visits. However, the above recommendation has not been fulfilled.

#### 2.7.4. TELEPHONE CONVERSATIONS

Right to a telephone conversation is one of the fundamental rights for the convict/ untried prisoners, which supports to maintaining strong relations with their families and friends. According to Article 14, paragraph 1, sub-paragraphs A-D, convicted/untried prisoners have the right to telephone conversation and correspondence.

According to Article 60<sup>2</sup> (2)(c) of the Imprisonment Code of Georgia, a convicted person serving a sentence in a low risk prison establishment may enjoy an unlimited number of telephone conversations during one month at his/her own expense, each lasting for not longer than 15 minutes, and telephone conversations of unlimited duration at his/her own expense as an incentive. According to Article 62 (2)(c) of the same law, a convicted person serving a sentence in the semi-open type establishment may enjoy 4 telephone conversations per month at his/her own expense, each lasting for not longer than 15 minutes, and as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes. As for the convicts placed in the closed type establishment, in accordance with Article 65 (1)(c) of the Imprisonment Code, they may enjoy 3 telephone conversations a month at his/her own expense, each lasting for not longer than 15 minutes, and as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes.

The Imprisonment Code also provides the rule of enjoying a telephone conversation for the convicts placed in the special risk establishment, namely, Article 66<sup>3</sup> (2)(c) of the Imprisonment Code provides that, a convicted person serving a sentence in a special risk prison establishment may enjoy 1 telephone conversation a month at his/her own expense, lasting for not longer than 10 minutes, and as an incentive, 1 additional telephone conversation not longer than 10 minutes at his/her own expense.



During the telephone conversations the prisoners encounter problems related to the conversation limits, in particular, if a prisoner fails to spend a total credit on his/her card, he/she can no longer use the remaining credit for the telephone conversations and therefore there is a need to purchase a new card, which incurs additional expenses. A telephone card is also blocked if a prisoner cannot manage to have a conversation within the telephone calls (due to the termination of phone connection, dialing a wrong number etc).

In the semi-open establishments, the special problem related to the enjoyment of telephone conversations by the prisoners constitutes the lack of the telephones. During the conversation with the members of the Special Preventive Group, the inmates noted that they have to stand in a queue and often, some part of the prisoners cannot manage to promptly exercise their right granted by the law. As for the closed-type prison establishments, the telephones are located in the duty room of the personnel and it is impossible to maintain the confidentiality of the conversation.

There are a number of cases when the prisoners placed in the solitary confinement cells cannot make a phone call to the Public Defender's Office. According to Article 88 paragraph 2 of the Imprisonment Code, "an accused/convicted person placed in a solitary cell may not enjoy short and long visits, telephone conversations or purchase food products." During the Special Preventive Group's visit to the penitentiary departments, the inmates noted that the telephone conversations are restricted to the Public Defender's Office and other bodies of inspection. Accessibility to the Public Defender constitutes an important guarantee for the protection from ill-treatment. Especially for the prisoners placed in the solitary confinement cells, since their placement in a total social isolation contains the risk of ill-treatment. Article 98 para 5 of the Imprisonment Code has a reservation according to which "An accused/convicted person may, at any time, file a complaint with the Public Defender of Georgia/Special Preventive Group." According to Article 82 of the same law, the restriction of the private correspondence for a disciplinary offence shall not apply to the correspondence the addressee or sender of which is the Public Defender of Georgia. It is noteworthy that there is no similar reservation regarding the telephone call. It is important to amend the legislation so that the prisoners placed in the solitary confinement cells are given the possibility to contact the Public Defender in any way, including the phone call.

According to Article 17 para 4 of the Order N119; N116, N117 of the Minister of Corrections dated 27 August 2015, "placement in the de-escalation rooms is not the ground for the automatical restriction of any rights of the accused/convict granted by the law," however, in practice, during the placement in the de-escalation rooms, the prisoners are completely deprived of the contact with the outside world. For instance, during the visit of the Special Preventive Group to the establishment N8 the prisoners noted that

in case of their placement in the de-escalation rooms, they are not allowed to send the correspondence, to enjoy the telephone calls or the visits, which constitutes a grave violation of law.

According to Article 124 of the Imprisonment Code, until 1 January 2016, under the control of the administration, an accused person may, at his/her own expense, maintain correspondence and enjoy 3 telephone conversations a month, each lasting for not longer than 15 minutes, only with the permission of the investigator, prosecutor or the court.

## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS OF GEORGIA:

- To ensure the enjoyment of the short-term visits without the glass partitions;
- To ensure all penitentiary establishments with the adequate infrastructure for the long-term visits;
- To ensure all penitentiary establishments with the adequate infrastructure for the video visits;
- To ensure a full access to telephone conversations in all penitentiary institutions as provided by law;
- To place the telephones in the closed-type penitentiary establishments in a location where the prisoners can make a call without the prison staff listening to them;
- To add the telephones in the semi-open prison establishments so that all prisoners can exercise their right granted by the law;
- During the placement of the prisoner in the penitentiary institution, taking into consideration the place of residence of the prisoner's family in order to ensure the peaceful enjoyment of the right to visits;
- To take all necessary measures to ensure the confidentiality of correspondence in accordance with the law.

### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- Amend the Imprisonment Code to reflect the need of untried prisoners for the long-term visits with due consideration of interests of the investigation;

- Amend the Imprisonment Code so that prisoners serving in closed type institutions are allowed to increased number of short-term visits
- Amend the Imprisonment Code and allow the prisoners placed in the special risk imprisonment establishment to enjoy the long-term visits;
- Amend the Imprisonment Code so that the prisoners placed in the solitary confinement cells are given the opportunity to make a telephone call to the Public Defender’s Office.

## 2.8. REQUESTS/COMPLAINTS MECHANISM IN THE PENITENTIARY SYSTEM OF GEORGIA

Absolute prohibition of torture is one of imperative (*Jus Cogens*) norms of the customary international law and cannot be a subject to derogation. A crucial component of the fight against torture is the guaranteed right of any person to prompt and impartial review of complaint against representatives of authorities as well as the effective operation of internal monitoring system. It is impossible to implement the mentioned principles without ensuring inmates with procedures of safe submission and review of complaints. States have the obligation to establish such effective system that enables prisoners to submit complaints about ill-treatment and any issue related to the detention conditions. An effective mechanism of handling requests/complaints and monitoring in penitentiary institutions ensures the respect for the inmates’ rights and represents a fundamental guarantee against ill-treatment. The absence of such mechanism adversely affects the order and safety in penitentiary institutions. In conditions of inadequate response to requests and complaints, prisoners often resort to extreme forms of protest – hunger strikes and self-harm.

This study was prompted by the information available to the Public Defender’s Office, which indicated about certain significant problems in requests/complaints handling mechanism and internal monitoring. The study was implemented with the financial support from Open Society Georgia Foundation within the project Promotion of Complaints Mechanism and Internal Monitoring in Penitentiaries. The study into requests/complaints procedure and the level of trust and attitudes of inmates towards it is implemented for the first time ever in Georgia. It is worth noting that the study involves sociological<sup>275</sup> and legal components. Within the framework of this study, a special preventive group conducted a survey of inmates in 14 penitentiary establishments through applying questionnaires that were developed in advance. The normative base regulating

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275 Sociological questionnaire with its subsequent analyses was developed by the Sociologist Iago Kachkachishvili.

requests/complaints procedure and internal monitoring was analyzed in the context of international standards. The study aimed to identify whether safe, available, confidential and impartial requests/complaints procedures are ensured to complainants; also, whether requests/complaints are responded to in a timely manner and the decisions taken on them are substantiated. Interviews were carried out with the representatives of the prison administration, the correspondence registered in the institutions was examined and the contextual analysis of the materials received from the Ministry of Corrections was conducted based on the random sampling.

The objective of the study was to identify whether safe, available, confidential and impartial requests/complaints procedures are ensured to complainants; also, whether requests/complaints are responded to in a timely manner and the decisions taken on them are substantiated. Also, to assess the level of awareness of this procedure among inmates and the latter's' attitudes towards it.

As a result of researching the reliability and effectiveness of the mechanism handling the request/complaints, a number of significant issues were identified.<sup>276</sup> It was revealed that self-evaluation of prisoners regarding the knowledge of complaint lodging right and handling procedure is much higher compared to the objective knowledge of prisoners.

Existing practice of informing prisoners on their rights cannot ensure appropriate awareness of prisoners with regard to either general rights of the prisoners or a particular right to lodging a request/complaint and handling procedure. According to the evaluation of the Special Prevention Group, information regarding their rights and complaints handling procedure is not regularly available to prisoners. There are no lists of prisoners' rights, including information on right to file a request/complaint and handling procedure at any corridors or cells. Prisoners do not have a written document in their cells containing information on the request/complaint handling procedure.

We welcome the fact that the Ministry of Corrections agrees with the position of the Public Defender regarding the measures to be taken for providing the proper information to the prisoners. Noteworthy is the readiness of the Ministry to publish informational brochures on various topics in several languages, to prepare the banners and posters and place them in the penitentiary institutions, so that the accused/convicts have access to the information on their rights and responsibilities.

Positively should be assessed an additional instruction issued in response to the Public Defender's recommendation, according to which the social worker should periodically provide the prisoners with the detailed information on their rights and responsibilities and the procedures existing in the institution. Also noteworthy is the readiness of the

<sup>276</sup> See the results of the study on the following link: <<http://www.ombudsman.ge/ge/reports/special-uri-angarishebi/specialuri-angarishi-motxovnisachivris-ganxilvis-meqanizmi-saqartvelos-penitenciuir-sistemashi.page>> [Last Visited on: 17.03.2016]

Ministry of Corrections to take into consideration the obligation to inform the inmates in the job descriptions and training programmes of the social workers.

Positively should be assessed the existing situation in the establishments regarding the availability of material and technical supplies for the realization of the right to lodging a request/complaint. Nevertheless, there are still cases when supplies were not available to the prisoners at various intervals during the last two years. The Ministry of Corrections agrees with the recommendation of the Public Defender and is planning to take additional measures in order to fully ensure the prisoners in the penitentiary institutions with the relevant material and technical means.

With regard to registration of requests/complaints and sending them to recipients, it should be noted that most complainants were notified of their complaint registration number. However, it is noteworthy that with regard to the confidential complaints, every third prisoner notes that they have not received the complaint registration number. According to the majority of the prisoners, the number of the forwarded complaint and the respective envelope code were not posted at a complaint box. It should be underlined that the information regarding the registration numbers is directly provided in the cells, which makes it possible to identify the author of a confidential complaint. Some cases were revealed during the study when the complaint was forwarded to the person whose actions were referred to within the complaint.

The Ministry of Corrections does not share the Public Defender's recommendation related to the problems of placing the complaint registration number and the relevant code of the confidential complaint near the complaint box. Nevertheless, the Ministry expresses its readiness to participate in the discussion of the above recommendation.

The results of the conducted sociological survey demonstrated that 33,6% of the interviewed individuals indicated to the negative practice in this direction.<sup>277</sup> 36,4% of the prisoners were provided with the information on the registration number in person and 34.6% - in the cells. The above demonstrated that the absolute majority of the prisoners is not provided with the registration number confidentially.<sup>278</sup> Therefore, the Public Defender still calls on the Minister of Corrections to sufficiently study the issue and take relevant steps for elimination of the above practice. The Ministry of Corrections agrees with the recommendation of the Public Defender and plans to take additional measures to eradicate the practice of forwarding the complaints to the person whose actions were referred to within the complaint.

Problematic is the use of the complaint box by the prisoner placed in the closed type penitentiary establishments without a person being accompanied.. Also, in a number

277 See the Public Defender's Special Report "Requests/Complaints Mechanism in the Penitentiary System of Georgia," p. 28.

278 *Ibid*, p. 29.

of institutions, the complaints boxes are placed in the area of the surveillance cameras. Confidentiality is violated when the security officer is present in the cell during drafting the complaint with the assistance of a social worker.

The Ministry of Corrections partially shares the position of the Public Defender and notes that in the penitentiary institutions, except for the penitentiary establishment N9, the complaints boxes are not installed in the area of the surveillance cameras. The Public Defender welcomes the readiness of the Ministry of Corrections to solve the above problem in the establishment N9, however, does not agree with the position that the above problem is encountered only in the establishment N9. The results of the monitoring carried out in the framework of the mandate of the National Prevention Mechanism revealed that the complaints boxes in the establishment N5 (in the detention unit), N6, N7, N8 and N18 are located in the area of the surveillance cameras.

The Ministry of Corrections shares the Public Defender's recommendation that the social worker should assist the prisoner in preparation of the confidential complaint without the attendance of the security officer. The Public Defender welcomes the fact that the Ministry has issued a verbal order to all security officers so that during the assistance provided by the social worker in drafting the complaint, the employees of the security unit should be placed in a manner that the confidentiality of conversation between the accused/convict and a social worker is protected.

The envelope for the confidential complaint is not received without identification in the closed type facilities. Noting the envelope number and the name and surname of the prisoner by the social worker constitutes a clear violation of confidentiality. Distribution of the correspondence from the Public Defender's Office to the prisoners in an open form, also, opening the closed envelopes by the establishment's personnel in front of the prisoners is alarming.

The Ministry of Corrections does not share the position of the Public Defender and considers that the free access to the envelopes of confidential complaints is ensured in the penitentiary institutions. The Ministry notes in its response that the envelopes are placed in libraries of the institutions or near the complaints boxes, where the electronic surveillance is not carried out. Beside, if the prisoners request, the envelopes are provided by the social workers in a way that the confidentiality of the prisoner receiving the envelope is protected.

The Ministry of Corrections shares the Public Defender's recommendation and plans to take additional measures in order to change the practice of openly distributing the correspondence received from the Public Defender's Office among the prisoners.

The monitoring results carried out by the Public Defender revealed that in the closed type establishments it is practically impossible to receive the envelope for writing a con-

confidential complaint without the identification of a prisoner. Namely, in case of need, the prisoner willing to file a complaint addresses a social worker to provide him/her with an envelope (envelopes are not distributed). Also problematic is the fact that when the prisoner requests a confidential envelope, a social worker is noting the number of the envelope and the name and surname of the prisoner receiving it. It is fairly easy to identify the complainant with the number of the envelope.

During sociological survey, significant attention was paid to analyzing the practice of filing complaints. More than half of the surveyed prisoners mention that they have filed complaints for the last two years. Prisoners of the closed facilities are particularly active at filing complaints. The study revealed that the prisoners mostly use open form of complaint. In accordance with the data, the convicted are more active at filing complaints compared to the accused. In addition, men file more complaints compared to women. Unfortunately, the article in accordance to which penitentiary department was responsible for analyzing requests/complaints entering the institution and preparing appropriate reports is removed from the current Imprisonment Code.. The analysis would make it possible to evaluate the causes of dissatisfaction within the establishments.

As there is different timing for handling complaints, requests and applications, differentiating between the requests and complaints considered in accordance with Imprisonment Code of Georgia as well as applications under General Administrative Code of Georgia by various units of the penitentiary system and responding in due time presents a problem. In response to the prisoner requests there is an established practice of timely but template responses. Namely, request/complaint/application recipient penitentiary system units respond to the prisoner within a very short time, however, the mentioned response is in most of the cases an intermediate response verifying that the recipient has received the request/complaint/application rather than a decision made due to handling the request/complaint/application of the prisoner. Noteworthy is the fact that in case of extending complaint handling time, the complainant/applicant is not appropriately notified in writing on requirement to extend time.

The Ministry of Corrections shares the recommendation of the Public Defender. Consequently, the Minister has instructed the General Inspection regarding the timely responses to the requests/complaints enshrined in the Imprisonment Code by the servants of the Ministry and on the protection of the relevant terms.

In terms of elimination the template response practice the Ministry notes that the Training Centre of the Ministry of Corrections annually ensures the needs assessment of the relevant structural units and sub-units of the Ministry and plans the trainings on various topics throughout the year. The Ministry also mentioned that in the framework of the above event, several trainings were already held in legal writing where one of the main

directions was the justification of legal documentation and capacity building of the Ministry's staff in this field.

The Public Defender considers that only the trainings in various field, including the training in legal writing is not sufficient for eliminating the above problem. It is important that the requests/complaints/applications are sufficiently studied by the various units of the penitentiary system and the decisions are properly justified.

With regard to the timing, negatively should be assessed the fact that the complaint handling term is not specified for Medical Department and General Inspection of the Ministry of Corrections under Imprisonment Code.

Sociological survey results reveal that the prisoners mostly abstain from lodging a complaint due to intimidation, which is mainly directed from the penitentiary establishment administration, however, intimidation has also taken place from the prosecutor, investigator or other prisoners. Prisoners also mentioned self-censorship as a significant factor, i.e. the feeling that filing a complaint would aggravate their condition within the penitentiary establishment. Within rehabilitation establishments for the juveniles, the respondents who have not filed a complaint despite the desire to do so name a single factor as a reason – the sense that this step would aggravate their condition. The mentioned factor has significant share in the event of female prisoners and convicts as well.

The Ministry of Corrections does not agree with the Public Defender's position that in a number of cases the prisoners abstain from filing a complaint due to the intimidation. It is revealed from the response of the Ministry that the existing reality and the number and content of the requests/complaints clearly demonstrate that the prisoners are not repressed due to filing the complaints. The Ministry also noted in its response that in each training programme of the training centre special attention is drawn to the standards of treatment of the prisoners and the detention conditions in accordance with the national and international standards. At the same time, for the prevention of the above violations, the Ministry is planning to train the employees and complete their certification process.

It was revealed as a result of studying the materials sent from the General Inspection of the Ministry of Corrections that in a number of cases the decision on which the termination of the proceedings was based did not contain the justification on why the information provided by the prisoner was not taken into consideration and only the information submitted by the prison staff was taken into account. In a number of cases the issue is not completely studied in the medical department either.

The Ministry of Corrections shares the Public Defender's recommendation and notes that after the reforms, the new management of the General Inspection, together with



the Legal Department of the Ministry studied the documentation prepared as a result of the official evaluation. In addition, they studied the court decisions based on the above conclusions and developed concrete recommendations and instructions for improving the documentation prepared as a result of the official examination. The Public Defender welcomes the Ministry's position and hopes that the measures for solving the problem will be taken in a timely manner.

The methodology of studying the issue by the general inspection is problematic. Namely, they are mostly limited only to question the prisoner and the personnel of the administration. Representatives of the general inspection do not always check documental and other evidences and do not question other prisoners and witnesses. In addition, they are asking the administration staff the leading questions and are not checking the answers with the other sources. The cases are solved on the ground that the fact of violation was not confirmed, while the argumentation in the written notices mainly includes only the description of explanations and the final report - that the violation was not confirmed.

The Ministry of Corrections shares the recommendation of the Public Defender of Georgia on improving the working methodology of the General Inspection and notes that currently, the working methodology, working instructions and guidelines of the General Inspection are being developed, which should be positively assessed.

In accordance with the conducted survey, only 19.2% of questioned respondents answered correctly to the question regarding the time the prisoner was handed complaint handling results after making the decision. This is a quite low figure with regard to awareness of prisoners. Processing the data indicates that with regard to responding to complaints there is marked difference between open and confidential complaints: if, in case of open complaints prisoners mostly receive response (52.6%), the figure is much lower regarding confidential complaints (37%). During analyzing received data at certain cases it was unclear whether the prisoner was notified of request/response handling outcome, the response is not complete, does not include all issues the accused/convicted mentioned.

For the closed type penitentiary establishments the issue of handing responses to the prisoners presents a problem. In particular, response received with regard to applications are communicated to prisoners, however it is not left in cells. There are situations when prisoner cannot understand the response properly and cannot proceed with further action.

The Ministry of Corrections agrees with the Public Defender's position that the prisoners should be allowed to have a certain amount of envelopes in the cells. According to the

response received from the Ministry, the Ministry, in the nearest future plans to review the existing provisions on prohibition, while considering the recommendations of the Public Defender of Georgia and the requirements of the institution's legal regime.

Deleting the part of the Imprisonment Code which restricted appealing request of a prisoner should be mentioned as positive. As a result of qualitative analysis of proceedings data of the system of Ministry of Corrections, it was found that prisoners are not notified of their right to appeal within response. They are also not informed of where and when the decision can be appealed.

The Ministry of Corrections shares the Public Defender's position that the prisoner, together with the results of reviewing the requests/applications/complaints should be informed about the right to appeal and should be indicated where and in what time is it possible to appeal the decision. The Ministry is planning to prepare various informational brochures and pamphlets on the above matter.

Analyzing prisoner complaint responses of the General Inspection of the Ministry of Corrections within the study indicated that official examination carried out by General Inspection during the reporting period is of formal character and cannot be considered as effective activity. The same is true with regard to the activities carried out by Monitoring Division. Intersection of responsibilities of General Inspection and Monitoring Division was the reason for abolishing the latter together with Penitentiary Department which should be undoubtedly assessed as a positive change.

The Ministry of Corrections shares the position of the Public Defender. The Minister has issued a decree regarding the procedures of filing and reviewing the requests/applications/complaints during the systemic monitoring or while studying the facts of official misconduct.

Practice of critical evaluation of the situation and detection of violations by the Division of Medical Activity Regulation should be mentioned as positive. Further strengthening of and providing appropriate resources to the mentioned Division are important. According to the Special Prevention Group, further elaboration of working methodology of the Division of Medical Activity Regulation, professional training of the staff, proper communication of the responsibilities of the Division to prisoners and ensuring transparency of the activities is important.

The Public Defender welcomes the steps taken by the Ministry of Corrections which means the further strengthening of the State Regulation Agency for Medical Activities with the human resources. Currently, the Regulation Agency for Medical Activities has 8 employees, one of them was appointed at the end of 2015 and another employee – at the beginning of 2016. It is also noted in the response of the Ministry of Corrections that

it is planned to hire the interns during the year. At the same time the practice of inviting the experts was established in the Unit and the health care specialist was hired under the service contract in the medical department.

The Ministry of Corrections shares the Public Defender's recommendation regarding the further improvement of the working methodology of the Regulation Agency for Medical Activities and notes that it is conducted while taking into consideration the existing practice.

The Public Defender welcomes the general constructive attitude of the Ministry of Corrections towards the results of the study, however, considers it necessary that the Ministry studies in detail and understands each issue revealed by the study. The Public Defender positively assesses the fact that the steps towards the solving of the problems are already taken and hopes that all necessary measures will be taken timely in order to increase the effectiveness of handling the requests/complaints.

## RECOMMENDATIONS

### TO THE MINISTER OF CORRECTIONS:

- To take all necessary measures to ensure that prisoners are handed over the information about their rights, including the right to file the requests/complaints and procedure of handling the request/complaints; the brochure can be produced to this end.
- To take all necessary measures in order to ensure that the Imprisonment Code, internal statute of an institution and other legislative acts are available for prisoners;
- To take all necessary measures to ensure that the information about the rights/obligations of prisoners, including, the right to file requests/complaints and procedure of handling request/complaints (in various languages) are displayed in places accessible to the prisoners, including in their cells;
- To enhance the role of the social workers; within the next few days of admitting prisoners to the penitentiary institutions, the social workers must provide the inmates with the detailed explanation about their rights and duties as well as the information about the right to file requests/complaints and procedure of handling request/complaints; must explain the competence of social workers and hand over all necessary basic documents; must periodically work with prisoners, either individually or in groups, on the topic of their rights and du-

ties, including the right to file requests/complaints and procedure of handling request/complaints;

- To take all necessary measures to ensure that materials (paper, pen, envelopes) are available to all prisoners for free;
- To take all necessary measures to ensure free availability of envelopes for the confidential complaints at a place (for example, in the library) and in a manner whereby the receipt of the envelope does not depend on an employee of the penitentiary institution and a prisoner receiving the envelope cannot be identified. At the same time, allow prisoners to have several envelopes in their cells;
- To take all necessary measures to ensure that the registration number of a request/complaint is communicated to a prisoner in a timely manner; in order to avoid repressions, a social worker should exercise extreme caution to prevent the identification of a prisoner filing a confidential request/complaint and at the same time, to protect confidentiality of the content of the request/complaint;
- To take all necessary measures to ensure that after forwarding confidential complaints, registration numbers are in any case posted near the complaints boxes; the information about this procedure should be periodically communicated to every prisoner in order to make them aware that registration numbers of their requests/complaints shall be posted near complaints boxes;
- To take all necessary measures in order to ensure that prisoners exercise their right to file the requests/complaints; to this end it is recommended to enhance the role of social worker in formulating requests/complaints and determining relevant addressees; prisoners who do not speak Georgian must be provided with a free interpreter service; in addition, brochures should be produced in various languages and supplied to the prisoners, containing practical information on filing and reviewing the requests/complaints;
- To take all necessary measures, including through the establishment of strict control, so that in case of extension of time for reviewing complaints, the complainant/applicant is appropriately informed in writing regarding necessity to extend time;
- Study each written correspondence in a manner to identify each indicated issued within the correspondence as a request or complaint considered in accordance with articles 95 and 96 of the Imprisonment Code of Georgia, or application considered in accordance with General Administrative Code of

Georgia and handle thereof within the term established in accordance with the legislation; In case handling of any of the issues is beyond the competence of the system of the structural units of the Ministry of Corrections, such issue should be forwarded to the institution of appropriate subordination, regarding which the complainant/applicant should be immediately notified of; In the event of forwarding in accordance with jurisdiction, legal basis should appropriately be explained to the complainant/applicant;

- Ensure maintaining and analyzing statistical data of requests and complaints considered in accordance with articles 95 and 95 of the Imprisonment Code of Georgia, as well as applications under General Administrative Code of Georgia;
- To take all necessary measures in order to eliminate the practice of the template responses;
- To take all necessary measures so that during the placement of the prisoners in the penitentiary facilities the inmates are fully provided with the information on using the complaints boxes;
- Carry out all necessary measures to locate complaint boxes at easily noticeable and accessible locations for inmates, with no electronic monitoring for the possibility of using the boxes without identification of the complainant;
- Carry out all necessary measures in order to ensure assistance by social service employee in making a complaint without the presence of the security officer;
- Carry out all necessary measures in order to ensure that penitentiary employees are prohibited to register the number and name of the prisoner upon issuing envelopes;
- Carry out all necessary measures in order to change the practice of handing correspondence from Public defender's Office of Georgia to inmates in an open condition;
- To take all necessary measures in order to prohibit the distribution of the responses to the confidential complaints in an open condition;
- Carry out all necessary measures in order to ensure that response provided in closed envelopes are handed confidentially to the prisoners, without the possibility of reading them by the administration personnel;
- To take all necessary measures in order to eradicate the practice of sending the complaints to the individuals whose actions are referred to in the com-

plaint;

- Carry out measures, including the training of the penitentiary establishment personnel in order to prevent repressions towards prisoners due to filing complaints;
- In the event of receiving information regarding such actions, General Inspection should investigate the case as priority and appropriately punish responsible persons;
- Review methodology for investigation of complaints by the General Inspection, develop appropriate guidelines/instructions;
- Ensure training of General Inspection employees in interviewing techniques and carry out strict control over use of professional skills;
- Ensure proper substantiation of decisions made as a result of studying complaints by General Inspection;
- Ensure development and approval of detailed procedure for reviewing medical complaints by medical Regulation Division of the Medical Department;
- To take all necessary measures to notify each prisoner regarding the complete and justified outcome of reviewing requests/complaints/applications in due time prescribed by the law;
- To amend the regulations of the institutions so that the inmates are given the possibility to have responses to requests/complaints/applications or any other material of the proceedings within their cells;
- To take all necessary measures so that upon receipt of request/complaint/application review outcome, the prisoner is informed regarding the right to appeal the decision, indicating the place and the term to appeal the decision;
- The General Inspection should carry out proactive monitoring at every penitentiary establishment at appropriate intervals throughout the year;
- To improve the working methodology of the General Inspection;
- To ensure the professional training of the employees of the General Inspection;
- To inform the prisoners sufficiently on the competences of the General Inspection;
- Ensure communication of the fulfilled work and prepared reports as a result of inspections by general Inspection to the public, including by regularly post-

ing appropriate material on the web page;

- Identify handling medical complaints, proactive inspection of medical service provision process and quality of provided service as major objectives of State Regulation Agency for Medical Activities;
- The State Regulation Agency for Medical Activities should carry out monitoring at all penitentiary establishments at required frequency throughout the year;
- State Regulation Agency for Medical Activities should regularly inspect implementation of the issued recommendations;
- Considering number of functions of State Regulation Agency for Medical Activities, increase the number of the agency employees and at the same time enhance the practice of inviting experts;
- Ensure further elaboration of working methodology of the State Regulation Agency for Medical Activities;
- Ensure professional training of the employees of the State Regulation Agency for Medical Activities;
- Strengthen the cooperation of the Ministry of Labour, Health and Social Affairs of Georgia with the relevant bodies of the system;
- Provide appropriate information to prisoners regarding competencies of State Regulation Agency for Medical Activities;
- Inform the public regarding the activities carried out by the State Regulation Agency for Medical Activities and reports prepared as a result of inspections, including by regularly posting appropriate material on the web page.

#### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- Make amendment to Article 98 of the Imprisonment Code so as to enable every prisoner to directly appeal to the Minister of Corrections without going through the lower instances;
- To amend the Imprisonment code in order to determine the obligation of the Ministry of Corrections to conduct analysis of requests/complaints on a regular basis in order to identify reasons of discontent among prisoners;
- Define reasonable timing for handling medical complaints/applications by the Medical Department of the Ministry of Corrections within the Imprisonment

Code of Georgia;

- Define Timing for handling complaints by General Inspection of the Ministry of Corrections within the Imprisonment Code of Georgia;
- Introduce amendments into appropriate legislative acts so that in the event to addressing the court regarding the issues related to imprisonment, the prisoner is exempt from paying state fees.

TO THE CHIEF PROSECUTOR OF GEORGIA:

- In case of receiving information regarding committing crime of carrying out repressions towards prisoners due to filing complaints, carry out investigation as a priority and ensure the appropriate punishment of the responsible individuals.



## 3. LIBERTY DEPRIVATION ESTABLISHMENT

### 3.1. GENERAL OVERVIEW

In order to achieve the goals set by Article 39 of the Criminal Code of Georgia,<sup>279</sup> the National Probation Agency has a territorial body – establishment for the restriction of liberty (hereinafter - the establishment), managed by the head of the establishment.<sup>280</sup> The Liberty deprivation Establishment operates under the Law on Procedure of Execution of Non-custodial Penalties and Probation and constitutes the territorial body of the National Probation Agency – a legal entity of public law under the Ministry of Corrections.<sup>281</sup>

On 3 June, 2014 the first Liberty deprivation establishment was opened in Tbilisi which became functional from January 2015. The convicts, whose sentence was substituted with the restriction of liberty by the decision of the Local Parole Council are allocated in the above establishment. Detention was substituted by the restriction of liberty for the above persons. In the liberty deprivation establishment there are also placed those persons who are sentenced to the restriction of liberty by the court. The above establishment is oriented on the full integration of the convicts in the society. They are guaranteed with possibility to leave the establishment during the holidays in order to maintain the contact with the outside world. The maximum number of the convicts to be placed in the establishment is 100.<sup>282</sup>

### 3.2. TORTURE AND INHUMANE OR DEGRADING TREATMENT

According to the UN Human Rights Committee, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human

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279 Criminal Code of Georgia, Article 39:

1. The goal of a sentence is to restore justice, prevent repetition of a crime and re-socialise the offender.
2. The goal of a sentence shall be accomplished by exerting influence on the convicted person and other persons in order to ensure that they develop a sense of responsibility before the law and the observance of public order. Such forms and measures of influence on convicted persons are provided for by the corrections legislation of Georgia.
3. The purpose of a sentence shall not be the physical torture or humiliation of a person.

280 The Law of Georgia on the Procedure of Execution of Non-custodial Penalties and Probation, Article 7<sup>1</sup>, para 1.

281 Order N373 of the Minister of Corrections on approving the regulation of the facility for the restriction of liberty.

282 Order N373 of the Minister of Corrections on approving the regulation of the facility for the restriction of liberty, Article 11.

person. It constitutes a norm of general international law not subject to derogation."<sup>283</sup> The European Court of Human Rights has underlined in a number of judgments that according to Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.<sup>284</sup>

It should be noted that during the visit, the members of the Special Preventive Group have not received any information regarding the physical violence or verbal abuse of the convicts from the personnel of the establishment.

During the visit to the establishment, the members of the Special Preventive Group checked the journal of visual examination that indicated only 3 household traumas. In one case the injury of the convict or the circumstance in which it was caused was not described. It should also be noted that the documentation received from the establishment for the detention of freedom<sup>285</sup> revealed that the convicts, besides the injuries described in the above journals, also had other injuries that are reflected in the medical certificates and acts of external examination and general health condition.<sup>286</sup> The injuries laid out in the certificates and acts were not reflected in the journal for the external examination of the body.

### 3.3. SECURITY

Security includes the prevention of violence among the prisoners, prevention of fire and other emergency situations, provision of safe working environment to the prisoners and the personnel of the establishment, as well as prevention of suicide and self-harm.

During the visit, special attention was paid to the conditions in terms of security and the specifics of the activities of the security service were studied.

In order to ensure the security, the establishment is equipped with the surveillance systems. The entrances in the establishment are controlled through the technical means. The special dactyloscopy is registering when the convict is entering or leaving the institution.

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283 CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, Article 4, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para 13a.

284 European Court of Human Rights, 24 October 2001, *Valašinas v. Lithuania*, para 102.

285 Letter N1557/16 of the Head of the Facility for the Restriction of Liberty received at the Office of the Public Defender of Georgia on 5 February 2016.

286 6 cases.

It was revealed during the visit that in the establishment for the restriction of liberty not a single living cell was equipped with the electronic surveillance system. They are installed only in the solitary confinement cells.

According to the Order N17 of the Minister of Corrections dated 21 February 2014 on approving the rules on issuing and using the special means of the officer for the restriction of freedom,<sup>287</sup> the officer's special means are the handcuffs and the rubber batons, however, according to the received information, the personnel of the establishment did not use special measures during the year.

Based on the information received during the visit to the facility, the staff of the establishment is trying to eliminate the conflict among the prisoners with the conversations. Nevertheless, in 2015 19 cases of verbal dispute and physical assault took place between the prisoners. According to the assessment of the Special Preventive Group, there are problems in the establishment in terms of physical security. In particular, there is a high risk of violence and disorder among the inmates. Therefore, it is necessary to take appropriate measures. Among others, for the proper supervision of prisoners and prevention of conflicts, there should be a sufficient number of personnel in the facility and they should be trained in the practical implementation of dynamic security.

### 3.4. CONDITIONS OF IMPRISONEMENT

#### 3.4.1. PHYSICAL ENVIRONMENT, SANITARY AND HYGIENIC CONDITIONS

According to the European Prison Rules, the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.<sup>288</sup> In all buildings where prisoners are required to live, work or congregate: the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system; artificial light shall satisfy recognised technical standards; and there shall be an alarm system that enables prisoners to contact the staff without delay.<sup>289</sup>

The establishment has 1 living block with 25 living cells on the second and the third floors. In total, there are 12 rooms for 2 persons and 13 rooms for 3 persons. The convicts living in the establishment freely move on the territory of the institution during the day.

287 Article 2(2).

288 European Prison Rules, Rule 18.1.

289 *Ibid*, Rule 18.2.

The space in the double rooms is approximately 12m<sup>2</sup>, and in the triple rooms – about 17m<sup>2</sup>. The floor of the rooms is made of laminate, the walls and the ceiling are painted, newly renovated. The rooms have one window that ensures their natural lightning and ventilation. The rooms have wooden beds with the mattresses, wooden closet, chairs and bedside tables. The TV is installed on the walls of each room. The washstand is in the room. The rooms are heated with central heating.

There are wood stop, pasta and bread factories on the territory of the establishment. During the visit, the probationers were employed in the wood stop. In the establishment is possible to master the profession of carpenter, electrician, enamel specialist, plasterboard specialist and a stylist. There is no heating in the building for the vocational learning.

The establishment yard is arranged in a way that the convicts could engage in various activities during the day. The institution has the football and volleyball courts and a gym (77 m<sup>2</sup>). The gym has the football and tennis tables and a variety of fitness equipment. During the visit there was no heating system in the gym and it was very cold.

The kitchen and a dining room are located on the first floor of the living block. The dining area is 68 m<sup>2</sup>. In the kitchen and the dining room the central heating is functioning, the floor is made of tiles, the walls are painted; natural and artificial lightning is sufficient. The dining room is equipped with the tables and chairs.

Sanitary knots and showers are arranged on all three floors of the establishment. During the visit, the bathroom and the sanitary knot of the second floor were being renovated.

During the visit the warehouse was examined. Its sanitary conditions are not satisfactory. The walls of the warehouse had the traces of moisture. The mice poison was placed in the corner of the room. The vegetables of the warehouse were not kept in the adequate conditions and therefore, the products had the signs of decay.

The establishment has a shop where the convicts can purchase additional food and other items. The refrigerator stall of the shop does not have a temperature regulator due to which the liquid products freeze. Accordingly, the products are not kept in adequate temperature regime, which has a negative impact on the characteristics and quality of the nutrition products and thus, endangers the health of the convicts.

The establishment has 2 solitary cells. Both cells are under the electronic surveillance. The solitary cells have one window. Both cells have the appropriate equipment. Lightning and ventilation is sufficient and the sanitary-hygienic conditions are satisfactory in the cells.

### 3.4.2. AGENDA AND REHABILITATION ACTIVITIES

According to the Law of Georgia on Procedure of Execution of Non-custodial Penalties and Probation, restriction of liberty is executed at the territory of the establishment based on the individual plan (progressive plan) the conditions of which shall be defined by the head of the establishment.<sup>290</sup> Upon receipt of a legal act on restriction of liberty as a sentence based on his/her needs an obligation of participating in rehabilitation programmes running at the establishment shall be defined for the convict; also with his/her consent and taking into consideration his/her physical and mental capacity after respective training the convict shall be assigned to a work at a non-profit or profit oriented legal entity of the National Probation Agency.<sup>291</sup> The work of a person restricted of liberty shall be remunerated.<sup>292</sup> It should also be noted that according to the obtained information,<sup>293</sup> during 2015, only 11 convicts were employed in the pasta factory on the territory of the establishment.

Rehabilitation and Educational Programmes Unit of the establishment has 10 employees: the head of the service, 7 restriction of freedom officers (including 1 psychologist) and 2 specialists.

See below the table demonstrating the information on the rehabilitation activities implemented in the establishment for the restriction of freedom in 2015.

N	Psycho-Social Rehabilitation Programmes	Length	Number of Participants
1	Personal Empowerment Programme	2 months	12
2	Anger Management Training Module	1 month/1 week	16
3	Public Order and Healthy Relations	1 month	12
4	Cognitive and Social Skills Training Module	3 months	8
5	Identity and Role of a Person in the Society	1,5 months	15
6	Professional Ethics and Etiquette	1 month	9
7	Development of Civic Awareness	3 month	27
8	Employment Skills	1 month	5
9	Literature Club	5 months/on-going	22
N	Training/Vocational Courses	Length	Number of Participants
1	MS Office Programmes	2,5 months	16

290 Article 44<sup>1</sup>, para 1.

291 Article 44<sup>1</sup>, para 2.

292 Article 44<sup>1</sup>, para 3.

293 Letter N1557/16 of the Head of the Establishment received at the Public Defender's Office, dated 5 February, 2016.

2	PC presentation program	1 months	3
3	Georgian Language	5 months	2
4	English Language	-	15
5	Facing Worker	3 months	3
6	Informational Technologist	3 months	7
7	Electrician	3 months	6
8	Air Conditioner Technician	3 months	6

In addition to the data provided in the table, religious-educational events in relation to the Orthodox Christian holidays, documentary film screenings and meetings with famous people were held in the establishment.

It should be noted that the Public Defender welcomes the implementation of a wide variety of rehabilitational activities in the establishment, however, it is important to give the convicts the possibility of paid employment in the factories and enterprises of the establishment.

### 3.5. MEDICAL SERVICE

The state is obliged to take care of the health of prisoners. Prisoners should enjoy the same standard of health care services, which are available to the general public. They should have access to free medical care without discrimination based on legal status.<sup>294</sup>

According to the Law of Georgia on Procedure of Execution of Non-custodial Penalties and Probation,<sup>295</sup> the emergency medical aid spot shall be placed at the establishment. And according to Article 7<sup>1</sup> of the same law, ensuring the functioning of the Establishment, including provision of convicts with relevant insurance, food, work, training, health care and living conditions shall be the responsibility of the National Probation Agency. According to the Order N373 of the Minister of Corrections dated 30 December 2013 on approving the Model Regulation of the establishment for the Restriction of Freedom, the convict has the right to be ensured with the emergency medical aid in accordance with the Georgian legislation.<sup>296</sup> The convict, during the stay in the establishment, shall be provided with the service of the establishment's medical unit, which includes the first aid doctoral and drug assistance.<sup>297</sup> The convict is ensured with the proper insurance by the National Probation Agency.<sup>298</sup>

294 Nelson Mandela Rules, Rule 24.1.

295 Article 44<sup>5</sup>.

296 Article 21.1 („a“)(„b“).

297 *Ibid*, Article 19.1.

298 *Ibid*, Article 19.2.

The medical personnel of the establishment of the restriction of freedom includes 1 doctor and 4 nurses. It is also possible to enjoy the on-site consultations of the specialized doctors and in case of need, the convict might be transferred to the public sector hospital. During the visit, 133 types of medicines, syringes and other materials were kept in the medical unit.

See the table below showing the information regarding the consultations provided by the specialized doctors in 2015.

N	Doctor-Specialist	The Number of Visits	Visited Patients
1	Psychiatrist	4	13
2	Cardiologist	2	11
3	Neurologist	1	1
4	Dentist	6	42

During the reporting year, 15 convicts were transferred to the civil hospitals, among them 1 was planned, at the expense of the state, 3 – as a matter of urgency, also at the expense of the state and 11 – also planned, but at their own expense.

It should also be noted that based on the records in the medical files of the convicts, in a number of cases, the convicts are in need of the consultations with the concrete specialist doctors. However, the treatment is prescribed by the establishment doctor without the above consultation. For instance, one of the convicts is diagnosed with the right sided epididymoorchitis. On 22 September 2015, the doctor of the establishment recommended the consultation of the urologist, and the ultrasound examination. There is no record of the urologist’s consultation or the ultrasound examination in the medical card of the patients, however, the convict was prescribed with the antibiotic therapy, analgesics and compresses.

Another convict has entered the establishment on 3 November 2015 with the following diagnosis: organic personality disorder (F07.0); Traumatic encephalopathy, a history of epilepsy, chronic prostatitis. Before being transferred to the Liberty deprivation Establishment, the above individual was numerously consulted by the psychiatrist, once – on 25 Aprils 2015, by the neurologist. During the monitoring, the patient was treated with the neurolepsin with the consultation of the psychiatrist or the neurologist. As for the chronic prostatitis, the convict was not consulted on this disease.

In a number of cases the information of the various medical documents is not reflected in the medical card of the convict. For instance, one of the prisoners was consulted by the doctor on 8 September 2015. According to the journal, the patient was diagnosed with the osteochondrosis, unspecified and was prescribed with the “Obugesi” twice a

day (5 days) and “Omeprazol” – one pill per day (10 days). This information is not reflected in the medical card. It is noted in the journal that the convict has a history of peptic ulcer disease, which is not reflected in the medical card.

The convict N has addressed the medical unit with the complaints related to the eye itching, tearing, the sense of burning, reddening of the whites. The patient was diagnosed with conjunctivitis preliminarily and was prescribed the treatment with gentamicin drops, 2-2 drops once every three to four hours (a day). On 25 September 2015, the convict addressed the medical unit again and complained of the lower left eyelid swelling purulent, was prescribed with the gentamicin drops – 5 drops per day and was recommended to consult with the ophthalmologist during the temporary layoff. This is the final record of the medical card. It is noted in the registration journal for the consultations that the convict has addressed the establishment doctor again and was diagnosed with cataract and was given the treatment recommendations. Ophthalmologist’s consultation was not provided to the convict.

It is crystal clear from the above–mentioned cases of medical service that the consultations of the specialized doctors are not ensured in the establishment, the head doctor of the establishment provides all kinds of consultations and prescribes the treatment. In addition, the medical cards of the convicts, in a number of cases are produced with deficiencies, which hinders the continuity of medical services for the convicts.

### 3.6. REGIME, DISCIPLINARY LIABILITY, INCENTIVES

Disciplinary liability of the convict is based on the disciplinary offense i.e. violation of the rules of the model regulation of the Liberty deprivation Establishment<sup>299</sup> or the agenda or avoiding complying with them without a reasonable ground, also, committing an administrative offense, for which the convict was sentenced to the administrative detention.<sup>300</sup> The Head of the establishment, for the disciplinary offence may use the following measures of disciplinary liability of the convict:

- a) warning;
- b) prohibition of leaving the territory of the establishment for not more than 30 days;
- c) prohibition of enjoying the internet, television and other means of communication for not more than 10 days;
- d) restriction of the right to use the stated short-term visit.<sup>301</sup>

299 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom.

300 *Ibid*, Article 49.1.

301 *Ibid*, Article 49.2.



It should also be noted that imposing multiple disciplinary sanctions (3 times or more) upon the convicts might become the ground for addressing the court enshrined under Article 21 paragraph 5<sup>302</sup> of the Law of Georgia on Procedure of Execution of Non-custodial Penalties and Probation.

In 2015, out of 48 disciplinary sanctions, in only 24 cases were the convicts prohibited from leaving the territory of the establishment. The main reasons of disciplinary sanctions were the physical/verbal abuse of the other prisoners, arriving at the facility drunk or late, and abuse of the establishment's staff.

In case of exemplary behavior and/or successful employment of the prisoner, successful completion of rehabilitational and educational programmes, thorough implementation of the individual (progressive) plan of the sentence, honest attitude towards the imposed obligations and in other special cases, the head of the establishment is empowered to use the following incentives towards the convict:

- a) Announcement of gratitude;
- b) Early release from the disciplinary sanction;
- c) Additional short-term visit;
- d) Addition short layoff from the institution;
- e) Enjoyment of the private TV or radio receiver;
- f) Provison of a valuable gift.<sup>303</sup>

During the year, only 3 convicts received incentives in the establishment. All three of them were announced the gratitude for the exemplary behavior, involvement in the rehabilitational and educational programmes and participation in the clean-up work of the institution. According to the assessment of the Special Preventive Group, it is necessary that the director of the establishment utilizes the forms of incentives more often, since it will contribute to the process of rehabilitation of the prisoners.

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302 The head of the facility, in case of a reasonable ground addresses the court with one of the following proposals: a) to change the imprisonment sentence with the restriction of freedom; b) in case of substituting the unserved imprisonment sentence with restriction of freedom – to change the unserved part of imprisonment to the restriction of freedom; c) on the early conditional release of the convict from the imprisonment sentence/substituted sentence.

303 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom, Article 50.1

### 3.7. CONTACT WITH THE OUTSIDE WORLD

According to the regulations of the establishment,<sup>304</sup> a convict has the right to be ensured with a short-term visit of a parent, adoptive parent, child, adopted child, spouse, sister, brother in accordance with the Georgian legislation. Also, to receive information through the press and mass media, to use fiction and other literature; with the approval of the head of the establishment, to leave the institution temporarily; to meet the lawyer without any obstacles. Additionally, a convict, in accordance to the rules established by the Georgian legislation, enjoys the right to leave the establishment on holidays and non-working days, if the regulations do not provide otherwise.

The special room is allocated in the living block of the establishment where the convicts can use internet, telephone and other means of communication according to the daily schedule. The telephone conversation is carried out at the expense of the convict for not more than 10 minutes a day.<sup>305</sup> A convict, during the free time, once a month, with a prior agreement with the head of the establishment, is allowed to enjoy a short-term visit with a parent, adoptive parent, child, adoptive child, spouse, sister and a brother.<sup>306</sup> A short-term visit can be carried out at a place properly arranged for the meetings and visits at the establishment (a room, an open space) and its length should not be more than an hour.<sup>307</sup> A convict has the possibility to get acquainted with the press and use the other means of media.<sup>308</sup> A convict or a group of convicts, with a prior approval from the institution's administration, may have a private radio receiver, if the use of the above equipment does not violate the requirements of the establishment's regulations and the peace of the other convicts. Convicts may buy the above items at their own expense.<sup>309</sup> A convict, at the time specified by the institution's time schedule, may use the TV through the monitor installed on a special place allocated for the sports and cultural block.<sup>310</sup> Convicts may, at their own expenses and in a reasonable amount, subscribe to the scientific, popular scientific, religious and other literature, newspapers and magazines, also, may possess writing items, with the exception of the prohibited items. A convict has the right to send and receive an unlimited number of letters, to submit applications, requests and complaints orally or in writing.<sup>311</sup>

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304 *Ibid*, Article 21, para 1, („a.c“), („b“), („d“), („1“), para 2, („b“)

305 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom, Article 23.

306 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom, Article 24.1.

307 *Ibid*, Article 24.2.

308 *Ibid*, Article 25.1

309 *Ibid*, Article 25.2

310 *Ibid*, Article 25.3.

311 *Ibid*, Article 26.1.

According to the information received from the Liberty deprivation Establishment,<sup>312</sup> in 2015, 19 convicts exercised the right to the visit with the family and 7 convicts – the right to the meeting with a lawyer.

The monitoring results revealed that the convicts are ensured with the written and telephone communication means, short-term visits with the family members and the right to temporarily leave the facility, as foreseen by the law. Nevertheless, it should be noted that there are problems in terms of transportation due to which the convicts have to walk to the nearest mini bus stop. The above is especially difficult in winter, in a cold and rainy weather.

#### RECOMMENDATIONS TO THE MINISTER OF CORRECTIONS:

- To study the reasons of the injuries reflected in the external bodily examination journal of the establishment and to take all necessary measures for the proper keeping of the journal;
- To develop and establish a new form of registering the injuries in line with the Istanbul Protocol, in which it will be possible to include a more detailed information about the bodily injuries;
- To study the working practice of the security unit of the establishment for the restriction of freedom and to take all necessary measures to ensure the security in the establishment, including through the sufficient number of the establishment's personnel, their proper training and strengthening the skills for identifying the risk factors of violence;
- To take all necessary measures to equip the shop of the establishment for the restriction of freedom with the modern counter-refrigerators so that the nutrition products are kept in the relevant temperature regime;
- To take all necessary measures for the renovation of the warehouse and for keeping the nutrition products in adequate conditions;
- To take all necessary measures for the installation of the central heating system in the vocational learning building and the gym of the establishment for the restriction of freedom;

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312 The written response N1557/16 of the Head of the Facility for the Restriction of Liberty received at the Office of the Public Defender on 5 February 2016.

- To take all necessary measures for the continuous employment of the convicts in the enterprises/ factories existing on the territory of the establishment;
- To take all necessary measures for issuing incentives more often to the convicts involved in the rehabilitation activities;
- To take all necessary measures to ensure the convicts of the establishment for the restriction of freedom with the transportation means;
- To take all necessary measures to ensure timely consultation of the convicts with the specialized doctors;
- To take all necessary measures for the proper production of the medical cards of the convicts.

## 4. SITUATION IN AGENCIES SUBORDINATED TO THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

### 4.1. INTRODUCTION

The present report contains the results of monitoring conducted by the NPM at police stations and temporary detention isolators (TDI) of the Ministry of Internal Affairs (MOIA) of Georgia. Throughout 2015, monitoring was performed at 59 police stations and 31 temporary detention facilities, and 54 detainees were interviewed.

It should be highlighted as a positive fact that, during monitoring, the members of the Public Defender's Special Preventive Group were provided unhindered access and were able to freely move within the MOIA police stations and TDIs. Throughout the visit, staff at all police stations and TDIs, according to the requirements set forth in the law, fully cooperated with the representatives of the Public Defender and helped them with full-fledged performance of monitoring.

Monitoring team members inspected log books of detainees maintained at police stations as well as registration journals of individuals transferred to detention facilities (temporary detention isolator), visually inspected police station buildings and interviewed staff. At TDIs monitoring team members inspected infrastructure, interviewed TDI staff, detainees, checked case files of detainees. To obtain necessary information contained in case files in a systemized manner, monitoring group used specifically designed questionnaire.

Over the course of drafting the report, data obtained through the visits were processed. Notably, initially qualitative analysis of the data obtained through the pre-designed questionnaire was performed using the Statistical Program (SPSS). A total of 740 questionnaires were processed. Members of the monitoring group reviewed all materials available at the temporary detention isolators in the course of the visit. Group members would complete questionnaires only if the presence of new injuries (other than a scar and minor injuries) would be discovered based on case materials. It should further be noted that the Special Preventive group, in order to assess the practice of documenting bodily injuries by TDI staff, through the random selection method, obtained records about incarceration of accused persons with bodily injuries at the penitentiary institutions, and compared these records with those of TDIs.

In the course of the report preparation, 11 proposals sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2015 have also been used. These proposals relate to the facts of violence by police officers against detainees. The report

also provides factual circumstances of those alleged cases of ill-treatment, which the monitoring team members identified over the course of the visits. In the process of the report drafting, the data obtained from the Ministry of Internal Affairs (MOIA) have also been analyzed, as well as the desk research of Georgian legislation and international standards was performed.

The goal of monitoring was to assess the conditions in relation to torture and inhuman or degrading treatment within the MOIA system, as well as to produce recommendations aimed at reducing the risks of torture and inhuman or degrading treatment.

## 4.2. EXECUTIVE SUMMARY

As compared to 2014, the number of individuals committed to TDIs has declined slightly. Furthermore, 916 less cases of bodily injuries have been identified in 2015, as compared to 2014. The cases of filing complaints against police have fallen as well (30 cases less). However, considering alleged cases of torture and other ill-treatment, the Public Defender and Special Preventive group regard that the state of human rights protection within the MOIA system has deteriorated.

In 2015, as compared to 2014, the number of proposals sent by the Public Defender to the Chief Prosecutor's Office of Georgia, concerning investigation of the facts of ill-treatment by police officers has risen. High risks of torture and other ill-treatment is corroborated by a study conducted by the Special Preventive Team.

The Public Defender deems that in 2015, the issue of ill-treatment of individuals detained by the Police is pressing and is concerned about the fact that in the majority of cases, based on the statements of applicants, preliminary, purposeful preparation for physical and psychological violence by police employees and realizing such violence to obtain statement on guilty plea can be observed, which is an element of crime that qualifies as torture. Especially alarming is the location and nature of injuries on the bodies of some of the applicants, as well as the fact that the severity of incurred injuries necessitated the transfer of some of them to civilian inpatient medical institutions. The fact that in some cases prior to commitment to TDIs, detainees had to spend the night at police stations. In studied cases, the duration of holding detainees under police control prior to placing at TDIs ranges from 5 to 23 hours. Moreover, it is worth noting that in some cases, actual time of detention indicated in detention reports does not match with the time listed by applicants to authorized representatives of the Public Defender.

It is alarming that based on 11 proposals sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2015, investigation was launched based on Article 333

of the Criminal Code of Georgia, while the circumstances indicated in Public Defender's proposals contain the indications of torture and inhuman or degrading treatment.

In some cases, such legal safeguards of detainees had been neglected by police officers as is briefing about the rights, putting them in contact with family and a lawyer. Furthermore, it is worthy of particular attention that during the reporting period, as indicated in detention reports, the trend of manifestation of aggression by citizens towards police has been observed, in which cases, given insufficient qualification of officers, the likelihood of the use of force on the part of police, and respectively, that of overstepping the bounds of the force is high.

The practice of the so-called "conversation" conducted by the police without express and free consent of individuals involves high risks of torture and other ill-treatment; such "conversation" is performed in a vehicle or at a division/station, which, effectively, is arbitrary detention, without briefing about procedural rights. The Public Defender deems that it is important to immediately brief all detained individuals about procedural rights. Furthermore, all detainees at TDIs should be briefed in a clear and comprehensible manner not just about procedural rights, but all those rights and duties an individual may enjoy while under detention at the TDI. Inter alia, a copy of the list of rights and duties should be provided to all detainees for review in their cells, or such list should be made otherwise available. Briefing detainees about rights is especially problematic in cases when the time of the entry of individuals at police stations precedes their factual detention time, which raises suspicion that these individuals are actually subjected to the restriction of liberty, and it is highly likely that they are not briefed about their rights.

The Public Defender is concerned about the fact that registries that would enable to find out as to how many individuals demanded the enjoyment of the right of informing a family or ask for a lawyer, and how many have actually exercised these rights, are not maintained either at police stations or at TDIs.

The Public Defender deems that general situation in terms of access to a lawyer and the possibility for holding confidential conversation with a lawyer at detention facilities can be assessed positively. Still, in the opinion of the Public Defender, it is a serious problem that, as discovered over the course of monitoring, in a number of cases, police would allegedly physically and verbally abuse detainees once they asked for access to a lawyer or the enjoyment of other procedural right. As regards access to a lawyer, the problem is that administrative detainees, due to the lack of funds or another reason, almost never use a lawyer's services. At the same time, current legislative framework does not ensure lawyer's services from the very initial stage of legal proceedings to detainees who are using free legal aid. This issue is especially pressing in regions, where, along with the

problem with the access to free legal aid, the free legal aid programs provided by NGOs are less available as well.

The Public Defender welcomes the practice of medical examination of detainees by ambulance physicians, and deems that this is the possibility for ensuring institutional independence. Still, at TDIs in regions, in a number of cases, timely arrival of ambulance team, incomplete description and documenting of the health status and injuries of detainees is a problem. Furthermore, conducting medical examination in a confidential setting, without the presence of non-medical staff is an essential challenge.

The Public Defender regards that that the deployment of medical personnel hired by the MOIA at TDIs will, on the one hand, ensure the provision of rapid and timely first medical services, but on the other, the degree of impartiality and independence of these personnel is questionable, and this may interfere in the identification of ill-treatment of detainees in the future.

In 2015, the absence of video surveillance on the inner perimeter in the majority of police stations remained a problem, and it has to be fixed immediately. Furthermore, it is important that not only Patrol Police Department officers, but also detective-investigators and neighborhood inspector-investigators are also equipped with shoulder video cameras and vehicle video registrars. It is also necessary for the NPM to have unimpeded access to video surveillance systems at TDIs and police stations.

It has been established based on a number of monitoring visits made throughout 2015, that the deficiencies are still present in the area of completion of detention and visual inspection reports, as well as journals and medical documentation at police stations. Further, the format of administrative detention report is imperfect.

It has been established during the implemented visits that at the MOIA Police stations and divisions stations special journals for recording entered individuals are not maintained. For example, when an individual comes to the police division/station in the capacity of a witness, the fact of his/her entry into the building is not logged in the unified journal. It is important to keep detailed record of date of entry (by indicating time), purpose of visit and the date and time of leaving the building by individuals at police stations and divisions.

TDI staff brief detainees about their rights, which, also comprises information about the right to file a complaint, although, notably, there is no relevant written procedure that would enable individuals held at TDIs to file confidential complaints.

The procedure of sending a notice by the Administration to an investigation body about bodily injuries of detainees is a significant legal guarantee to protect individuals placed



at TDIs against ill-treatment. It should be noted that notification about bodily injuries of detainees is sent to prosecutors at the discretion of TDI heads, and there is no specific rule governing this procedure and it is unclear specifically in which case a notification should be sent to a prosecutor. The failure of the Prosecutor's Office to duly examine complaints of detainees sent from TDIs and conduct investigations is an issue.

The stance of the Public Defender as to the creation of an independent investigative mechanism is unaltered. He deems that it is extremely important to establish a mechanism with a mandate to conduct effective investigation of alleged facts of torture and inhuman treatment of detainees by law enforcement officers.

The Public Defender of Georgia thinks that the practice of examination by the Human Rights and Monitoring Department Monitoring Office cannot ensure relevant examination of the state of human rights protection at TDIs. During inspection, focus is made on administrative and technical aspects of activities of TDIs, versus the quality of documenting alleged ill-treatment of detainees by the Police and in this respect, the status of protection of their rights.

It is important to note that living conditions of individuals held at TDIs should be in conformity with national as well as international standards. At TDIs in the regions of Georgia, the issues with central heating, natural lighting and ventilation, complete isolation and technical serviceability remain outstanding.

The Public Defender welcomes amendment to the Administrative Violations Code according to which administrative detention term was reduced from 90 days to 15 days, which should be assessed positively, although, it should also be mentioned that current situation at TDIs is not adequate for committing administrative detainees.

Although the norms of daily nutrition of individuals held at TDIs are prescribed in a relevant order, food for individuals with special food needs is not considered for the detainees at TDIs in the regions. Detainees are provided canned food only, everyday consumption of which may compromise a person's health. There are cases when TDIs staff are compelled to buy bread for detainees at their own expense. Detainees are primarily consuming food sent in via packages. An administrative detainee may be held at TDI for up to 15 days. For an individual detained for long-term period relevant food and living conditions are especially important.

### 4.3. TORTURE AND OTHER INHUMAN TREATMENT

No one should be subjected to torture,<sup>313</sup> or to inhuman and degrading treatment.<sup>314</sup> Pursuant to Article 10 of International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. According to the UN Human Rights Committee, „respecting human dignity is a norm of international law, and may not be subjected to any derogation.“<sup>315</sup>

According to ECtHR case law, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.<sup>316</sup> Moreover, ECtHR ruled that, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.<sup>317</sup>

The burden of proof shifts to the state in the cases of individuals who are injured during the detention. In this case, too, the state that has to allege that the use of force during detention was not excessively harsh.<sup>318</sup> Furthermore, at the time of detention of an individual police officers should exert minimum force so as not to inflict physical harm to an individual. Pursuant to national legislation, to perform police functions, a police officer may use fit and proportionate coercive measures only in the case of necessity and to the extent that shall ensure achievement of legitimate objectives.<sup>319</sup> The form and extent of a coercive measure shall be defined based on a given situation, the nature of an offence and individual peculiarities of the offender. In addition, a police officer must try to cause minimal and proportionate damage while carrying out a coercive measure.<sup>320</sup>

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

314 European Convention on Human Rights and Fundamental Freedoms, Art. 3.

315 UN Human Rights Committee General Comment N 29, CCPR/C/21/Rev.1/Add.11 (2001), August 31, 2001, Par. 13a, available in UN Official languages, at: <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en)> [Last seen on 29.03.2016]

316 ECtHR April 6, 2000 Judgment on the case *Labita v. Italy*, N26772/95, Par. 120.

317 ECtHR June 27, 2000 Judgment on the case *Salman v. Turkey*, N21986/93, Par. 100.

318 ECtHR Judgment on the case *Rehbock v. Slovenia*, N29462/95, Par. 72

319 Police Law of Georgia, Article 31(1).

320 Police Law of Georgia, Article 31(4).

With respect of examining alleged ill-treatment, ECtHR case law landmark case against Georgia is noteworthy; ECtHR ruled substantial breach of Article 3 of the European Convention, due to ill-treatment by MOIA Tskaltubo Police officers against the complainant, and ruled procedural violation by the prosecutor's office due to failure to conduct effective investigation.<sup>321</sup>

In 2014, the Public Defender of Georgia sent to the Chief Prosecutor 7 proposals on the commencement of investigation around alleged ill-treatment by police, while in 2015 – 11 proposals. Furthermore, it should be noted that the practice of overstepping the bounds of force by police officers during detention has been a principle trend in 2014, which, among others, is addressed in the Public Defender's 2014 Report to the Parliament. While, in 2015 the trend of ill-treatment by police officers against detainees is prevailing. The above-mentioned and the matters reviewed below demonstrate that, as compared to 2014, in 2015 the situation concerning ill-treatment of detainees by police has deteriorated.

The Public Defender's Office has solicited statistical information from the MOIA. The number of individuals committed to TDIs, statistics of bodily injuries of individuals at the time of placing at the TDI, and the number of complaints against the police, by years, is provided in the table below.

N	Data by years	2013	2014	2015
1	Number of committed individuals	16553	17087	16416
2	Individuals committed who had injuries	7095	6908	5992
3	Complaint against police	111	198	168

Number of bodily injury cases in 2015		5992
Prior to detention		5635
At the time of detention		243
Following detention		52
Prior to detention – at the time of detention		47
Prior to detention – after detention		10
At the time of detention – following detention		4
Prior to detention – at the time of detention – following detention		1

Complaints against police in 2015		Number
Prior to detention		8
At the time of detention		90
Following detention		34

321 ECtHR December 18, 2012 Judgment on the Case Dvalishvili v. Georgia N19634/07.

Prior to detention – at the time of detention	23
Prior to detention – following detention	8
At the time of detention – following detention	4
Prior to detention – at the time of detention --following detention	1
	<b>Total: 168</b>

The analysis of the above tables demonstrates that, as compared to 2014, the number of individuals placed at temporary detention facility has fallen slightly. Furthermore, as compared to 2014, in 2015 there have been observed 916 less cases of bodily injuries. The cases of complaints against police have also fallen (30 cases less). Still, considering alleged torture and other ill-treatment cases reviewed below, the Public Defender and the Special Preventive Group regard that the situation with the protection of human rights within the MOIA system has deteriorated.

The study conducted by Special Preventive Group also corroborates high risks of torture and other ill-treatment. The results of this study will be reviewed below.

In 2015, as compared to 2014, the number of proposals sent by the Public Defender to the Chief Prosecutor’s Office of Georgia about the investigation of ill-treatment facts by police employees has risen.<sup>322</sup> Factual circumstances described in these proposals will be reviewed briefly below.

	Alleged actions committed by law enforcement	Injuries	Other significant circumstances
<b>Case N1<sup>323</sup></b>			
A.J.	<p>1. Was beaten mercilessly at the time of detention.</p> <p>2. At MOIA Zestaponi Police Main Station, 8 employees were beating during 3 hours for obtaining confession.</p> <p>3. At Zestaponi hospital, in the x-ray room, a stranger beat and verbally abused him.</p>	<p>1. <b>At the time of interview with authorized representative:</b> On the forehead wound covered with eschar, eschar covered excoriation on both elbows, bruises and wounds on the entire area in the lower back, bruises on the left eye.</p> <p>2. <b>TDI:</b> numerous scratch scars and excoriations on the back, forehead, both shoulders, both elbows and wrists, both knees</p>	<p>1. Due to numerous injuries, the TDI refused to admit A.J., following which he was transferred to the Zestaponi hospital.</p> <p>2. The story of A.J. coincides with the story of other individuals who were detained along with him. He did not have a chance</p>

322 7 proposals were sent in 2014, while in 2015 – 11 proposals.

323 Pursuant to the Chief Prosecutor’s Office of Georgia N13/1869 letter dated January 12, 2016, on October 29, 2015, investigation was launched at the Zestaponi District Prosecutor’s Office on Criminal Case N052291015801, on the fact of exceeding official power through violence towards A.J., B.J., S.J., and M.V., by the officers of MOIA Zestaponi District Division for the elements of crimes envisaged under Article 333 (3) (b) of the Criminal Code. Criminal prosecution has not been instituted against specific individuals, investigation is underway.

		and calves, with bruises, on the face and both eye sockets.  3. At the National Center of Intervention Medicine linear fracture of the nasal bone was established.	to communicate with these individuals after detention.
S.J.	1. Following detention, over twenty police officers knocked him down to the asphalt and beat him mercilessly, following which he felt unwell, but police officers continued to beat him.  2. At the MOIA Zestaponi Police Main Station, where in one of the rooms they would inflict physical violence with open hands and feet for over three hours.	1. TDI: bruise on the left cheek, eschar on the left elbow, red patches on the back.	
B.J.	1. Was beaten during about half an hour at the time of detention.  2. Beating and verbal abuse continued at the MOIA Zestaponi Police Main Station.	TDI: bruise On the forehead, right temple area, scratch scars on the right shoulder, red patches on both knees.	
M.V.	1. Was forced at the MOIA Zestaponi Police Main Station To provide testimony against A.J., B.J., and S.J.  2. Was beaten and verbally abused for refusing to provide testimony.	1. According to the health certificate <sup>324</sup> based on the examinations conducted on October 7, skull brain closed trauma, concussion, intracranial hypertension was determined.	1. M.V. describes the fact of beating A.J., B.J. and S.J at the place of detention, which matches with the story of the latter individuals.  2. Police officers did not draw up relevant documentation for detention of M.V.  3. M.V. was released from the building of Police Main Station in several hours.

Case N2<sup>225</sup>

<p>B.R.</p>	<p>1. Was forcibly placed in a vehicle, covered his eyes with a hat, and drove him in unclear direction into the forest.</p> <p>2. Was asked about weapon and was beaten.</p> <p>3. Tied him to a tree using handcuffs, in order to obtain confession, and beat him while in such state, next, they also hanged him with his feet, using a rope, for about 10-15 minutes.</p> <p>4. At Bagdati District Police Station, police officers would verbally abuse him during interrogation.</p>	<p>1. TDI: Excoriations on the right ear and right side of belly, as well as a small wound on the inner side of the upper lip.</p>	<p>1. B.R. alleges that he was detained at about 12:00 on November 20, 2014, while according to official documents, detention took place on 4:15 on November 21, 2014.</p> <p>2. The detainee alleged that he had spent about 22 hours and 30 minutes under the police control prior to the commitment to the TDI.</p> <p>3. It can be ascertained from the detention related documentation that prior to placement in the TDI, B.R. Was under police officers' control for 6 hours and 15 minutes.</p>
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Case N3<sup>226</sup>

<p>G. Dz.</p>	<p>1. Was not briefed about rights at the time of detention.</p> <p>2. Was beaten and physically abused during detention.</p> <p>3. Was beaten in the police vehicle.</p>	<p>1. <b>Medical examination conclusion:</b> In the mid-third on the back of the nose, a wound with dimensions 0.6*0.2 cm – dark reddish bruises in edges and in sides. On the left wrist joint frontal surface an impression with dimensions 0.5*0.3 cm, on the back surface of chest, in right lower third -- impression with dimensions 3.5*0.2cm.</p>	<p>1. In the examined documents there is no indication as to physical resistance of the detainee against police officers.</p> <p>2. The detention report mentions that the detainee did not have any injury at the time of detention.</p>
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225 According to the Chief Prosecutor's Office of Georgia April 6, 2015 Letter N13/20964, on March 26, 2015, in West Georgia District Prosecutor's Office Investigation Unit investigation was launched on the criminal case N088260315801, on the fact of alleged exceeding official power in relation to B.R., for the elements of crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia.

226 According to the Chief Prosecutor's Office of Georgia September 7, 2015 Letter N13/56648, on September 7, 2015, at the West Georgia District Prosecutor's Office Investigation Unit, investigation was launched on the criminal case N088070915801, for alleged exceeding official power through violence by MOIA Imereti, Racha-Lechkhumi and Kvemo Svaneti Regional Main Division officers, while detaining G.Dz. in the capacity of an accused, for the elements of crime envisaged under the Article 333(3)(b) of the Criminal Code of Georgia.

	<p>4. In one of the MOIA Isani-Samgori units, in about 50 meters from the Department, where there was no video surveillance camera, he was beaten again and was verbally abused in order to gain the confession of the fact of robbery.</p> <p>5. Once he was taken to the MOIA Imereti, Racha-Lechkhumi and Kvemo Svaneti Regional Police, in order to obtain confession, police officers would kick him, beat him with hands, handle of a gun, handcuffs and a bottle. Several times, they hit his head against a wall. He collapsed several times because of beating. Throughout the night he was tied to a chair, police officers would occasionally beat him.</p>	<p>2. N 2 Penitentiary Facility: on frontal surface of both calves, in upper third -- eschar covered contusion wound with uneven edges, bluish bruise on the right ear-lobe, a centimeter long contusion wound, covered with eschar on nose septum, bluish bruises on both eye sockets.</p>	<p>3. According to medical examination findings, according to the explanation by the person subject to be examined, police officers had not inflicted injuries to him, although G.Dz. explains to the authorized representative of the Public Defender that at the first stage of legal proceedings he did not have a defense attorney and was vulnerable.</p> <p>4. G. Dz. Was detained in Tbilisi, at 15:35, at about 21:00 he was taken to the MOIA Imereti, Racha Lechkhumi and Kvemo Svaneti Regional Police Office, where he spent the entire night.</p>
<b>Case N4<sup>227</sup></b>			
G.G.	<p>1. While in a police vehicle, police officers would beat him in the face and would force him to confess a crime.</p> <p>2. After bringing him to the MOIA Kobuleti Police Main Station, in order to obtain confession of a crime, he was beaten during about one hour, was forcefully placed on the floor, would take off his pants and threaten to rape (such actions repeated 5-6 times). He was also forced to squat, and was laughed at, spat at.</p>	<p>1. TDI: Scratch scars in the back area, small hematomas in the head area, lower limbs slightly swollen, red patches, swelling and contusions on the face.</p>	<p>1. It can be ascertained from the documentation about detention that prior to placing in the temporary detention facility, G.G. was under police control for about 14 hours.</p> <p>2. Based on the recommendation of the ambulance physician, the detainee was transferred to the Kobuleti Regional Hospital.</p>

227 According to the Chief Prosecutor's Office of Georgia December 4, 2015 Letter N13/75164, on December 3, 2015, investigation was launched at the Chief Prosecutor's Office of Georgia Investigation Unit on the criminal case N 074031215803, on the fact of alleged exceeding official power in relation to G.G., G.K., R.T. and B.M., by the officers of the MOIA Kobuleti District Division, for the elements of crime envisaged under Article 333(3)(b) and (c) of the Criminal Code of Georgia.

<p>G.K.</p>	<p>1. Police officers beat him in the street while handcuffed.</p> <p>2. Beating continued in a police vehicle, they were demanding that he confess a crime. Over the period of ride from Tbilisi to Kobuleti periodically he would be beaten and verbally abused.</p> <p>3. In order to gain confession at the MOIA Kobuleti Main Station, for several hours police officers would physically abuse him, would beat with hands, would kick him, beat with plastic bottles filled with water, threatening to implant a drug substance into the possession of his brother. G.K. was forced to confess an action he had not committed.</p>	<p>1. According to the registration log of the individuals detained at the Police Station, detainee did not have any injuries on the body.</p> <p>2. TDI: Small hematomas in the head area, contusions with slight swelling in both eyes and nose area, both ears swollen, with pale blue patch.</p> <p>3. Medical document issued at the hospital: The patient had deformation in the area of head, pain and hematoma deformation and pain in the spine area. Code S 27 was assigned, traumatic injury of head and spine.</p>	<p>1. From the detention until the transfer to TDI, G.K. was under the police control for 20 hours and 40 minutes.</p> <p>3. Based on the recommendation of ambulance physician, at 13:04 G.K. was transferred to Kobuleti Regional Hospital.</p>
<p>R.T.</p>	<p>1. He was beaten at the MOIA Kobuleti Police Main Station, one of the officers threw him to the floor, was spitting at him and clean his shoes against his face, other officers brought a bottle with ice, and would hit him in the head, on feet. They forcefully took off his pants, and would threaten with rape, as well as implant a drug substance to his family members. They were forcing the detainee for five hours to confess robbery. Officers destroyed a computer in the room, tore off the uniform of one of the officers and threatened the detainee that he would be sent to prison due to the mentioned actions.</p>	<p>1. At the time of bringing at the Police Main Station the detainee did not have any injury on the body.</p> <p>2. TDI: On both shoulders, towards the back, small bruises, lump in the right side of the crown on the head.</p>	<p>1. R.T. demanded contact with a defense attorney or family members, in response he would get cynical response and they would kick him while on the floor.</p> <p>2. It can be ascertained from the documentation about detention that from the detention until the transfer to TDI, R.T was under police control for 5 hours and 40 minutes.</p> <p>3. According to R.T., his actual detention took place at Sarpi Checkpoint at 20:26 on October 27, 2015, while Sarpi territory is not mentioned at all in case materials. According to October 27 account of the neighborhood inspector-investigator,</p>



			<p>R.T. was at Sarpi check-point and was going to leave Georgia, which is contrary to the statements of officers, According to which R.T. himself came to the police department during night hours.</p> <p>4. Family and defense attorney found out about whereabouts of R.T. only after several hours.</p>
B.M.	<p>1. In MOIA Kobuleti Police Main Police Station building, with a demand to confess crime, police officers would beat B.M., with hands, would kick him, beat with a bottle filled with frozen water, would wipe their shoes against him while he was knocked down on the floor. They would force the detainee to confess robber during 2-3 hours.</p>	<p>1. <b>Registration book of detainees:</b> The detainee had an impression in the forehead area, scratch scars at eye, injury on the head above forehead, impression below both ears, at the neck, small impression on the back.</p> <p>2. <b>TDI:</b> multiple contusions in various parts of the body, specifically, on the back and kidney projection area, edema below both eye sockets, contusion on the face, as well as closed trauma in the forehead area, small hematoma in the head area.</p>	<p>1. Public Defender's official representatives interviewed B.M. in the Kobuleti Regional Hospital.</p> <p>2. Ambulance was called several times at the TDI, the patient was transferred to the Kobuleti Regional Hospital.</p> <p>3. It can be established from the documentation about detention that B.M., from detention prior to the transfer to TDI, was under police control for 5 hours and 30 minutes.</p>
<b>Case N5<sup>228</sup></b>			
D.P.	<p>1. In the residential house of his friend, at about 5:00 am, police officers broke in, knocked him down and beat him brutally while he was knocked down in handcuffs.</p>	<p><b>TDI:</b> chopped wound and edema was observed on his forehead, red patches on both shoulders, red patches on the right knee and in the area of back, towards the sides.</p>	<p>1. According to the detainee, prior to placement at the TDI, he was under police control for about 12 hours.</p>

228 According to the Chief Prosecutor's Office of Georgia April 6, 2015 Letter N13/20965, on March 24, 2015, investigation was launched at the Prosecutor's Office Zugdidi unit on the criminal case N053240315801, on the fact of alleged exceeding of official power in relation to D.P., by the officers of the MOIA Tsalenjikha District Division Police, for the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia.

	2. Upon bringing to the Tsalenjikha District Police Station Jvari Police Station, D.P. demanded contacting with family members and a lawyer, and was denied. Next, he was beaten while in handcuffs.	N2 penitentiary facility: scratch scar, covered with eschar, as well as bluish bruises in collar-bone area, bluish bruise in right shoulder area, bluish bruise in the groin area on both sides, eschar covered contusion wound in the area of right knee joint.	
<b>Case N6<sup>229</sup></b>			
D.Kh.	1. One of the police officers hit him in the face, while in the police vehicle.  2. D.Kh., who was under administrative detention, was beaten by police officers at the Tbilisi Police Department Gldani-Nadzaladevi Police Station 8 <sup>th</sup> Station.	1. TDI: chopped wound on the lower lip, upper lip swollen, scratch scars in the area of nose and right calf, reddening of the left eye socket and bruises in the area of throat.  2. According to the certificate issued following first medical aid to the detainee, D.Kh. had complaints about pain in the back, which is related to trauma. Diagnosis: posttraumatic syndrome.  3. Certificate from the Tbilisi Central Hospital, Ltd.: Operation was administered – laparotomy, splenectomy, abdominal drain procedure. Diagnosis: closed trauma of abdomen, spleen rupture, Hemoperitoneum.	
<b>Case N7<sup>230</sup></b>			
V.B.	1. At the MOIA Isani-Samgori Main Police Station, head of the unit inflicted verbal and physical abuse. Deputy head of the Police Station also committed physical violence.	1. While interview with official representatives of the Public Defender, He had small scratch scars and hyperemia on the forehead, excoriations on both lower limbs, reddish excoriation on lower left limb, covered by eschar.	

229 According to the Chief Prosecutor’s Office of Georgia December 24, 2015 Letter N13/79977, on December 24, 2015, at the Investigation unit of the Chief Prosecutor’s Office of Georgia investigation was launched on the case N074241215802, on the fact of alleged exceeding of official power in relation D.Kh., by the officers of MOIA of Georgia Tbilisi Police Department Gldani-Nadzaladevi Division 8th Station, For the elements of crime envisaged under the Criminal Code of Georgia Article 333(3) (b). The case was transferred for investigation to the Tbilisi Prosecutor’s Office Investigation unit.

230 According to the Chief Prosecutor’s Office of Georgia August 17, 2015 Letter N13/52251, at the Tbilisi Isani-Samgori District Prosecutor’s Office investigation was launched on the criminal Case N004060815801, on the fact of alleged fact of exceeding official power by police officers in relation to V.B., for the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia.

	2. According to V.B., next he was transferred to one of the units, where one of the officers would verbally abuse him, would perform psychological pressure over him – threatening with liquidation, raping of a wife and sister. Other police officers also inflicted verbal and physical abuse.		
<b>Case N8<sup>231</sup></b>			
Z.Kh.	1. According to Z.Kh., he was speaking with two individuals, when a pickup vehicle hit him. MOIA Kutaisi Police 4 <sup>th</sup> Station officers came off the vehicle and started beating him.  2. They continued beating him also when placing in the vehicle.	1. TDI: Hematoma on the right eye socket, chopped wound on the upper lip, small excoriation on left knee.	1. Based on medical complaints, Z.Kh. was transferred to the Imereti regional clinical hospital, where relevant examination was performed.
G.G.	1. Kutaisi Police N 4 Station officers beat him during detention and following detention after bringing him to the same Station. They would also verbally abuse him.	TDI: hyperemic areas were observed In the area of both flanks, on the right wrist and arm, excoriation on right index finger.	1. The detainee complained about headache and vomiting. At the decision of ambulance physicians, he was transferred to Imereti Regional Clinical Hospital.
G.B.	1. Police officers beat him at the time of detention	1. TDI: No injuries were observed.	
<b>Case N9<sup>232</sup></b>			
L.J.	1. At the time of detention police officer hit with a hand in the face twice, as a result of which his lip split open and nose started bleeding.	1. TDI: Small hematoma in forehead area, excoriation in lip area.	1. According to documentation about detention, prior to the placement in the TDI, the detainee was under police control for about 15 hours.

231 According to the Chief Prosecutor’s Office of Georgia October 16, 2015 Letter N13/64779, on March 30, 2015, Investigation was launched at the Prosecutor’s Office Kutaisi District Office on the criminal case N041300315801, for alleged fact of exceeding official power by officers of the MOIA of Georgia Kutaisi Police Division 4th Station, for the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia. Criminal prosecution has not been launched against the specific individuals. The investigation on the case is ongoing.

232 According to the Chief Prosecutor’s Office of Georgia October 6, 2015 Letter N13/62690,, on October 6, 2015, investigation was launched at the Adjara AR Prosecutor’s Office Investigative Section on the criminal case N170061015801, On the fact of alleged exceeding of official power by law enforcement body at the time of detention of L.J., for the elements of crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia.

	<p>2. At MOIA Kobuleti Police Main Police Station, police officers physically and verbally abused him.</p> <p>3. Failed to provide examination material (urine) at the time of narcological test, following which he was made walk barefoot on cold floor-tiles, where they would pour cold water. Next, he was taken to the courtyard, and let him stay in the cold for several minutes, demanded him to do squats.</p> <p>3. One of police officers hit him in the face with a hand, kicked in the belly, Also verbally abused him and threatened to beat to death, unless he confessed crime and took drug test.</p>		
<b>Case N10<sup>233</sup></b>			
O.R.	1. Tbilisi Didube-Chugureti District Division N 4 Police Station officers, following detention of O.R., physically abused him in a vehicle.	1. TDI: Left eye socket area is slightly swollen, excoriation on the right side on the back and under the flank are.	
<b>Case N11<sup>234</sup></b>			
Sh.A.	1. Multiple acts of physical and verbal abuse were effected at the MOIA building (Ortachala), as well as in N 8 Penitentiary Facility and at the time of the transfer from court to N 7 facility.	1. At the time of placing at N 8 facility: On forehead, small reddish excoriation on the right side, small brownish excoriations on both hands, on phalanges. Various reddish excoriations in the area of both calves. Bluish-yellowish bruises on inner surface of the left eye socket. Reddish impressions in the area	

233 According to the Chief Prosecutor’s Office of Georgia November 4, 2015 Letter N13/68604, on October 20, 2015, Investigation was launched at the Tbilisi Didube-Chugureti District Prosecutor’s Office on the Criminal Case N002201015801, on alleged exceeding of power towards O.R., involving the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia. Investigation is underway.

234 According to the Chief Prosecutor’s Office of Georgia May 2, 2015 Letter N13/28375, on April 15, 2015, investigation was launched at the Chief Prosecutor’s Office of Georgia General Inspectorate on criminal case N074150415801, on the fact of exceeding of authority by officers following the detention of Sh.A., for the crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia. Various investigative activities are underway on a criminal case.

	<p>of both wrists area. About 2.5 cm diameter yellowish-bluish bruise in mid-third of the left shoulder.</p> <p>2. At the time of placing at N 7 facility: reddish contusion in the area of both cheekbones; reddish excoriations in the area of neck and back, along the spine; bruise in spine area of chest; bruise -- in the chest area on the right – laterally; contusion of both knees; injury on left hand ring-fingernail; Chopped wounds on right hand phalanges.</p>	
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Distinct, notable trends are formed following the analysis of the 11 cases provided above. Specifically, in the majority of cases, according to applicants, physical and verbal abuse occurred at the time of detention as well as at the police station building, and, in a number of cases, in police vehicle. Furthermore, notably, in the cases described above physical and psychological violence went on for several hours.

Especially alarming is the location and the nature of injuries on the bodies of some of the applicants, as well as the fact that due to inflicted injuries, it became necessary to transfer some of them to civilian in-patient treatment facilities. At the same time, it is especially notable that in a number of cases, prior to placing in TDI, detainees had to spend night at police stations. In the cases reviewed above, prior to placing at TDIs, the period of time during which detainees were under police control varies between 5 to 23 hours. Furthermore, notably, in some cases, actual time indicated in the detention report does not match with the time reported by applicant to authorized representatives of the Public Defender.

Several notable cases revealed through the examination of documentation and interviews with police officers, at the time of proactive monitoring by Special Preventive Group, are provided in the table below.

	Alleged offence by law enforcement officers	Injuries	Noteworthy circumstances
G.A. <sup>235</sup>	The use of fire-arm by Kobuleti Police District Division officer without observing the law-prescribed requirements.	<p>1. <b>Log book of individuals detained at the Police Station:</b> Injury on right hand that had been bandaged.</p> <p>2. <b>TDI:</b> Gunshot wound is observed in the upper area of right shoulder joint.</p> <p>3. <b>Record of a physician of the ambulance:</b> Gunshot wound in the lower third of the right shoulder. Requires a surgeon's consultation,</p>	<p>1. According to visual inspection report, based on Article 19 and 177 of the Criminal Code of Georgia detained G.A. does not have any complaints against police officers.</p> <p>2. Still, notification about injury was sent to a prosecutor.</p> <p>3. Detainee was transferred from TDI to a civilian sector hospital and was released without returning to TDI. Ultimately, a plea bargain was concluded between G.A. and the Prosecutor's Office and 3 years of conditional sentence was ruled.</p>
G.G. <sup>236</sup>	Provoking a crime, physical violence	<p>1. <b>TDI:</b> Has small excoriations on the right hand and small excoriations on the left hand wrist.</p> <p>2. <b>Ambulance physician:</b> bluish bruise in the right eye socket area, excoriations with eschar on the surface of left hand.</p>	<p>1. Kobuleti District Police Station officers detained G.G. based on Articles 187 and 353 of the Criminal Code of Georgia. According to duty officer, administratively detained G.G. was to be transferred from the Police Station to TDI, when G.G. slapped him in the face, tore off his t-shirt and broke glass in the duty office door. Notably, during these actions the detainee was handcuffed. Police officers immobilized G.G. and placed him on an iron chair at the by the entrance of the Division. Detainee turned aggressive again, stood up and broke the chair by kicking. He was immobilized again.</p> <p>2. Just ambulance physician had documented injury in the eye socket area.</p>

235 According to the Chief Prosecutor's Office of Georgia October 7, 2015 Letter N13/62784, investigation was launched on the fact of the injury to health by exceeding the measure necessary for the capturing an offender by a police officer and investigation was terminated on the case due to the absence of an action envisaged by the Criminal Code.

236 It can be established through the Chief Prosecutor's Office of Georgia October 13, 2015 Letter N13/64151, that investigation has not been launched on the fact of bodily injury of the detainee.

			<p>In addition to calling ambulance at the time of placing in the TDI, ambulance was called two more times. The accused complained about pain in the back and belly area.</p> <p>3. TDI employees had not notified a prosecutor. They justified this by the fact that, according to the accused, he had incurred injuries prior to detention and he did not have any complaints.</p> <p>4. According to a defense attorney, G.G. was provoked and next was beaten. He spoke about the above-mentioned before the judge when measure of restraint was ruled.</p> <p>5. Prior to placing at TDI, G.G. was under police control for over 9 hours.</p>
I.Gh. <sup>237</sup>	Provoking offence, physical violence	<p>1. Detention report: injury in the area of right eye socket</p> <p>2. Registration journal of detainees: hematopsia can be observed.</p> <p>3. TDI: bruise in the right eye socket area, bluish patch in the left area of the lower lip</p>	<p>1. The detainee was entered at the Police Station at 03:00, was placed at TDI at 10:20, i.e. was held under police control for 7 hours and 20 minutes.</p> <p>2. Ozurgeti Regional Main Police Station Administrative building is indicated as actual place of detention, in the detention report, while I.Gh. was actually detained at his uncle's house. The detention report also mentions that I.Gh. posed resistance to MOIA Ozurgeti District Police officers. Upon overcoming physical resistance, the detainee was brought to the MOIA Guria Regional Main Police Station.</p> <p>3. According to the Deputy Head of Ozurgeti Regional Main Division, in evening hours a citizen applied to the Police Station stating that I.Gh. was threatening</p>

<sup>237</sup> According to Chief Prosecutor's Office of Georgia October 6, 2015 Letter N13/62692, investigation had not been launched on the fact of bodily injury of a detainee.

			<p>them over the phone. Since I.Gh. did not enjoy good reputation, police perceived the statement of the citizen as actual threat and launched investigation on the have I.Gh. brought as a witness for interrogation. I.Gh. was at his physically abused police officers (Article 353, Criminal Code of Georgia). Next, force was used against him; he was detained and brought to the Police Station.</p> <p>4. Finally, a plea bargain was concluded with I.Gh., which does not envisage the restriction of liberty.</p>
I.S. <sup>238</sup>	Physical violence at the time of performing investigative action	<p>1. When a detainee was taken out of the TDI for participation in investigative activity he did not have bodily injury, while at return he had bruise injury on left arm (more towards the shoulder-blade area, according to TDI staff member)</p>	<p>1. I.S. told the employees of the TDI, that he got hurt during the investigative activity and that he had complaints towards police officers.</p> <p>2. Prior to court session the detainee did not have a lawyer.</p> <p>3. According to the investigator, he interrogated an accused person placed in N 2 penitentiary facility. The accused stated that he had stated about injury while in the state of agitation and that at present he did not have any complaints.</p> <p>4. Ultimately, plea bargain was concluded in relation to I.S.</p>
M.Kh. <sup>239</sup>	Physical violence	<p>1. <b>Detention report:</b> Has a scratch scar on the forehead that he received as a result of resistance against police.</p> <p>2. TDI: March 26 – small scratch scar with an eschar is observed on the forehead. March 27 – bruises on both eyes and edema on the right eye. The detainee explained</p>	<p>1. It is indicated in the detention report that M.Kh. posed resistance to police (Article 353, Criminal Code of Georgia). Gun with cartridges was seized as a result of search (Article 236, Criminal Code of Georgia). The report does not refer to the use of force.</p>

238 According to Chief Prosecutor's Office of Georgia October 22, 2015 Letter N13/65936, investigation had not been launched on the fact of bodily injuries of the detainee.

239 According to the Chief Prosecutor's Office of Georgia October 22, 2015 Letter N13/65928, investigation had not been launched on the fact of bodily injury of the detainee.



		that he got hurt at the time of detention and prior to the bringing to the TDI, he was applying a wet cloth on the face.	
V.M. <sup>240</sup>	Physical violence, inhuman and degrading treatment	<p>1. <b>Detention report:</b> No injury can be observed.</p> <p>2. <b>Registration book of detained individuals (Senaki District Police Station):</b> No injuries were observed at the time of bringing to the Police Station.</p> <p>3. <b>Detainee Registration Book:</b> At the time of taking out for drug test, detainee had injury in the area of head.</p>	<p>1. Detainee got injury in the area of head at the Police Station, where he spent almost 2 hours.</p> <p>2. According to police officers, detainee slammed head against a safe and injured himself. The refrained from specifying the details.</p> <p>3. Despite a serious chopped wound on the head, administrative detainee was taken out for drug test and was taken to the hospital only after 5 and half hours.</p>
G.J. and G.G.		<p>1. <b>Detention report:</b> G.J. has excoriations and red patches in the area of the back.</p> <p>2. <b>TDI:</b> G.J has numerous excoriations and red patches on the back, blue patch on the left eye and redness on right wrist.</p> <p>3. <b>Ambulance physician:</b> 1<sup>st</sup> call – G.J. complaints about pain, has edema in the area of left eye, as well as excoriations on the back. 2<sup>nd</sup> call – complained about pain in back and shoulder-blade area, as well as in the temple area, also complained about nausea, dizziness, had multiple hematomas In the area of shoulder blade, as well as small hematoma in the left eye socket area. Was in need of a counseling of a neurologist and in-patient treatment.</p> <p>4. <b>Detention report:</b> G.G. does not have injury.</p> <p>5. <b>Detainee registration book:</b> G.G. does not have injury.</p> <p>6. <b>TDI:</b> G.G. has redness on both eyes</p>	<p>1. Grounds for detention: Article 353, Criminal Code of Georgia.</p> <p>2. According to the visual inspection report, G.J. had stated that he had incurred injuries at police station, although he did not have complaints against police officers.</p>

240 According to the Chief Prosecutor’s Office of Georgia October 22, 2015 Letter N13/65925, investigation on the criminal case for the fact of bodily injury of a detainee was terminated due to the absence of an action envisaged under the Criminal Code of Georgia.

Based on specific circumstances of the case, several cases are especially notable from the cases provided above in the table; among them, G.A.'s case, in relation of whom, with high likelihood, firearm had been used in violation of legislation prescribed provisions. According to Deputy Chief Prosecutor of Georgia October 7, 2015 Letter N13/62784, on March 13, 2015, at the Adjara Autonomous Republic Prosecutor's Office investigation unit investigation was launched on the criminal case N170130315801, on the fact of the injury to health by exceeding the measure necessary for capturing an offender, for the elements of crime envisaged under Article 123 of the Criminal Code of Georgia. It was established through the investigation on the case that at the time of detention, during physical standoff between police officer and G.A., the accused accidentally hit the hand of the police officer, as a result of which an office gun he held in his hand accidentally went off. It is mentioned in the Letter that since, according to Article 123 of the Criminal Code of Georgia, just serious or less serious injury of health in exceeding of the measure necessary for capturing an offender is punishable, furthermore, in the action of the officer of the MOIA the elements of another crime envisaged under the Criminal Code have not been identified, investigation on the case was discontinued due to the absence of an action envisaged under the Criminal Code. Notably, G.A. who was transferred to hospital was released without returning to the TDI. Moreover, plea bargain was concluded between G.A. and the Prosecutor's Office, based on which he was sentenced to 3 years of deprivation of liberty, which was counted as conditional sentence.

Further, the case of I.Gh. is also notable, where Ozurgeti Regional Main Police Station officers decided to interrogate I.Gh. in the capacity of witness at 3:00 am, which, according to police officers, was followed by resistance by I.Gh. who was at his uncle's house. I.Gh. was detained based on Article 353 of the Criminal Code. According to Deputy Chief Prosecutor of Georgia October 6, 2015 Letter N13/62692, on March 15, 2015, I.Gh. mentioned during interview with a prosecutor from Ozurgeti District Prosecutor's Office that he had no complaints against police officers who had detained him. Therefore, investigation on the injury of I.Gh. was not launched.

In relation to the above-mentioned fact, the Public Defender thinks that, even in the absence of official complaint, Prosecutor's Office has to launch and conduct investigation on a criminal case under separate proceedings.

Administratively detained V.M.'s case is worthy of special mention, where V.M. received a chopped wound in the head at the Police Division building, next he was taken for the drug test and was taken to the hospital for receiving medical assistance only after 5 hours and 30 minutes. According to Deputy Chief Prosecutor of Georgia October 22, 2015 Letter N13/65925, on March 6, 2015, at Senaki District Prosecutor's Office investigation was launched on criminal case N068060315801, for the fact of alleged exceeding of authority in relation to V.M., by MOIA Senaki District Division officers, involving the

elements of crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia. On March 19, 2015, investigation on the mentioned criminal case was terminated due to the absence of an action envisaged in the Criminal Code of Georgia.

In relation to the above-mentioned case, it is noteworthy that after V.M. incurred injury, he was transferred for narcological testing, and medical aid was provided after quite long period, 5 hours and 30 minutes. While this fact may indicate negligence on the part of the police towards human rights of the detainee, or in the worst case, failure to provide medical aid may have been the means for exerting pressure over him.

In addition to the above-described cases, as a result of statistical analysis of cases studied during monitoring over the reporting period numerous significant trends have been identified. The cases of injuries studied under the monitoring, broken down by TDIs are provided in the table below.

N	TDI	Detained as of monitoring	Number of questionnaires <sup>341</sup>	Monitoring time
1.	Kakheti Regional TDI (Telavi)	244	36 (14,7 %)	06.2015
2.	Sagarejo TDI	139	22 (15,8 %)	06.2015
3.	Sighnaghi TDI	105	5 (4,8 %)	06.2015
4.	Kvareli TDI	217	21 (9,7 %)	06.2015
5.	Imereti, Racha-Lechkhumi, and Kv. Svaneti Regional TDI (Kutaisi)	553	83 (15 %)	06.2015
6.	Lentekhi TDI	8	–	06.2015
7.	Zestaponi TDI	184	19 (10 %)	06.2015
8.	Bagdati TDI	53	6 (11,3 %)	06.2015
9.	Chiatura TDI	92	21 (22,8 %)	06.2015
10.	Samtredia TDI	166	21 (12,6 %)	06.2015
11.	Ambrolauri TDI	0	–	06.2015
12.	Samegrelo and Zemo Svaneti Regional TDI (Zugdidi)	217	24 (11 %)	07.2015
13.	Zugdidi TDI	359	31 (8,6 %)	07.2015
14.	Senaki TDI	165	11 (6,7 %)	07.2016
15.	Poti TDI	101	10 (9,9 %)	07.2015
16.	Khobi TDI	83	9 (10,8 %)	07.2015
17.	Chkhorotsku TDI	89	8 (9 %)	07.2015
18.	Mestia TDI	8	–	07.2015

<sup>341</sup> In order to obtain necessary information contained in case materials in a systemized manner, the monitoring team was using a specially designed questionnaire for documenting information.

19.	Tetrtskaro TDI	4	–	06.2015
20.	Tsalka TDI	11	6 (54,5 %)	06.2015
21.	Marneuli TDI	254	68 (26,8 %)	06.2015
22.	Ajara and Guria Regional TDI (Batumi)	1160	121 (10,4 %)	07.2015
23.	Kobuleti TDI	148	25 (16,9 %)	07.2015
24.	Ozurgeti TDI	77	13 (16,9 %)	07.2015
25.	Chokhatauri TDI	19	10 (52,6 %)	07.2015
26.	Lanchkhuti TDI	53	0	07.2015
27.	Shida Kartli and Samtskhe-Javakheti Regional TDI (Gori)	361	67 (18,5 %)	08.2015
28.	Khashuri TDI	242	50 (20,7 %)	08.2015
29.	Borjomi TDI	63	25 (39,7 %)	08.2015
30.	Akhaltzikhe TDI	113	27 (23,9 %)	08.2015
31.	Akhalkalaki TDI	19	1 (5,3 %)	08.2015

It can be seen from the analysis of the Table that out of those TDIs where there were more than 50 detainees from January 1, 2015 as of the time of monitoring, the monitoring group identified the highest number of noteworthy cases at TDIs of Borjomi, Marneuli, Akhaltsikhe, Chiatura and Khasuri. At these TDIs, the ratio of the cases of injury identified in these TDIs to the number of detainees is above 20%. With slight difference in percentage, Shida Kartli and Samtskhe-Javakheti Regional (Gori) TDI, as well as Kobuleti, Ozurgeti, Sagarejo, Imereti, Racha-Lechkhumi and Kv. Svaneti Regional (Kutaisi) and Kakheti regional (Telavi) TDIs come next.

It has been ascertained following processing of collected information that in 419 cases detention reports contain a record about bodily injury, and visual inspection reports – in 716 cases. Respectively, in 297 cases detention report does not indicate injury while they are indicated in visual inspection reports. This may be due to the deficiencies in visual inspection of body and documenting of injuries, although, at the same time a firm assumption arises that detainees may have incurred injuries under police control. Similarly, the study has shown that in 418 cases in visual inspection reports there are more bodily injuries described than contained in detention reports and detainee registration books.

According to police officers, the lack of adequate lighting and the method of physical inspection has negative bearing on complete description of injury in detention report. Hence, as part of the study the analysis as to the influence of the presence/absence of adequate lighting on describing injury in detention report was performed. It was established that individuals were detained during daylight only in one third of cases. It has

also been ascertained that in one third of cases where injuries are mentioned in the visual inspection report only, individuals had been detained during daylight. Notably, the study has identified 50 cases when individuals were detained during daylight, while injuries on the head, face and eye socket areas are indicated only in the visual inspection report drawn up by TDI employees. In these 50 cases, if an individual had injury at the time of detention, detaining police officer was required to document it.

The study shows that out of those 297 cases where injury is not indicated in the detention report, in 236 (79.5%) cases individuals were detained administratively, while in 61 cases (20.5%) – under criminal procedure, which is 52.2% of total number of administrative detention related questionnaires, and 20.8% of criminal detention related questionnaires processed. In all fairness, it should be mentioned that in cases of administrative detention one of the reasons for such high indicator of not stating injuries in detention reports is the absence of a relevant field about bodily injuries in the administrative detention report. In cases where administrative detention protocol has record about bodily injuries, as a rule, such information is included in the notes field.

As part of the study, the location of injuries was studied. The data<sup>342</sup> according to visual inspection reports drawn up at TDIs is provided in the table below:

Location	N	%
Head area	14	1,9
Face area	82	11,4
Eye socket area	39	5,4
In various parts of the body (except for head, face and eye socket areas)	263	36,7
Head and facial area	7	1
Head and eye socket area	4	0,5
Head area and various parts of the body (except for face and eye socket)	20	2,8
in head, face and eye socket area	2	0,3
in head and face area, as well as in various parts of the body	12	1,7
In head and eye socket area, as well as various parts of the body	1	0,1
In face and eye socket area, as well as various parts of the body	51	7,1
In face and eye socket area	31	4,3
In face area and various parts of the body (except for head and eye socket area)	136	19

<sup>342</sup> For the purposes of the study, the location of injuries was generalized and grouped. Since special focus of the study was injuries in head, face and eye socket area, these parts were singled out separately.

in eye socket area and various parts of the body (except for head and face)	41	5,7
In head, face and eye socket area, as well as various parts of the body	13	1,8
	<b>Total: 716</b>	

The analysis of data provided in the table shows that in 63.3% of cases, detainees had injuries, separately and in combination, in head, face and eye socket area. Injury in head area (separately and together with other injuries) has been observed in 63 cases. Injury in face area (separately and in combination with other injuries) is observed in 334 cases. Injury in eye socket area (separately and along with other injuries) is observed in 182 cases. Notably, as reported by detainees, injury in head area (separately and along with other injuries) at the time of detention was incurred in 16 cases, in face area – in 59 cases, in eye socket area – in 31 cases.

It was examined as part of the study whether the time of the emergence of injury is indicated in the visual inspection report. See the table below:

Time of injury	
Prior to detention	581
At the time of detention	116
Following detention	11
No record	32
	<b>Total: 740</b>

It has been examined as part of the study as to out of 740 cases in how many cases the detainee had complaints towards police and in how many cases there was no record as to the presence or absence of complaint. It appeared that complaint towards police was expressed by detainees in 69 cases, detainees did not have complaints in 626 cases, and in 45 cases visual inspection report drawn up at TDIs did not have record as to the complaint towards police.

Time of incurring injury	Complaint towards police			Total
	Has complaint	Does not have	No record	
Prior to detention	9	543	29	581
At the time of detention	50	57	9	116
Following detention	8	3	0	11
No record	2	23	7	32
<b>Total</b>	<b>69</b>	<b>626</b>	<b>45</b>	<b>740</b>

Following cross-tabulation of the data about location of bodily injury, time of injury and complaint towards police it appeared that in 8 cases individuals has injuries in different parts of the body and states that they have complaints towards police, but has received injuries prior to detention.

For cases when injury was incurred at the time of detention, information about location of injury and information about complaint of a detainee (according to visual inspection report) can be seen in the table below:

Injury location	Has complaint	Does not have complaint	Is not indicated	Total
Head area	1	2	0	3
Facial area	4	6	0	10
Eye socket area	3	3	0	6
Other part of the body (except for head, face and eye socket)	15	15	4	34
Head and eye socket area	0	1	0	1
Head area and other parts of the body (except for face and eye socket area)	2	2	1	5
Head and face area, as well as in other parts of the body	1	2	0	3
In Head and eye socket area, as well as other parts of the body	0	1	0	1
In facial and eye socket area, as well as other parts of the body	3	6	1	10
Facial and eye socket area	2	3	0	5
Facial area and other parts of the body	16	10	2	28
in eye socket area and other parts of the body	1	3	1	5
in head, facial and eye socket area, as well as other parts of the body	2	1	0	3
	<b>Total: 50</b>	<b>Total: 55</b>	<b>Total: 9</b>	<b>Total:114</b>

The analysis of the table provided above shoes that in 55 cases individuals had numerous injuries on the body, which, according to their own explanation, they had received during detention, although they did not have any complaints towards police. It can also be established from the table that in 9 cases when injuries were incurred during deten-

tion, it is not indicated in visual inspection report whether a detainee has complaints towards police.

Notably, 11 cases were identified during inspection, when detainees would indicate post-detention period as the time of emergence of injury. Of those, 9 detainees had injuries in the area of head, face and eye socket, while 2 detainees – in various parts of the body. Out of the mentioned individuals just 8 detainees stated that they had complaints towards police, and 3 detainees did not say they had complaints towards police.

According to the data provided above, although detainees, according to their own explanation, in 3 cases had incurred injuries following detention, and in 55 cases – at the time of detention, in face and eye socket area, as well as in various parts of the body, they did not have complaints towards police. Such explanation is less convincing. Presumably, in the above-mentioned cases this is self-censorship due to fear, stress and uncertainty, since at the first stage of deprivation of liberty the threat of intimidation, pressure, abuse, and other ill-treatment is highest and an individual is in especially vulnerable situation during such time.

As part of the study, the circumstances of detention were also examined. The goal of such examination was to establish whether in studied cases the detention of individuals was preceded by abuse of citizens by such person, physical stand-off with them, as well as disobedience to legitimate demand of police officers or physical resistance against them, their verbal abuse and whether police used force.

The study, based on detention reports, has identified just 11 cases of physical confrontation with other citizens. 44 cases of verbal abuse by detainees towards citizens, and 171 cases of abusing police have been identified. The analysis of the data shows the trend of exerting aggression by citizens towards police. 209 cases of random swearing have been observed.

Out of examined 179 cases where detention was made based on Article 166 and 173 of the Administrative Violations Code of Georgia, only in 5 cases there is high likelihood that injuries were incurred following physical confrontation with another citizen. In 15 cases too, we may presume that verbal insult of citizens was preceded by physical confrontation, which is not indicated in the report. In 51 cases of abuse towards police, since the detention report does not refer to circumstance that may give rise to the infliction of injury prior to detention, we can presume that injury was incurred following contact with police officers.

Out of 227 cases of disobedience of legitimate demand of police officer and resistance against police officers, according to detention report, detainees verbally abused police officers in 74 cases. In such cases, the likelihood of the use of force by police and respec-



tively, that of exceeding of force, is high. It should also be mentioned here that during monitoring interviewed police officers were very concerned about the fact of verbal abuse by offenders. They stated that it is very difficult for a Georgian man to tolerate swearing at his mother, but they had to endure all this.

As part of the study, it was examined as to what injuries did person had in cases of random swearing, abusing police officers and the use of force by the police. The data according to visual inspection report can be seen in the table below:

Location of injury	Random Swearing	Abusing police officers
In eye socket area	4	1
In face area	0	1
In head and eye socket area	0	1
In head, face and eye socket area	0	1
In various parts of the body (except for head, face and eye socket)	3	5
in the area of head and various parts of the body (except for face and eye socket)	1	1
In the area of head and face, as well as various parts of the body	1	1
In the area of eye socket and face, as well as various parts of the body	5	3
In the area of eye socket and face	2	1
In the area of face and various parts of the body (except for head and eye socket area)	4	2
In the parts of eye socket and various parts of the body (except for head and face area)	1	2
In various parts of the body, including in the area of head, face and eye socket	0	1

As can be seen from the analysis of the above table, in absolute majority of cases of random swearing, abusing police staff and the use of force, detainees have injuries in the area of head, face and eye socket. Furthermore, out of 21 cases of random swearing and the use of force by the police, injury is not indicated in 10 cases in detention reports, while out of 20 cases of abusing police staff – in 9 cases. Based on all of the above-mentioned, there is an assumption that police staff may have exercised ill-treatment.

It was examined under the study, out of processed 740 cases, in how many cases did defiance or resistance to police occurred according to the detention reports. The study has

identified 227 cases (30.7%) of defiance/resistance, while 513 examined reports (69.3%) do not contain such indication. Out of these, record as to defiance/resistance is the most often seen in cases when individuals had been detained based on Article 166 and 173 (80 cases – 35.2%) of Administrative Violations Code, and detained based on Article 353 (43 cases – 18.9%) of the Criminal Code. This indicator is high also separately in case of detention based on Article 173 alone (69 cases – 30.4%).

According to the study, in 80 cases (45.2%) out of 177 cases when person were detained based on Articles 166 and 173 of Administrative Violations Code, detention report indicates defiance/resistance. Such indication is present in 69 cases (43.1%) out of 160 cases when individuals were detained under Article 173 alone, while in cases of detention based on Article 353 of the Criminal Code, out of 50 cases – in 43 cases (86%).

It has been established as a result of the study that out of 227 cases when defiance/resistance was indicated in detention reports, in 3 cases (1.3%), there is full description as to defiance/resistance, in 4 cases, reports contain partial description (1.8%), in 96.9% of cases police employees did not make such description.

Out of 740 cases, the fact of the use of force is indicated only in 46 cases (6.2%), in 27 cases (3.6%) it is mentioned that the force had not been used, while in 667 cases (90.2%) detention reports do not have indication about the use of force. Out of 46 cases when the use of force was mentioned, the method for the use of force is indicated in the detention report only in 2 cases (4.3%), in 3 cases (6.5%) reports contain partial description, and in 41 cases (89.2%) report does not mention anything about the method of the use of force.

The number of cases when detention report makes reference to the defiance/resistance and the use of force is 37 (16.3%), while the number of cases when defiance/resistance is mentioned but the fact of the use of force is unclear from the detention report, is 189 (83.3%). In 1 case police indicates to the fact of defiance/resistance, but states that force had not been used. It is also noteworthy that out of 50 cases when individuals were detained based on Article 353 of the Criminal Code, in 44 cases (88%) the use of force is not indicated in detention reports. In such cases, the probability of the use of force is high, although, it seems that police staff avoids making record about the use of force. Conversely, 9 cases have been observed, when detention report mentions that there had not been any defiance/resistance, yet reports contain indication on the use of force.

Based on all of the above-mentioned, the Public Defender is of the opinion that in 2015, the issue of ill-treatment by police of detainees is pressing and is alarmed by the fact that in the majority of cases it can be observed that police officers prepare for physical and psychological violence in advance, purposefully, and exercise such violence to get confession, which is an element that qualifies as torture crime.

It is also alarming that based on 11 proposals sent by the Public Defender to the Chief Prosecutor of Georgia in 2015, investigation was launched based on Article 333 of the Criminal Code, while the circumstances indicated in the Public Defender's proposals comprise the elements of torture and inhuman or degrading treatment. The Public Defender urges the Prosecutor's Office of Georgia to launch investigation under Articles 144<sup>1</sup> and 144<sup>3</sup> of the Criminal Code.

It is a significant problem that police has neglected such legal safeguards of detainees as briefing about rights, putting them in contact with family and lawyer. Furthermore, it is especially notable in the reporting period, as indicated in detention reports, the trend of aggression of citizens towards police, in which case, given inadequate qualification of police staff, the probability of the use of force and respectively, overstepping the bounds of force by them, is high.

#### RECOMMENDATIONS TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA

- To take all necessary measures to avoid torture, inhuman and degrading treatment, as well as breaching human rights by police officers, among other measures, through relevant training, increasing accountability and strict supervision

#### RECOMMENDATIONS TO THE CHIEF PROSECUTOR OF GEORGIA

- Ensure effective investigation of alleged facts of torture and inhuman or degrading treatment of detainees by police, which implies comprehensive and complete examination of cases
- In case torture and inhuman and degrading treatment of detainees by police is discovered, launch investigation and conduct it under Articles 144<sup>1</sup> and 144<sup>3</sup> of the Criminal Code.

### 4.4. PRINCIPAL SAFEGUARDS AGAINST ILL-TREATMENTS

#### 4.4.1. BRIEFING DETAINEES ABOUT THEIR RIGHTS

According to Article 5(2) of the European Convention on Human Rights, Everyone who is arrested shall be informed promptly, in a language that he understands, of the reasons for his arrest and of any charge against him. Hence, detainees must be provided specific information including accurate details, so that they able to challenge the lawfulness of detention at a relevant body based on Article 5(4) of the Convention. For the purposes

of this Article, detainees should be briefed using simple, non-technical language, so that they understand the grounds for detention and charges against them.

According to the position of the European Committee for the Prevention of Torture (CPT), it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language that they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.<sup>343</sup>

The legislation of Georgia guarantees the right of detainee to receive information about their rights<sup>344</sup>, however during the reporting period individuals, without their consent, had been taken from the street for a “conversation” in a police car or police station, during which time they were not provided absolutely any information about own rights. If this was done to have a “questioning”, Georgia legislation envisages that in such case information is provided voluntarily and prior to the commencement of “questioning”, individual must be briefed about their rights.<sup>345</sup> UN Special Rapporteur on Torture stressed that taking a person for a “conversation” without explicit and freely given consent not only restricts that person’s right to liberty and security but also heightens the risk of torture and ill-treatment.<sup>346</sup>

The Public Defender regards that the practice of taking individual for “conversation” into the police vehicle or station creates high risk of arbitrary detention and ill-treatment. In any case of the deprivation of liberty persons have to be briefed without delay and in a language they understand, about their rights.<sup>347</sup>

It has been established following inspections conducted by the Special Preventive Group that the time of the entry of some of the individuals into police stations precedes their factual detention time, which raises suspicion that unlawful deprivation of liberty took place in relation to such persons, since at the time of bringing to the station, they had not been detained officially and most likely, they would not have been briefed about any of their rights.

Staff at the Kakheti Regional Police Station explained that the precedence of the time

343 CPT Standards, Par. 44, available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 25.03.2016]

344 Criminal Procedure Code of Georgia, Article 38(1-20); The Code of Administrative Offences of Georgia, Article 245(1)

345 Criminal Procedure Code of Georgia, Article 113(1-2)

346 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, 2015, Par. 43, Available in UN Official languages, at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/57/Add.3](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3) [Last viewed on 26.03.2016].

347 CPT Standards, p. 6, Par. 37, Available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 25.03.2016].

of the entry into the Station relative to the time of detention is conditioned by the fact that individual was brought to the Police voluntarily, for performing a check according to Article 45<sup>348</sup> of the Code of Administrative Offences of Georgia, and next they were transferred for narcological test only after detention report was drawn up.<sup>349</sup>

UN Working Group on Arbitrary Detention regards that any confinement or retention of an individual accompanied by restriction on his or her freedom of movement, even if of relatively short duration, may amount to de facto deprivation of liberty.<sup>350</sup> Therefore, if an individual is placed under the control of law enforcement officers, who are taking him/her to the police building, this already amounts to the deprivation of liberty and it is necessary that an individual be briefed from the very onset as to their procedural rights.

According to Georgian legislation, following personal inspection, interview, and sanitary treatment of individuals brought to Temporary Detention Isolator TDI, duty officer in charge or another duty officer, at the order of the former, briefs detainees about, and, if possible, hands over a copy of internal rules of the isolator TDI, as well as the list of their procedural rights and duties, and afterwards they are confined in cells.<sup>351</sup>

Although the handover of a list of procedural rights and duties to a detainee is not absolute obligation of TDI staff, in conversation with the monitoring group TDI administrations mentioned that prior to placing an individual in a cell they are briefed about their rights and duties in language that they understand, they have them sign and are provided a copy to take into a cell with them.

Group members have observed at several TDIs TDIs that the list of rights and duties to be provided to detainees was incomplete and did not contain the rights individuals should enjoy while in custody. In some cases, detainees would say that no one had explained to them the right to walk and shower; therefore they could not enjoy this right.

The Public Defender deems that all individuals brought to the Temporary Detention Isolator TDI should be briefed in a clear and understandable manner not only about procedural rights but also all those rights as well as duties they have during confinement. Since briefing about these rights usually takes place immediately after detainees are brought to TDI, when an individual is agitated and may sign on the sheet without fully perceiving their rights, it is important that they are given this list of rights to take with

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348 Article 45, Administrative Violations Code of Georgia: Illegal purchase or storage of small amount of drug substance, without the intention of resale, and/or the consumption of a drug substance without a physician's prescription.

349 On this issue see the Public Defender of Georgia 2015 Report to the Parliament, Chapter Right to Freedom and Security, available at: <http://www.ombudsman.ge/uploads/other/3/3512.pdf> [Last viewed 06.04.2015].

350 Report of the Working Group on Arbitrary Detention (December 24, 2012) Par. 55, available in English at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf) [Last seen on 26.03.2016].

351 The Minister of Internal Affairs February 1, 2010 Order N108; Annex N3; Art. 3(4).

them into a cell, to be able to review their rights and duties later, in a relatively calm environment.

#### 4.4.2. INFORMING A FAMILY ABOUT DETENTION, ACCESS TO LAWYER AND PHYSICIAN

##### **Informing family**

The Committee against Torture emphasizes the importance of the right to inform family.<sup>352</sup> The European Committee for the Prevention of Torture (CPT) also points a detained person's right to have the fact of his/her detention notified to a third party immediately. Of course, the CPT recognizes that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons thereof, and to require the approval of a senior police officer unconnected with the case or a prosecutor).<sup>353</sup> It should be noted that international law does not require to have a detainee notify their family members or third parties in person (if this may delay investigation of the case), but police officer may do this.<sup>354</sup> The purpose of this right is to timely inform a detainee's family (or a third party) about the fact of detention and a detainee's whereabouts.

According to Article 177 (1) of the Criminal Procedure Code of Georgia, a prosecutor or at a prosecutor's instruction -- an investigator -- should notify a detainee's family members or third parties about the detention no later than 3 hours after detention. Article 245(1) (c) of The Code of Administrative Offences of Georgia envisages the right of a detainee, if willing, to have a relative listed thereof notified about the fact of his/her detention and whereabouts.

Usually, police grants detainees right to contact their relatives or lawyer in about 2-3 hours. The practice for notifying family members or lawyers about detention by police is different. In some cases, police officers allow detainees to call family member using their own telephone (only after verifying that the person detainee is calling is really a family member), or a police officer calls the number provided by detainee and notifies the family him/herself.

352 UN Committee Against Torture (CAT) General Comment N2, Par.13, available in English at: [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf) [Last viewed on 25.03.2016]

353 CPT Standards, Pg. 15, Par. 43, available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 25.03.2016].

354 Monitoring Police Custody: A Practical Guide (Association for the Prevention of Torture, 2013) Pg. 127.

Usually, at Temporary Detention Isolators, on duty officer informs an investigator who, in turn, calls family member of the detainee and informs them, a report is drawn up based on this phone notification; however, during monitoring it was identified at Zugdidi regional and Chkhorotsku TDI/STDI that duty officers were not aware of this obligation. According to Zugdidi duty officer, they notify a family only if a person is in custody for 2-3 days, while Chkhorotsku detention isolator employee said that they do not have a family notification obligation at all.

During the reporting period, at MOIA Kobuleti Main Station, alleged suspension of the right of R.T. to contact lawyer and family members had been observed. The Public Defender applied to the Chief Prosecutor's Office of Georgia demanding the investigation of alleged fact of ill-treatment of R.T. Similar case took place at Tsalenjikha District Department Jvari Police Station, where a detainee D.P. was allegedly subjected to ill-treatment, which, *inter alia*, comprised the suspension of the right to contact family members. In this case, too, the Public Defender applied to the Chief Prosecutor's Office with a proposal.

The CPT deems that fundamental guarantees granted to detainees will be reinforced at police stations if a unified and detailed record is maintained for each detainee, to reflect every aspect of their custody and related actions (time of and grounds for the deprivation of liberty, when detainee was briefed about rights, when they contacted family/consulate and lawyer, and when they visited the detainee). Moreover, lawyer should have access to the mentioned records.<sup>355</sup>

It is worth noting that neither police divisions nor TDI/STDI maintain a registry detailing the number of individuals who demanded the enjoyment of the right of informing a family, how many exercised this right, who contacted relatives of detainee, what information was provided, etc. Which leaves the impression that even when a detainee asks that their family members are informed about detention, this will depend on good will of police, since the enjoyment of this right is not documented as some unified, systematized registry, therefore, in cases when a detainee is unable to enjoy the mentioned right, since their family members or friends were unreachable over the phone, it is difficult to establish whether police employees actually made a call and were unable to reach detainee relatives or whether they arbitrarily suspended this right for a person.

The improvement of recording system at Temporary Detention Isolators/STDI, penitentiary facilities via the refinement of relevant registries is envisaged under 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment of Persons,<sup>356</sup> hence, the Public Defender deems that the refinement of

355 CPT Standards, P. 7, Par. 40, available in Georgian at:<http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 25.03.2016].

356 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or

registries should also involve proper documenting of demanding notification to family or lawyer by detainees.

### Access to a lawyer

The CPT has also emphasized that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend - and stay at - a police establishment.<sup>357</sup>

In his report on the mission to Georgia in March, 2015, UN Special Rapporteur on Torture notes that, with regard to access to lawyers, overall, situation is satisfactory and visits by lawyers are granted and are held in confidential settings.<sup>358</sup> Although he mentions that there have been several cases of physical and verbal abuse by law enforcement officers despite the guarantees provided for by the law for arrested and detained persons with regard to legal counsel, medical examination, and notification of relatives about the arrest.<sup>359</sup>

Presence of a lawyer at a police station is one of the effective means for prevention of ill-treatment of a detainee, especially in the first hours of detention, so that in case of detection of ill-treatment, lawyer briefs detainee about the filing of complaint and other safeguard mechanisms.<sup>360</sup> Lawyer should be present during all investigative actions taken in relation to a detainee. This, on the one hand, will significantly lower the risk of ill-treatment of a detainee and, on the other hand, lawyer's presence during interrogation or other investigation activities is important for the police as well in case ungrounded allegation concerning ill-treatment is made against police. It is also important that the meeting of a detainee and a lawyer be held without attendance of law enforcement officers, so as not to enable them to overhear the conversation. According to the order of the Minister of Internal Affairs of Georgia, meeting with the Public Defender is held at the temporary detention isolator TDI investigation room, according to the wish of a lawyer and a defendant. The meeting may be held in absentia of others, irrespective of the number of meetings and time.<sup>361</sup>

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Punishment of Persons, Par. 1.2.8.

357 CPT Standards, P. 6, Par. 37, available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last seen on 25.03.2016]. Pg. 13, Par. 41.

358 Report of UN Human Rights Council Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, 2015, Par. 71, available in UN Official languages, at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/57/Add.3](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3) [Last accessed on 26.03.2016].

359 Ibid., Par. 42.

360 CPT Standards, P. 13; Par. 41, available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 25.03.2016].

361 Minister of Internal Affairs February 1, 2010 Order N 108, Annex N 3, Article 8(2).



The Public Defender has mentioned earlier<sup>362</sup> that access to a lawyer should be ensured within shortest timeframe from detention, since the threat of intimidation, pressure, abuse and other ill-treatment is highest during the very first stage of restriction of liberty when an individual is especially vulnerable.

Monitoring group, when inspecting MOIA temporary detention isolatorsTDIs has discovered that G.M. detained in Telavi isolatorTDI demanded a lawyer and contacting family members at Signagi District Station, and police officers failed to act upon this demand, while N.A. detained together with him was allegedly subjected to ill-treatment and failed to enjoy the right to a lawyer. Five individuals visited by the group at the Telavi isolatorTDI stated that while in police custody, they were not granted the right to use the services of a physician and a lawyer.

It was established on the case of G.Dz., examined by the Public Defender that upon the instance of detention in Tbilisi the detainee was allegedly subjected to ill-treatment, specifically, beating, afterwards he was transferred to Kutaisi temporary detention isolatorTDI, he was not briefed about rights, at the first stage of legal proceedings he was unable to use a lawyer's assistance and was in the state of vulnerability. Public Defender has suggested to the Chief Prosecutor's Office of Georgia to launch investigation on the above-mentioned case.

Although the right of access to a lawyer is guaranteed under administrative<sup>363</sup> as well as criminal<sup>364</sup> proceedings, during the monitoring the trend has been identified that administrative detainees almost never use lawyer's assistance.

One of key reasons for rejecting lawyer's assistance by a detainee is finance. Detainees think that hiring a lawyer right away will be additional high expenses for their families and often use lawyer's assistance only during the court trial. European Court on Human Rights ruled that the state has obligation not only to ensure access to lawyer for a detainee, but also, in case of a manifest failure by counsel appointed under the legal aid scheme to provide effective representation, intervene to ensure effective enjoyment of the right to a lawyer for a detainee.<sup>365</sup>

According to the Law of Georgia on Legal Aid, free legal aid to an individual is provided only in cases explicitly stipulated by law, as well as according to the rule prescribed by this Law, provided an accused person, convicted person and/or acquitted individual is unable to pay.<sup>366</sup> According to the same Law, a maximum two days is prescribed for

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362 Public Defender's 2014 Report to the Parliament; Pg. 208; See link <http://www.ombudsman.ge/uploads/other/2/2439.pdf> [Last accessed on 26.03.2016].

363 Administrative Violations Code of Georgia; Art. 255.

364 Criminal Procedure Code; Art. 38(5).

365 ECtHR January 20, 2009 Judgment on the case *Güveç v. Turkey*, N70337/01, Par. 130-131.

366 The Law of Georgia on Legal Aid, Art. 21(1).

assigning a legal aid lawyer, provided an individual or their relative refers to the Legal Aid Office with a request to allocate a lawyer. The same two-day period applies in cases when due to inability of an accused person to pay; investigation body refers to legal aid office with a demand to assign a lawyer.

Fast access to legal counsel and aid, especially at the time of detention of an individual, is main guarantee for fair trial and rule of law. The involvement of a lawyer at very early stage ensures protection of these rights and is an important mechanism for the protection against torture and other forms of ill-treatment. Implementation of international standards for timely access to a lawyer is also envisaged under the 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment.<sup>367</sup>

The Public Defender regards that given the existing regulations, specifically, two-day period, the enjoyment of the right to lawyer within short timeframes from the instance of detention by detainee is effectively ruled out, unless they can afford hiring a lawyer.

In addition to lawyers appointed under legal aid mechanism, a number of NGOs provide to detainees pro bono legal aid, but primarily in Tbilisi and in large cities, hence, getting free legal aid from NGOs in regions is a problem.

Additionally, documenting the fact of demanding a lawyer by a detainee is a problem. When a detainee demands contacting with a lawyer, there is no mechanism that would record in a report or via another registered document that a person was truly put in contact with a lawyer, or police officer arbitrarily denied the enjoyment of this right based on some made up motif. Therefore, the Public Defender deems it important to have every demand for the enjoyment of the right to a lawyer documented and have in place some registry where every such demand and relevant actions would be recorded.

## **Access to a physician**

An individual must be provided necessary medical aid upon detention, which implies the service of qualified physician without any delay. The right to receive independent medical service is enshrined by UN CAT<sup>368</sup> and Human Rights Committee.<sup>369</sup> A doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor

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367 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment of Persons, Par. 1.2.1.

368 UN Committee Against Torture, General Comment N2, Par.13, Available in English at: [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf) [Last accessed on 25.03.2016].

369 UN Human Rights Committee General Comment N20, Par. 11.

should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).<sup>370</sup>

According to ECtHR case law, Article 3 of the Convention envisages supporting health and welfare of detainees, *inter alia*, it obliges government to ensure requisite medical assistance to detainees.<sup>371</sup> It is important that a detainee should be able to use medical services from the moment of detention, which also brings down the risk of ill-treatment. In addition, during medical examination, a person's state of health must be described in detail and examination results should be made available to the detainee or their lawyer.

Upon bringing a detainee to the temporary detention isolators of MOIA of Georgia, TDIs individuals' visual examination takes place; this procedure is performed in a separate room by an authorized person of the isolatorTDI, without the presence of anyone else. During the examination detainees are asked about their health, as well as actual external injuries on their body (if any) will be inspected. If a detainee complains about his/her health, or he/she has obvious indications of sickness, ambulance will be called immediately, which will determine whether a person is fit enough to be placed in the lockup. If, according to medical professional's conclusion, the detainee may not be confined in a temporary detention isolatorTDI, such person is immediately sent to a medical treatment facility.<sup>372</sup>

According to the statistical data provided by the MOIA of Georgia, a total of 241 people were transferred to a medical facility after arrest due to health problems during the reporting period. In 2015, there was one case of a suicide attempt by the detainee of Shida Kartli and Samtskhe-Javakheti regional isolatorTDI (Gori), which was timely prevented by the temporary detention isolatorTDI staff, ambulance was called, but there was no need in transferring the detainee to an in-patient facility.

According to the established practice, an ambulance call is made at the same time when a detainee is admitted to a temporary detention isolatorTDI. An ambulance physician conducts medical examination of a detainee. Public Defender welcomes this practice, since he believes that ambulance physician is not subordinated to the MOIA and is independent from it in their work. Despite the afore-mentioned, the following essential problems have been identified as a result of the inspection of temporary detention isolatorsTDIs by the monitoring group:

- In some cases (primarily in regions) ambulance team arrives late, while de-

370 CPT Standards, p.15; Paragraph 42, available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 25.03.2016].

371 ECtHR October 26, 2000 Judgment on the case *Kudła v. Poland* N30210/96 (Grand Chamber) Par. 94; ECtHR October 15, 2002 Judgment on the case *Kalashnikov v. Russia*, N47095/99, Par. 95.

372 The Minister of Internal Affairs February 1, 2010 Order N108, Annex N3, Article 3(1-3).

tainee is not taken into the temporary detention isolator TDI until a physician arrives.

- Often, ambulance physicians provide incomplete description of detainee's health. Their records are often non-informative and do not depict real condition.
- Initial medical examination of detainees is usually performed in the presence of isolator TDI staff, due to the reason that ambulance physician is afraid to remain alone with a detainee. There are cases when during this time officer who had detained the individual and brought to the temporary detention isolator TDI is nearby, which negatively influences the openness of a detainee during conversation with a physician (listing actual causes of injury, stating complaints against police).
- As for documenting medical inspection of a detainee, there is no unified standardized form for detailing health status of detainees; hence, physicians do not provide complete description of injuries.
- Often, there is a mismatch between records of visual inspection report drawn up at the temporary detention isolator TDI and those of ambulance physicians.

The Public Defender considers that all medical examinations should be performed in a setting that excludes the possibility for law enforcement officers and other non-medical personnel to hear and observe the examination process, except for individual cases when a physician requests an exception; although this should not become regular practice and in case when a physician is afraid to be alone in a room with a detainee, other alternative means for security should be designed, since the presence of a police officer during the examination of a detainee may become the cause for incomplete documenting of detainee health status, as well as of the origin of injury.

The Public Defender also emphasizes the importance of using comprehensive and unified standard for documenting injuries, which would be in line with The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Commonly known as the Istanbul Protocol).

According to the CPT, the record drawn up after the medical screening of a person at custody facility should contain:

- an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment)
- a full account of objective medical findings based on a thorough examination

- the health-care professional’s observations in the light of the above points, indicating the consistency between any allegations made and the objective medical findings.

The record should also contain the results of additional examinations carried out, detailed conclusions of specialized consultations and a description of treatment given for injuries and of any further procedures performed. Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file.<sup>373</sup>

Out of 740 examined cases in relation to documenting of injuries by ambulance physicians, 264 cases have been identified, where injury is indicated in visual inspection report, while ambulance physician does not indicate injury; 67 cases when injury is indicated in visual inspection report, while physician states that a detainee does not have injuries; in 3 cases physician describes injury, while visual inspection report states that detainee does not have injuries; in 91 cases, there is a mismatch between the location of injury indicated in visual inspection report and that in a physician’s record.

The study has shown that out of the cases where physician does not provide an indication about injury, in 21 cases, according to visual inspection report, detainee had injury in the area of head, in 123 cases – in the area of face, and in 59 cases – in the area of eye socket (separately and in combination). Even if a detainee did not take off clothes, which is necessary component for complete inspection, physician in any case should have been able to detect injuries in the area of head, face and eye socket. Out of the cases where physician states that detainee did not have injury, according to visual inspection report, in 5 cases detainee had injury in the area of head, in 25 cases – in the area of face, in 22 cases – in the area of eye socket.

In the table below the cases are provided according to temporary detention isolators T-DIs, when ambulance physician does not indicate at all as to the presence or absence of injuries (no record), while visual inspection report indicates injury and in another case, when injury is recorded in visual inspection report, although ambulance physician states that detainee does not have injury.

Isolator TDI	No record	No injury
Sagarejo TDI	4	1
T Salka TDI	2	2

373 CPT 23<sup>rd</sup> General Report, 2013, Par. 74.

Marneuli TDI	52	0
Kutaisi TDI	22	9
Chiatura TDI	4	1
Zestaponi TDI	6	2
Samtredia TDI	4	0
Batumi TDI	34	9
Kobuleti TDI	7	2
Ozurgeti TDI	3	1
Chokhatauri TDI	9	0
Zugdidi TDI	15	3
Zugdidi Regional TDI	4	4
Senaki TDI	3	1
Khobi TDI	1	1
Poti TDI	0	3
Chkhorotsku TDI	2	2
Gori TDI	45	6
Khashuri TDI	13	9
Borjomi TDI	7	6
Akhalkalaki TDI	1	0
Akhaltshikhe TDI	11	1
Kvareli TDI	7	1
Sighnaghi TDI	2	2
Telavi TDI	6	1
<b>Total</b>	<b>264</b>	<b>67</b>

According to the data provided by the MOIA, in response to the recommendations<sup>374</sup> of the Public Defender provided in 2015, for the improvement of timely and adequate medical services for detainees at temporary detention isolatorsTDIs, in October, 2015, within the MOIA Human Rights and Monitoring Department Medical Services Unit was formed where a total of 27 physicians will be employed, who will serve at the 8 busiest temporary detention isolatorsTDIs of the Department (6 regional and 2 in Tbilisi).

It can be ascertained from the data received from the MOIA of Georgia that several special groups are working towards the improvement of medical services:

- working group in charge of designing a form for examination of individual by medical personnel at the time of admission to the isolator;

374 Public Defender's 2014 Report to the Parliament; Pg. 218, See the link <http://www.ombudsman.ge/uploads/other/2/2439.pdf> [Last accessed on 26.03.2016].

- working group in charge of drafting two legal acts: (1) one relates to managing hunger strike at temporary detention isolatorsTDIs and (2) the second one is concerning the obligation to transfer the copies of health related documents about a person confined at temporary detention isolatorTDI to a relevant penitentiary facility, in case of transfer thereof;
- working group which, through the involvement of local experts, is designing operational instructions for temporary detention isolatorTDI medical personnel;

The MOIA also plans to conduct trainings for medical staff employed at temporary detention isolatorsTDIs on the following topics: documenting injuries according to the Istanbul Protocol, creating healthy environment at isolatorsTDIs and prevention of diseases, as well as mental health issues.<sup>375</sup>

It should be noted that the objective of earlier recommendations of the Public Defender was provision of adequate medical services to detainees at temporary detention isolatorsTDIs by independent and impartial physicians that would enable detainees to report to physician openly and without fear about all injuries or complaints they may have during or following detention. Therefore, the presence of physicians employed by the MOIA at temporary detention isolatorsTDIs jeopardizes the achievement of this objective, since, during the rendering of medical services all individuals within the temporary detention isolator (isolatorTDI (TDI staff as well as physician) are subordinated to the MOIA, which may raise in a detainee fear and sense of helplessness, that his/her health condition will not be duly described and that alleged ill-treatment by police will not be acted upon.

The Public Defender deems that posting MOIA medical staff to temporary detention isolatorsTDIs, on the one hand, will ensure the provision of fast and timely medical services, but on the other hand, the degree of impartiality and independence of such staff is questionable, which may in the future hamper the identification of ill-treatment of detainees. Given this situation, the very activities of the MOIA medical staff and determination of the degree of their independence will be the subject of special monitoring by the NPM in the future.

## RECOMMENDATIONS

### TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA

- Discontinue the practice of so-called “conversations” with citizens, which actually involves restricting the liberty of an individual by police officers

<sup>375</sup> MOIA Letter 15.01.2016.

- Take all necessary measures to ensure that all detainees or persons whose liberty is otherwise restricted are immediately briefed about their procedural rights
- Take all necessary measures to ensure that all individuals brought to the temporary detention isolatorTDI are briefed clearly and in a language he/she understands briefed not only about procedural rights, but all rights and duties they have while in custody
- To ensure that all detainees are provided, or otherwise make available to them, a copy of the list of rights and duties for reviewing while in lockup
- adequately document demands of detainees about notifying family or lawyer, by means of maintaining relevant registers
- ensure timely and adequate medical service to detainees at temporary detention isolatorsTDIs, in all cases
- Ensure complete description and recording of all bodily injuries of detainees during each medical examination, according to Istanbul protocol
- In case medical staff are permanently stationed at temporary detention isolatorTDIs, ensure independence and impartiality of physicians

#### PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Refine legislative framework in order to reduce maximum two day period for receiving free legal aid for detainees, so that detainees have lawyer's services available from the very first stage of legal proceedings.

## 4.5. PROCEDURAL SAFEGUARDS

### 4.5.1. AUDIO-VIDEO RECORDINGS

The CPT deems that fundamental safeguards of detainees will be reinforced at police stations if a unified and detailed video recording will be kept for each particular detainee, reflecting all aspects of confinement and any actions taken in relation to them.<sup>376</sup>

According to Article 27(1) of the Law on Police, for the protection of public safety, Police is authorized to attach to an uniform, install on the road and on outer perimeters of buildings, as well as use edited automatic photo and video devices owned by others,

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<sup>376</sup> See CPT Standards, (CPT/Inf/E (2002) 1 - Rev. 2015), Par. 36, available in English at: <http://www.cpt.coe.int/en/docsstandards.htm> [Last accessed on 29.03.2016].



according to the rule prescribed by the Georgian legislation, for the purposes of prevention of crime, as well as for the protection of individual's safety and property, public order and the protection of minors from harmful influence.

According to Article 24 of the Law of Georgia on Police, special police control of an individual, article or means of transport is effected in case there is sufficient grounds to estimate that crime or other violation has been committed or will be committed. When performing special police control, police officer should be equipped with switched video recording devices attached to the uniform.

Notably, currently audio-visual recording using shoulder video cameras is performed only by the MOIA Patrol Police officers. The timeframe for storing recordings is governed under the Minister of Internal Affairs January 23, 2015 Order N 53, according to which the duration of storage of recording is dependent on the specifications of technical devices, not to exceed three years.<sup>377</sup> Notably, patrol police employees are authorized but not required to perform video recording.<sup>378</sup>

It is important that not only patrol police department officers, but also detective-investigators and neighborhood inspector-investigators be equipped with shoulder video cameras and vehicle video registrars. In 2015, the Public Defender applied to the Chief Prosecutor's Office of Georgia with 11 proposals concerning commencement of investigation in relation to alleged ill-treatment of detainees by police officers. In the majority of cases, detainees would make allegations about physical and verbal pressure by police officers, as well as physical violence effected in police vehicles. The example of the above-mentioned is the case of G.Dz., where the accused person indicates that he was not briefed about his rights when he was detained, they started physical and verbal abuse against him right away, and these actions continued in police vehicle as well. Accused person O.R. also refers to the fact of physical violence and verbal insult in a police vehicle.

Two experiments in relation to the use of body cameras by police should be mentioned. The experiments were conducted in 2012 in the USA, one was in the State of California Rialto city<sup>379</sup>, and the second one in Arizona State Mesa city.<sup>380</sup> The mentioned experiments have demonstrated that the use of body cameras contributes to the reduction of overstepping the bounds of force by police, as well as resistance from detainees.

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377 The Minister of Internal Affairs January 21, 2016 Letter N153298.

378 The mentioned issue is reviewed in the Public Defender of Georgia 2015 Report to the Parliament Free Trial Chapter, available at: <http://www.ombudsman.ge/uploads/other/3/3512.pdf> [Last accessed on 06.04.2016].

379 Findings of the Study can be viewed at: <https://www.policeone.com/use-of-force/articles/8218374-7-findings-from-first-ever-study-on-body-cameras/> [Last accessed on 23.03.2016].

380 The findings of the Study can be viewed at: <http://journalistsresource.org/studies/government/criminal-justice/body-cameras-police-interact-with-public> [Last accessed on 23.03.2016].

The experiment conducted in Rialto Showed the following:

- Extensive research shows that people tend to “adhere to social norms and change their conduct” once they are aware that their behavior is being observed. Under camera scrutiny, they “become more conscious that unacceptable behaviors will be captured on film”;
- This “self-awareness effect” caused by the camera’s “neutral third eye” affects the psyches of officers and suspects alike, prompting suspects to “cool down” aggressive actions and deterring officers “from reacting with excessive or unnecessary force.”
- when camera records everything this brings down the risk of improper behavior by police, since police officer knows that any of their interaction with citizens will be recorded and will not be left undetected;
- During the experiment the indicator of the use of force by police, as well as the number of complaints filed by citizens was brought down;
- Video recordings are treated as significant evidence if the case is taken to court.

The experiment conducted in Mesa showed the following:

- police officers who did not wear body cameras were observed to have had more cases of “interviewing in situ” and would perform 6.9% more detentions than police officers equipped with body cameras; Officers who did not wear body cameras conducted more “stop-and-frisks” and made more arrests than officers who wore the video cameras. Officers who did not wear cameras performed 9.8% more stop-and-frisks and made 6.9% more arrests.
- Officers assigned to wear cameras issued 23.1% more citations for ordinance violations than those who did not wear cameras.
- Officers with body cameras initiated 13.5% more interactions with citizens than those who did not wear them.

In 2015, the absence of video surveillance on internal perimeter at the majority of police divisions was still a problem. According to information received from the MOIA<sup>381</sup>, video surveillance is not performed on internal perimeter at Gldani-Nadzaladevi # 8 station, Mtskheta district and Tianeti district stations, Vaziani, Teleti and Gombori police stations, Shulaveri, Algeti, Kachagani and Sadakhlo police stations, Tamarisi station, Tsalka District Division Administrative building, Supsa Station and Lanchkhuti Division.

381 March 4, 2016 Letter N555482 from the MOIA.

Notably, they do not have video surveillance cameras on inner perimeter at any of the stations and divisions of Kakheti and Tetrtskaro District Police. Furthermore, except for administrative buildings of Adjara Autonomous Republic Police Department and Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department, video surveillance of inner perimeter is not performed at any of divisions and stations.

Once a detainee is brought into the building, it becomes impossible to establish the place and condition this person is at police station and whether he/she was subjected to physical or psychological violence. Buildings of police stations should be equipped with surveillance cameras and video recording should be stored for reasonable period, which is additional guarantee for the protection of detainees against ill-treatment. It is worth noting that in 2015, out of 11 recommendations of the Public Defender about alleged ill-treatment of detainees by police, 10 were related to the facts of physical violence against detainee, at police stations. It should also be highlighted that in the majority of divisions indicated in the given cases, specifically, in N 8 Gldani-Nadzaladevi station, Zestaponi, Bagdati, Tsalenjikha, Kobuleti district divisions, as well as Kutaisi Police 4<sup>th</sup> station, video-surveillance is not performed.

Video recording may be an effective guarantee for the protection of rights of defendants, as well as for the police. Usually, video recordings are made in order to observe general situation at police facilities, as well as for interrogating detainees. According to the general comment of the UN Committee against Torture (CAT), new methods of prevention, e.g., such as video recording of all interrogations, are tested and found effective.<sup>382</sup> The case of V.B. is interesting in terms of the importance of audio-video recording.

On August 3, 2015, accused V.B. was taken to the MOIA Isani-Samgori District Main Station, for examination. According to the accused, upon bringing to MOIA Isani-Samgori Main Station, he was taken up to the fourth floor in the office of the head of the Station, where he was subjected to verbal and physical abuse. V.B. further relates that following the above-mentioned, he was transferred to police station in Varketili 3<sup>rd</sup> Massive where one of the officers, whose name he does not know, although, can identify, verbally abused him. Furthermore, he would exert psychological pressure – would threaten by liquidation, raping wife and sister, and next, verbally and physically abused him, along with other police officers. In relation to the afore-mentioned, the Public Defender applied to the Chief Prosecutor's Office of Georgia through August 5, 2015 Recommendation N15-8/6351. According to N 13/52215 response received from the Prosecutor's Office on August 17, 2015, the video material filmed while in police administrative building had been appended to the criminal case of accused V.B., where accused was threatening law enforcement officer that although they had not beaten him, he would certainly sue them and would allege that police officers had beaten him.

382 UN CAT General Comment, N2, Par. 14, available in English at: [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf) [Last accessed on 25.03.2016].

In 2014, the Public Defender applied to the Minister of Internal Affairs with a recommendation to equip all police divisions with internal and external perimeter video surveillance systems. According to March 4, 2016 Letter N555482 received from the MOIA, during 2014-2015 video cameras were purchased for structural units of the MOIA, installation of which is planned in 2016.

The Public Defender of Georgia deems that it is necessary that from the detention of an individual and throughout the period while in police custody, to have the entire process videotaped in any case.

According to Article 9<sup>1</sup> of Additional Instructions regulating the activities of temporary detention isolatorTDI approved under the Minister of Internal Affairs of Georgia February 1, 2010 Order N108, video surveillance at temporary detention isolatorTDIs is allowable in order to ensure security of detainees and temporary detention isolatorTDI staff, prevent ill-treatment of detainees, violations at temporary detention isolatorTDIs, as well as for effective monitoring of temporary detention isolatorTDIs operations and over the protection of human rights. Video surveillance is permissible in the halls of temporary detention isolatorTDIs, as for cells, video recording there is permissible only in exceptional cases, based on security considerations, although in such case the privacy of inmates should be maximally protected.

According to the information received from the MOIA, except for Poti and Mestia temporary detention isolatorTDIs, video surveillance is performed at all temporary detention isolatorTDIs. According to provided information, video cameras are placed throughout the entire perimeter and corridors of temporary detention isolatorTDIs, except for pre-trial detention cells, investigation rooms and WC facilities. No video surveillance is performed at temporary detention isolatorTDI adjacent areas of all isolatorTDIs.

Video surveillance of temporary detention isolatorTDIs is handled by the MOIA Human Rights and Monitoring Department Monitoring Office staff, from a specifically designated room, through live broadcasting of the signal mode and video recordings are not stored.<sup>383</sup> To ensure the protection of detainee against ill-treatment, it is important to record temporary detention isolatorTDIs video surveillance and store recordings for reasonable period. If necessary, recordings should be made available for the members of the Special Preventive Group.

#### RECOMMENDATIONS TO THE MINISTER OF INTERNAL AFFAIRS

- install surveillance cameras at the buildings of all police divisions and temporary detention isolatorTDIs

383 Response N153298 dated January 21, 2016, received from the MOIA.

- Ensure uninterrupted video recording in all cases, from the instance of detention of an individual by police until the committing to the temporary detention isolatorTDI, including, detention, briefing about rights, conducting investigation activities, transportation process.
- Prescribe making relevant recording by police officers while communicating with citizen via body cameras, and rules and timeframes for the retention of made recordings.
- Set forth the obligation of making relevant recordings using body camera when making communicating with citizens for detective-investigators and neighborhood inspector-investigators, and the rule and timeframes for retention of recordings.
- Ensure recording of video surveillance performed at temporary detention isolatorsTDIs and storage of recordings during a reasonable period.
- Ensure retention of all video recordings during reasonable timeframe.

#### 4.5.2. COMPREHENSIVE HANDLING OF DOCUMENTATION

During the visits made throughout 2015, members of the Special Preventive Group examined the cases of individuals confined at temporary detention isolatorsTDIs, as well as journals at police divisions and stations. Following the examination of the mentioned documentation, various violations and deficiencies have been identified, which are necessary to be fixed for comprehensive handling of documentation.

According to the February 1, 2010 Order N108 of the Minister of Internal Affairs of Georgia on the Approval of Typical Statute of temporary detention isolatorsTDIs, Internal Rules of temporary detention isolatorsTDIs and Additional Instructions Governing temporary detention isolatorsTDI Activities,<sup>384</sup> to ensure sound operation of temporary detention isolatorsTDIs, registration and identification and various special journals, electronic systems and documentations are maintained, specifically, a) unified electronic database of individuals detained at the temporary detention isolatorsTDIs; b) registration book of detainees committed at the temporary detention isolatorTDI; c) journal for registration of medical aid to inmates of the temporary detention isolatorsTDIs; d) journals of incoming and outgoing correspondence; e) journal of the receipt and handover of packages; f) detainee visual inspection report; g) list of prisoners subjected to escorting; h) guard record sheet; i) personal inspection report; j) archive memo.

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384 Annex 3 – Additional instruction governing the activities of TDI, Article 5.

Under the Minister of Internal Affairs of Georgia August 8, 2014 Order N605 Annex N 6, the Form of the Book for Registration of Detainees within the MOIA bodies is approved, while under Annex 7 of the same Order, “the Journal for Registering Individuals transferred to prison (temporary detention isolatorTDI) is approved.”

Notably, in the course of inspection of the mentioned journals, staff of police divisions and stations would ask members of Special Preventive Group about completion of specific fields. It appeared that the employees of the MOIA bodies fill out journals in different ways. Based on all of the afore-mentioned, it is important to provide briefing to individuals in charge of filling out journals at MOIA police divisions and stations, to ensure full-fledged keeping of the journals for “registration of detainees” and “registration of individuals transferred to prison (temporary detention isolatorsTDI)”.

During monitoring visits conducted throughout the year it was established that mentioned journals, in most cases, were incomplete and filled out incorrectly. Specifically, in some cases it cannot be established when an individual was detained by police officer, the date/time of the entry of detainee at divisions, as well as follow-up information about the detainee is unclear; The numbering in journals is messed up, it is not indicated where and in which condition violation happened, and in some cases, fields in journals are not filled out altogether. The deficiencies with filling out journals have been identified in journals maintained at Marneuli, Tsalenjikha, Khobi, Zestaponi, Tkibuli, Kutaisi, Batumi, Borjomi, Adigeni, Akhaltsikhe, Gori, Sagarejo, Tetrtskaro, Terjola, Ambrolauri, Lanchkhuti, Oni, Shuakhevi, Keda, Tskaltubo, Khashuri, Aspindza, Telavi, Sighnaghi, Khelvachauri, Kareli, Abasha, Martvili, Chkhorotskhu, Tsalka, Baghdati, Kvareli, Samtredia, Chiatura, Sachkhere, Lentekhi, Vani, Ozurgeti, Kobuleti, Zugdidi, Senaki, Ninotsminda, Poti, Mestia, Khulo, Chokhatauri district divisions and Bakuriani, Baraleti and Vale police stations.

It should also be mentioned that it has been established during the visits that special journals of individuals who entered the MOIA police stations and divisions are not maintained. So, for example, if an individual comes to police division/station in the capacity of a witness the fact of entry of such person into the building is not documented in a unified journal. It is important to keep detailed record comprising date (by indicating time), purpose of arrival and date and time of leaving the police station and division facility.

Georgia legislation stipulates the forms of administrative and criminal detention reports. According to Article 175(2) of the Criminal Procedure Code of Georgia, the following should be included in the detention report: who, where, when, in which circumstances, based on which grounds indicated in this Code, physical state of detainee at the moment of apprehension, crime a detainee is accused of, Exact time of bringing individual to police facility or another law enforcement body, list of rights and duties of an accused

persons envisaged under this Code, as well as in relevant case -- objective reason (reasons) due to the presence of which it was impossible to draw up detention report immediately upon detention.

It should be mentioned that, during the visits carried out throughout the year it was examined as to how completely law enforcement officers complete reports and it was established that often detention and personal search report of an accused person are not filled out in a comprehensive manner. Specifically, such information as the condition of detaining an individual, whether they posed resistance, whether proportionate coercive measure was used, and in which form, whether detention took place in calm atmosphere, without posing resistance is not included in a complete manner.

It was established as a result of qualitative analysis of 740 cases studied by members of the Special Preventive Group that there were 227 (30.7%) cases of defiance/resistance on the part of detainees, while 513 (69.3%) reports do not contain indication about such actions. It has also been ascertained that out of 227 cases when detention report referred to defiance/resistance, in 3 cases (1.3%) there is complete description as to the manifestation of defiance/resistance, in 4 cases report contains partial description (1.8%), in 96.9% of cases police officers did not provide such description.

Out of 740 cases, indication about the fact of the use of force is contained in 46 cases only (6.2%), in 27 cases (3.6%) it is mentioned that force had not been applied, and in 667 cases (90.2%), detention reports contain no indication as to the use of force. Out of 46 cases of indication about the use of force, the method of the use of force is described in full in detention report in 2 cases only (4.3%), in 3 cases (6.5%) report comprises partial description, while in 41 cases (89.2%), nothing is said in a report as to the method of the use of force.

According to Article 245(5) of the Code of Administrative Offences of Georgia, administrative detention report is drawn up about administrative detention, and the date and place of drawing up a report; position, first name and last name of a person who has drawn up report; notes about detained individual; Time and grounds for detention is recorded in it. The report is signed by an official drawing up a report, as well as by a detainee. If a detainee refuses to sign report, indication thereof is made in the report.

Once an individual is detained, at the time of his/her physical inspection, any trace of violence that may have been caused by torture or ill-treatment must be described and documented according to relevant rule. ECtHR has ruled that when an individual suffers bodily damage at the time of detention or while being held under the control of police officers, every such injury gives rise to solid presumption that detainee had been subjected to ill-treatment.<sup>385</sup>

385 ECtHR October 23, 2007 Judgment on the Case *Colibaba v. Moldova*, Case N29089/06.

According to established standard by European Court, when an individual is detained, and when such persons did not have injuries prior to detention, while afterwards such person appears to have injuries, it is the obligation of the state to present due explanations as to the causes of such injuries, present evidences as to the origin of the injuries, which will refute a victim's statement. The failure of the state to present the mentioned explanation gives rise to the breach of Article 3 of the Convention.<sup>386</sup>

On November 30, 2015, according to the proposal sent by the Public Defender to the Chief Prosecutor's Office,<sup>387</sup> it is worthy of special attention that, at the time of the entry in the police division, as indicated in relevant documents, G.K., R.T., and G.G. did not have any traces of injuries on body, while at the time of entry to the temporary detention isolatorTDI, accused persons had multiple injuries at visual inspection. The alleged ill-treatment of detainees by police officers becomes more convincing due to the circumstance that none of relevant documents drawn up by law enforcement officers contain indication as to the fact of physical resistance by G.K and G.G., while, both detainees had numerous significant injuries on their bodies.

Information about occurrence of information about injuries in detention reports, in the MOIA Detainee Registration Book and Visual Inspection Report can be seen in the table below.

Injury	Quantity	Share
Is indicated in the detention report, registration book of detainees and visual inspection report	134	18,9%
only in a detention report	11	1,6%
in registration books of individuals detained at MOIA bodies, and detention report	2	0,3%
only in registration books of individuals detained at MOIA bodies	0	0
in the books of registration of individuals detained at MOIA bodies and visual inspection report	22	3,1%
Only in visual inspection report	276	38,9%
In detention report and visual inspection report	33	4,7%
in detention report and visual inspection report, in the books registration of individuals detained at MOIA bodies it could not be checked	231	32,6%
Total	709	

It can be seen from the data provided in the above table that in 298 cases (42%) deten-

386 ECtHR February 23, 2010 Judgement on the Case *Gokhan Yildirim v. Turkey*, Case N31950/05.

387 Letter N 11-3/9735, concerning alleged ill-treatment and other possible violations of law enforcement officers in relation to G.G., G.K., R.T., and B.M.



tion reports do not contain information about injury.<sup>388</sup>

The number of occurrence of injuries can be seen in the table below.

Injury	Quantity	Share
Higher number of injuries in detention report	26	3,5 %
Higher number of injuries in detention report and books of registration of individuals detained at MOIA bodies	10	1,3 %
Higher number of injuries in the books of registration of individuals detained at MOIA bodies	4	0,5 %
Higher number of injuries in the books of registration of individuals detained at MOIA bodies and visual inspection reports	7	0,9 %
Higher number of injuries in visual inspection reports	418	56,2 %
Higher number of injuries in detention reports and visual inspection reports	42	5,6 %
Total number of processed questionnaires	740	

Out of 418 cases when higher number of injuries is indicated in the visual inspection report, in 289 cases (69.1%) individual had been administratively detained, and in 129 cases (30.9%) – these were criminal detainees (63.6% of all cases of administrative detention, 44.8% of criminal detention). It is clear that the problem is more pressing in terms of the complete description of injury.

The Special Preventive Group analyzed as part of the study the influence of absence/presence of adequate lighting on the description of injury in the detention report. It has been established that only in case of one third of cases individuals had been detained during daylight. It had also been ascertained that in one third of those cases where indication about injury is contained in visual inspection report only, individuals had been detained during daylight. Notably, the study has identified 50 cases when individual was detained during daylight, while injuries in head, face and eye socket area are indicated only in visual inspection report. In these 50 cases, if at the time of detention individual had injury, detaining officer was required to document it.

It has also been established following the study that from the materials of 740 studied cases, in 45 cases temporary detention isolator TDI employee did not indicate in a relevant field of the visual inspection report whether detainees had complaints towards police. The highest number of deficiencies in this regard was identified in Marneuli temporary detention isolator TDI.<sup>389</sup> Moreover, in 32 cases visual inspection reports do not

388 Out of these 298 cases, administrative detention – 237 cases (79.5%); criminal detention – 61 cases (20.5%). 52.2% of all cases of administrative detention; 20.8% -- of criminal detention.

389 18 cases.

provide indication as to the time of incurring injury.<sup>390</sup>

In the 2014 Report to the Parliament, the Public Defender recommended to the Minister of Internal Affairs to take all necessary measures to ensure comprehensive completion of documentation about detainees. Deficiencies with the completion of detention and visual inspection reports, journals at police divisions and medical documentation are still present, as has been established based on monitoring conducted in 2015. Moreover, the form of administrative detention report is incomplete.

According to the Minister of Internal Affairs of Georgia Order N 625 dated August 15, 2014, on the Approval of the Rule for completing administrative violations report, administrative detention report, personal search and items search report, penalty receipt, temporary permit for driving a transport vehicle, explanation and certificate forms, and on the submission to a body reviewing administrative offences, administrative detention report template was approved.<sup>391</sup> The mentioned report does not have boxes for the time of drawing up report,<sup>392</sup> recording injuries on the body of a detainee and the conditions under which individual was detained (whether there was resistance, whether proportional coercive measure was used, in which form, or whether the detention took place in calm atmosphere, without resistance), unlike the criminal detention report.

Based on all of the afore-mentioned, it is necessary to improve the administrative detention report, by means of inclusion of the above-noted information in it and also training and development of temporary detention isolator TDI, police divisions and stations of officers.

#### RECOMMENDATIONS TO THE MINISTER OF INTERNAL AFFAIRS

- In order to ensure comprehensive handling of documentation, ensure training of the employees of the MOIA of Georgia
- take all necessary measures, including by means of relevant inspection, to ensure comprehensive handling of documentation.
- Amend the Minister of Internal Affairs of Georgia Order N 625 dated August 15, 2014, on the Approval of the Rule for completing administrative violations report, administrative detention report, personal search and items search report, penalty receipt, temporary permit for driving a transport vehicle, explanation and certificate forms, and on the submission to a body reviewing administrative offences, administrative detention report template and insert the fields in the administrative detention report form approved under Annex

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390 In 10 cases in visual inspection reports drawn up at Adjara and Guria regional TDFsTDIs.

391 Annex N 9

392 Implies the time of detention.

9, to enter to following information: time of drawing up report, description of injuries on the body of a detainee, the condition of detention, whether there was resistance, whether proportional coercive measure was used, and in which form

- Develop a unified journal template for all police divisions and stations of the MOIA, for registering the visitors

#### PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Amend Article 245(5) of the Code of Administrative Offences of Georgia, in order to add the following to the information to be entered in the administrative detention report: time for drawing up report, description of injuries on the body of detainee, setting of detention, whether there was resistance, whether proportional measure of coercion was used and in which form.

#### 4.5.3. COMPLAINTS

The right to fast and impartial examination of complaint against representatives of government bodies guaranteed for any person is the most important component of the prevention of torture. The mentioned principles cannot be realized in practice without supporting the procedures for submission of complaints by detainees and examination procedures. States have the obligation to establish such effective system where detainees will be able to file complaints on ill-treatment by police. Effective complaints examination mechanism will ensure respecting the rights of detainees and is a fundamental safeguard against ill-treatment.

According to Article 4(2) (i) of temporary detention isolatorTDI Statute Template, approved under the February 1, 2010 Order 108 of the Minister of Internal Affairs of Georgia, temporary detention isolatorTDI administration is required to ensure the right of detainees [...] to file complaints.

Pursuant to Article 5(b) of the same Regulations, it is procedural duty of temporary detention isolatorTDIadministration to send complaints and motions of detainees to investigators, prosecutor's office and judges, and in cases envisaged by law – to the Public Defender, within no later than the day following their submission.

According to Article 4(5) of Internal Rules of temporary detention isolatorsTDIs approved under the same Order, individual admitted in temporary detention isolator in TDIs is authorized to appeal actions of temporary detention isolator TDIemployees before a superior body, which will take decision as to relevant response/action within the law-prescribed timeframe.

Access to the complaints review procedure is related to the presence of simple and clear procedures of filing of complaints and examination. It is important that procedures be clear and accessible for detainees as well as law enforcement bodies. The mentioned procedure combines several important components. This, in the first place, implies awareness of detainees about the availability of complaints examination mechanism, provision of necessary material-technical resources for complaints by detention facility administrations, relevant registration of complaints and timely and adequate response/action to those.

Pursuant to Article 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

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

The CPT attaches very high importance to the awareness of prisoners and establishes that individuals detained by the police should be briefed about their rights immediately.<sup>393</sup> The CPT further notes that “It is axiomatic that rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence.”<sup>394</sup>

According to Article 3(4) of the Additional Instructions Governing the work of temporary detention isolatorsTDIs, approved under the Minister of Internal Affairs of Georgia February 1, 2010 Order N108, following inspection, interviewing and sanitary treatment of individuals brought to the temporary detention isolatorTDI, on duty officer or another person, at the instruction of the former, briefs such individuals about, and if possible, hands over to them internal rules of temporary detention isolatorTDI, as well as a list of their procedural rights and duties, following which they are placed in cells.

It can be identified following inspection conducted at temporary detention isolators TDIs over the reporting period that administration of temporary detention isolator TDI-briefs detainees about their rights, which also comprises information about the right to file a complaint, although certain deficiencies have been identified in terms of informing detainees, which is reviewed in detail in sub-chapter on briefing detainees.

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393 CPT Standards, [CPT/Inf (92) 3] Para. 37.

394 CPT, Report on Turkey, [CPT/Inf (99) 2] Par. 26.

Without material technical support for filing a complaint a detainee will be unable to exercise the right of filing a complaint. Material-technical support for filing complaint comprises supplying with requisite means for writing a letter.

According to Article 5(1) of additional rules and Conditions on Serving Administrative Sentence at temporary detention isolatorsTDIs, approved under the Minister of Internal Affairs of Georgia February 1, 2010 Order N 108, individuals sentenced to administrative detention are authorized to appeal any action or decisions of a facility enforcing administrative detention at a superior body or court. An individual sentenced to administrative detention is authorized to apply, without any limitation, to national, regional and international human rights Institutions approved under Georgia legislation, international agreements and treaties. In case of a demand from an individual subjected to administrative detention, temporary detention isolator TDIadministration is required to furnish them with a pen and a paper for drafting applications, complaints and other addresses.

Notably, there is no prescribed procedure that would ensure the right of individuals committed to temporary detention isolatorsTDIs with the right for filing confidential complaints. It has been discovered during monitoring performed at temporary detention isolators TDIsthat detainees had not filed complaints to superior body in relation to the actions of temporary detention isolatorTDI employees. Temporary detention isolator TDIstaff explained that, in case a detainee asks for sending a complaint, it should be sent via electronic program, which involves scanning a complaint and uploading to an electronic program. While the above-mentioned excludes the possibility of using confidential complaint by a detainee.

It should be assessed positively that individuals admitted in temporary detention isolatorin TDI, when they are briefed about rights, are informed that they have the right to contact the General Inspectorate of the MOIA, via the hotline (telephone number 126). Although, it should be mentioned that telephone call to the General Inspectorate can be made only from the telephone of a temporary detention isolatorTDI administration, which, for this purpose, should be temporarily given for use by a temporary detention isolatorTDI employee. Furthermore, temporary detention isolator TDIemployee should control that an inmate really calling the General Inspectorate hotline.

Base on the above-mentioned, the provision of information to the General Inspectorate in a confidential manner, and respectively, safely is not ensured (in the conditions when protection against repressions is ensured).

The procedure of sending a notification to investigative body about injuries on the bodies of detainees by the Administration is a significant legal safeguard for the protection of detainees against ill-treatment. Notably, notification to a prosecutor about injuries

on the bodies of detainees is sent at the discretion of head of temporary detention isolator TDI, and there is no specific rule governing of this procedure, and it is unclear in which case a notification is sent to a prosecutor. The fact that Prosecutor's Office does not duly examine and investigate the complaints of detainees sent from temporary detention isolators remains TDIs is an issue.

Hence, for having effective legal safeguards in place, relevant normative act should clearly regulate the cases when notice is to be sent to a prosecutor about bodily injury of a detainee.

Detainee is given the possibility to file a complaint about alleged ill-treatment by police at the time of admission to the temporary detention isolator TDI. In this regard, notably, individuals detained during 2015 brought complaints against police in 168 cases.

The right to file a complaint also implies that the investigation of complaints of detainees about ill-treatment should meet at least the following criteria 1. Independence and impartiality; 2. Thoroughness; 3. Prompt and expeditious nature; 4. Competence; 5. Transparency 6. Participation of a victim. State should ensure effective investigation observing the above-mentioned elements, in order to administer justice.<sup>395</sup>

The results of monitoring have revealed that the Prosecutor's Office does not duly examine and investigate matter in relation to the complaints of detainees from temporary detention isolators TDIs. The Public Defender of Georgia has solicited information from the Chief Prosecutor's Office of Georgia concerning actions/response in relation to notifications about bodily injuries of specific individuals committed to temporary detention isolators TDIs.

Special Preventive Group, in the course of inspection performed at temporary detention isolators TDIs and police stations, following interviews with police staff and examination of documentation, has identified several notable cases where detainees allegedly were subjected to physical violence effected by police and notification about this had been sent to the Prosecutor's Office.<sup>396</sup> In relation to the mentioned cases, the Office of Public Defender has solicited information from Chief Prosecutor's Office, as to the actions taken by the Prosecutor's Office. It can be ascertained from the replies received from Chief Prosecutor's Office of Georgia that out of 7 cases, investigation on an independent criminal case was launched in only 2 cases, which were discontinued on the grounds that the fact of unlawful action by police officers could not be determined. While in the remaining 5 cases, Prosecutor's Office limited itself only by interviewing detainees as part of the charges under criminal case and a separate investigation about alleged ill-treatment

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395 CPT 14<sup>th</sup> General Report, CPT/Inf (2004) 28, 2013. Par. 31-36, available in English at: < <http://www.cpt.coe.int/en/annual/rep-14.htm>>, [Last accessed on 29.03.2016].

396 As of monitoring, the mentioned detainees were not at TDI.

towards him had not been launched. Notably, in the majority of the above-listed cases, the Prosecutor's Office justified the discontinuation of investigation by the fact that during interview detainees denied any illegal action towards them and stated that they did not have any complaints against police.

In relation to the above-mentioned, the Public Defender deems that investigation on independent criminal cases had to be launched in any case, including in the absence of official complaint by detainees.

The stance of the Public Defender with regard to creation of independent investigation mechanism is unchanged and he deems that it is extremely important to create such mechanism, which mandate will be effective investigation of alleged facts of torture and ill-treatment of detainees by law enforcement officers.

## RECOMMENDATIONS

### TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA

- ensure that detainees are duly briefed about the right to file a complaint
- ensure the introduction of confidential complaints mechanism at temporary detention isolatorsTDIs
- set forth explicit instructions concerning sending a notification to the Chief Prosecutor's Office about injuries identified on the bodies of detainees, at the time of committing to temporary detention isolatorsTDIs, under a relevant sub-legal act

### To the Chief Prosecutor of Georgia

- In case of receiving information about alleged ill-treatment of detainees by police, including in the absence of a formal complaint by detainees, ensure that investigation is launched as a separate proceedings and handled by investigation unit of the Prosecutor's Office.

## 4.5.4. INSPECTION AND MONITORING

Conducting various internal and external inspection is one of the efficient means for the protection of the rights of individuals whose liberty has been restricted.

According to Article 11 of the UN Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment, “Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture”.

The inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of persons in custody.<sup>397</sup>

MOIA General Inspectorate is in charge of internal inspection of Georgia police. According to Article 2 of the Statute of the General Inspectorate, approved under the Minister of Internal Affairs of Georgia February 23, 2015 Order N 123, the objectives of the General Inspectorate are to control steady fulfillment of requirements of Georgia legislation within the MOIA system, as well as detect the facts of breaching of norms of ethics, discipline, professional misconduct and specific unlawful acts within the MOIA system, and take relevant response actions.

During 2015, General Inspectorate conducted 22,447 inspections,<sup>398</sup> based on which 3,055 conclusions were produced and 2,630 disciplinary penalties were imposed.

The types and number of disciplinary measures:<sup>399</sup>

N	Types of disciplinary measures	Number
1	Recommendation memos	396
2	Admonition	720
3	Harsh reprimand	639
4	Reprimand	578
5	Dismissal	161
6	Setting up to three extra on duty assignments	112
7	Demotion	13
8	Deprive of the right of next leave of absence	11
	Total	2630

397 CPT Standards, available in Georgian at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last accessed on 29.03.2016].

398 MOIA Letter 09.01.2016, MIA 61600048372.

399 MOIA Letter 29.01.2016, 224058.



As a result of inspection conducted in relation to the facts of the violation of citizens' rights, in 172 cases the fact of transgression has been confirmed, therefore the following disciplinary measures were imposed: admonition-- 19; reprimand – 44; harsh reprimand – 68; demotion – 5; dismissal -36.

Following the inspection on alleged breach of the rights of detainees or persons whose liberty is restricted otherwise, transgression was established in 2 cases, out of which in 1 case it was official error, and in another case negligent and careless attitude was identified, for both cases disciplinary penalty – reprimand was imposed.

1599 inspections were conducted based on applications/complaints about alleged violation of citizen's rights, out of which 45 facts of disciplinary violations have been confirmed following inspection. Notably, during the reporting period a case of the violation of rule of law and undue fulfillment of law prescribed duties in the course of proceedings by the General Inspectorate have been identified, which is reviewed in detail in the chapter of this report – Labor Rights (sub-chapter – Deficiencies in the work of General Inspectorates).

Following inspection conducted based on operative information about alleged violation of citizens' rights, 31 facts of transgression by MOIA employees have been established following inspection.

In addition to inspection, MOIA General Inspectorate is authorized, on criminal cases transferred to them by Chief Prosecutor of Georgia or an individual authorized by Chief Prosecutor, to conduct investigative and procedural actions within the scope of the authority prescribed under the Criminal Procedure Code of Georgia.

Over the reporting period, at General Inspectorate investigation was underway on 42 criminal cases. Out of the mentioned cases 7 cases were related to alleged violation of citizen's rights (exceeding power – 1 case; theft – 2 cases; rape – 1 case; hooliganism – 1 case; fraud – 2 cases). Out of the listed cases, one was discontinued through diversion, and in case of two cases criminal prosecution was launched, out of which on one case guilty sentence has been ruled, and another case is under investigation. Acquittal has not been reached in any of the cases.

Furthermore, based on the cases transferred by the Prosecutor's Office to General Inspectorate for investigation, 23 employees of the MOIA system were brought to criminal liability for the following crimes: theft- 9; fraud – 2; appropriation or embezzlement – 3; illegal production, making, purchase, storage, transportation, dispatching or trading with narcotic substance, its analogue, precursor or a new psychoactive substance – 1; unlawful purchase, storage, keeping, production, transportation, dispatching, or trade with firearm, ammunition, explosive substance or explosive device – 2; taking posses-

sion of weapons, ammunition, explosive substance or explosive device unlawfully, with the aim to appropriate or extort – 1; failure to notify about crime – 1 and taking a bribe – 4 facts.

According to information provided by General Inspectorate of MOIA, information obtained about offences committed by MOIA employees are sent to Chief Prosecutor's Office of Georgia. If the mentioned information relate to exceeding power by police officers, including beating and torture of citizens and other facts of gross human rights violations, Prosecutor's Office investigates such cases. General Inspectorate is primarily in charge of such criminal cases that were instituted at the Prosecutor's Office based on information sent about elements of crime identified during work related control, examination and monitoring by General Inspectorate, and were subordinated to the General Inspectorate for investigation.

Notably, given the system of investigation bodies in Georgia, the Public Defender welcomes the fact that the Prosecutor's Office handles the above-mentioned criminal cases, although the stance of the Public Defender with regard to necessity to establish independent investigation mechanism is unaltered. It is designed to ensure high degree of credibility and effective investigation.

As for internal monitoring within temporary detention isolatorsTDIs, the MOIA Human Rights and Monitoring Department is entrusted this function; the TDIs are subordinated to the same Department.

According to Article 6(a) of Statute of Human Rights and Monitoring Department approved under the Minister of Internal Affairs Order N1006 dated December 31, 2015, the objective of the Department is to commit individuals detained for the enforcement of decision of an authorized entity, pursuant to Georgia legislation, and/or administrative detainees to temporary detention isolatorTDI, and ensure the protection of their rights. To this end, the Monitoring Office of the Department; oversees the protection of the rights of individuals confined at temporary detention isolatorsTDIs; monitors the protection of human rights of individuals placed at temporary detention isolatorsTDIs by theTDI staff; monitors living and hygiene conditions of individuals admitted to temporary detention isolatorsto TDIs; within its competence, takes action in response to alleged breaches identified as a result of received applications, information and/or monitoring.

As has been ascertained following the examination of the issue, according to existing practice, Human Rights Protection and Monitoring Department Monitoring Unit periodically inspects temporary detention isolatorsTDIs throughout Georgia. While inspecting, the Monitoring Unit focuses on the following issues: situation in terms of discipline, case handling, sanitary-hygiene condition and repair works.

The Public Defender of Georgia deems that the practice of inspection by Monitoring Office cannot ensure appropriate assessment of the state of human rights protection at temporary detention isolatorsTDIs, since the above-listed issues represent rather administrative and technical side of the work of temporary detention isolatorsTDIs. Hence, inspection must focus on such issues as the degree and quality of documenting of alleged ill-treatment of detainees by police, and the state of the protection of detainee rights.

As for external monitoring, according to Articles 18 and 19 of the Organic Law of Georgia on the Public Defender of Georgia, Public Defender of Georgia and individual specially entrusted by the Public Defender (including a member of the Special Preventive Group) are authorized to enter temporary detention isolatorsTDIs and perform inspection at police divisions in order to study the state of the rights of confined individuals.

In this respect, the fact that during monitoring members of the Public Defender's NPM mechanism would be admitted without obstacles and were able move freely at the MOIA district divisions and temporary detention isolatorsTDIs should be assessed positively. During the visits, staff of all divisions and temporary detention isolatorsTDIs would fully cooperate with the representatives of the Public Defender and support them in full-fledged monitoring, as prescribed by law.

Public Defender emphasizes the fact that the NPM should have unimpeded access to video surveillance systems of temporary detention isolatorsTDIs and police divisions.

#### RECOMMENDATIONS TO THE MINISTER OF INTERNAL AFFAIRS OF GEORGIA

- Improve the methodology of Human Rights and Monitoring Department Monitoring Unit, so that during the inspection of temporary detention isolatorsTDIs they focus on the quality of documenting of alleged ill-treatment of detainees by police officers and the state of the protection of detainee rights;
- Ensure unimpeded access of the Special Prevention Team to video surveillance systems at temporary detention isolatorsTDIs and police divisions.

#### 4.6. SITUATION AT TEMPORARY DETENTION ISOLATORS

In 2015, throughout Georgia, there were 37 active temporary detention isolatorsTDIs. From June, 2015 through September, 2015, members of Special Preventive Group performed monitoring at 31 temporary detention isolatorsTDIs of the MOIA. Monitoring

was conducted from June through September, 2015, in the following regions: Shida Kartli, Kvemo Kartli, Kakheti, Imereti, Samtskhe-Javakheti, Guria, Adjara, Samegrelo, Racha-Lechkhumi, Kvemo and Zemo Svaneti. Over the course of monitoring, members of Special Preventive Team observed facilities and environment at temporary detention isolatorTDI, interviewed temporary detention isolatorTDI employees and inspected documentation contained in case files of individuals detained in 2015. Team members were guided by pre-designed tools and data obtained from penitentiary facilities.

According to the information received from the MOIA, over 2015 16, 416 individuals were committed to the mentioned temporary detention isolators.TDIs. Data of individuals placed at each temporary detention isolatorTDI is provided in the Table.

N	TDITDI name	Number of detainees	N	TDITDI name	Number of detainees
1	Tbilisi N 1 TDI	417	20	Lentekhi TDI	16
2	Tb. And Mtskh. Mtianeti TDI	5556	21	Zestaponi TDI	330
3	Mtskheta TDI	379	22	Baghdati TDI	64
4	Dusheti TDI	29	23	Chiatura TDI	146
5	Telavi TDI	503	24	Samtredia TDI	325
6	Sagarejo TDI	224	25	Ambrolauri TDI	25
7	Sighnaghi TDI	189	26	Zugdidi Reg. TDITDI	366
8	Kvareli TDI	359	27	Zugdidi TDI	661
9	Gori TDI	581	28	Senaki TDI	288
10	Khashuri TDI	325	29	Khobi TDI	143
11	Borjomi TDI	118	30	Poti TDI	219
12	Akhalsikhe TDI	214	31	Chkhorotskhu TDI	162
13	Akhalkalaki TDI	36	32	Mestia TDI	16
14	Rustavi TDI	356	33	Batumi TDI	2039
15	Tetritskaro TDI	34	34	Kobuleti TDI	355
16	Tsalka TDI	29	35	Ozurgeti TDI	153
17	Gardabani TDI	0	36	Lanchkhuti TDI	82
18	Marneuli TDI	545	37	Chokhatauri TDI	28
19	Kutaisi TDI	1104	Total		16416

It should also be mentioned that in 2014, 17,087 individuals were committed to temporary detention isolatorsTDIs, hence, in 2015, as compared to a prior year, the fall of the number of detainees can be observed.

Living conditions of individuals confined at temporary detention isolators, sTDIs should be in conformity with national, as well as international standards.

“All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (E.g., a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets. Persons in custody should be allowed to meet with natural needs when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.<sup>400</sup>

Under the Minister of Internal Affairs of Georgia Order N 108 dated February 1, 2010, on Approving Statute Template for temporary detention isolatorsTDIs of the MOIA of Georgia, internal rules of temporary detention isolatorsTDIs and additional instruction governing temporary detention isolatorTDI activities, sanitary-hygiene and general conditions at temporary detention isolatorTDI should not infringe the right of a person to dignified existence, his/her honor and dignity, privacy and security of a person, interests of respecting privacy.<sup>401</sup>

According to the same order, administration of temporary detention isolatorsTDIs is obliged to: ensure natural and artificial lighting, heating and ventilation in cells; ensure adequate sanitary conditions in cells; ensure maintaining relevant hygiene in cells.

There are various infrastructure related and other problems at temporary detention isolatorsTDIs in regions of Georgia, for the illustration of which we are presenting data about several temporary detention isolatorsTDIs:

### **Lentekhi TDI**

Lentekhi TDITDI is housed at the Police Station building and is separated by iron bars and wooden door. There are a total of two cells. Each one is designed for two persons. Area of cells is 4.3m<sup>2</sup> and 4.4 m<sup>2</sup>. There are no windows, artificial ventilation, heating system, water, water closets, tables and chairs in cells. Detainees, when necessary, use common use WC designed for police staff. TDITDI does not have a yard for walking detainees.

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400 CPT Standards, Paragraph 42, available at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Accessed on: 26.03.2016].

401 Annex 1 – Statute Template for the MOIA Human Rights and Monitoring Main Division TDFsTDIs, Article 4.

## **Samtredia TDI**

At Samtredia TDITDI detainees are placed in three cells, which area ranges between 10m<sup>2</sup>-12.8m<sup>2</sup>. The cells are equipped with three-tier iron beds. There is adequate artificial ventilation and lighting in the cells. Natural and artificial lighting is not satisfactory. There is semi-isolated WC in cells. According to TDITDI staff, for washing hands and face detainees are taken to the common use bathroom outside cells, while drinking water is provided with bottles. During the visit of special preventive group members,<sup>402</sup> the matter of supplying TDITDI with personal hygiene articles was inspected and it was discovered that there was no soap supply at the TDI. Samtredia TDITDI has a yard for walking detainees.

## **Samegrelo-Zemo Svaneti Regional TDITDI**

At Samegrelo-Zemo Svaneti Regional ITDI, there are 3 cells, 2 four-person and 1 two-person. The area of cells ranges between 10m<sup>2</sup>-11.3m<sup>2</sup>. There are iron beds and 1 iron table with 2 chairs in the cells. Windows in cells have bars from both sides, from the inside they are screened via a drilled metal sheet, which prevents the entry of natural lighting and ventilation in the cells. There is moisture in the cells. Strong specific odor can be felt. Sanitary-hygiene condition is unsatisfactory.

## **Gori (Shida Kartli and Samtkshe-Javakheti Regional) TDI**

There are 5 cells in Gori (Shida Kartli and Samtkshe-Javakheti Regional) TDI. The area of cells ranges between 11m<sup>2</sup>-12m<sup>2</sup>. There is central ventilation and heating in cells. Water regulator for flushing water in the toilet is located in the hall of the TDI; hence, TDITDI on duty officer regulates the supply and shutting of water. There is a courtyard for walking in the TDI, although it is impossible to walk during rainy weather, since the yard is not sheltered. During the visit,<sup>403</sup> the supply of toiletries and other articles was inspected and has been identified that they did not have the supply of clean towels and single-use plates at the TDI. According to the head of the TDI, when they lack supply of single use plates, food is served to detainees via large sheets of paper. Expired dry soup was discovered during monitoring the TDI.

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402 July 7, 2015.

403 September 17, 2015.

## **Signagi TDI**

There are 2 cells at the Signagi TDITDI for accommodating detainees, with area 6.3 m<sup>2</sup>. The cells are equipped with 1 iron table and 2 chairs. There is not WC inside the cells. When needed, detainees use common toilet outside cells. Natural lighting and ventilation is inadequate, since windows are covered by iron windowpanes and iron grids. Artificial lighting and ventilation is unsatisfactory. The yard for walking is not envisaged for detainees of the TDI.

## **Sagarejo TDI**

There are 4 three-person cells in Sagarejo TDI, their area ranges between 9m<sup>2</sup>-9.65m<sup>2</sup>. There are 3-tier iron beds with mattresses in cells. There is one table. Tables serve as a chair in the cells. There is moisture in the cells, insufficient natural lighting and ventilation. Drilled metal sheets are installed on the windows, which limits the entry of light into cells and natural ventilation. There is central heating in cells. Detainees use common WC and shower room located outside the cell. TDITDI does not have a courtyard for walking.

## **Tetrtskaro TDI**

Tetrtskaro TDITDI is housed on the first floor of Tetrtskaro District Division. There are two 2-person cells in the TDI, with area ranging between 11m<sup>2</sup>-11.25m<sup>2</sup>. There is 1 iron table and 2 chairs in the cells. Drilled metal sheets are attached to the windows, which limits the penetration of natural lighting and air into cells. Cells are heated via warm air entering from the ventilation system. There is semi-isolated WC in cells. Above 5cm from the floor, there is a water pipe that is used to flush the toilet. Water current is regulated by staff from outside the cell. During the visit, TDITDI lacked the supply of single-use plates and glasses.

## **Akhalkalaki TDI**

There are 3 cells in Akhalkalaki TDI, area ranges between 7m<sup>2</sup>-7.1m<sup>2</sup>. Instead of individual beds, there is a dais in the cells. The ventilation in the cells is inadequate. There is no WC in the cells. Detainees use common toilet outside the cell. TDITDI has 56.47m<sup>2</sup> area courtyard for walking for detainees. Common WC is located by the courtyard. Opposite the WC, there is a surveillance camera directed at the courtyard, which scope also includes inner side of the toilet, since depreciated door does not shield the WC. The door

does not have a lock from the inside. Due to the mentioned problem, privacy of individuals using toilet is not ensured. There is no artificial lighting in the toilet. The mentioned TDITDI does not have a shower facility. The courtyard is not sheltered and therefore it is impossible to walk during rain.

### **Akhalsikhe TDI**

There are 5 cells in the Akhalsikhe TDI. The area of cells ranges between 6.7m<sup>2</sup>-19.9m<sup>2</sup>. The cells are designed to accommodate 2 and 3 persons. There is no natural lighting and ventilation in cells, since windows are sealed. Artificial ventilation is inadequate. Artificial lighting is adequate. Sanitary-hygiene condition in cells is inadequate (requires wet cleaning). There is no WC in cells. There is no separate yard for walking detainees. According to the administration, they are taken for a walk to the inner yard of the police building. TDITDI requires refurbishment.

### **Lanchkhuti TDI**

There are three two person cells in the Lanchkhuti TDI. Area of cells ranges between 2m<sup>2</sup>-3m<sup>2</sup>. There are 2 iron beds with mattresses in cells, one table and two chairs. There is moisture in the cells, and ventilation is inadequate. Ceiling in the cells is damaged and damp, due to precipitation. It has been ascertained following the conversation with the head of the TDITDI that water leaks during precipitation from the roofs. There are semi-isolated WCs in cells. There is no heating in cells. TDITDI has a courtyard for walking detainees.

### **Khashuri TDI**

There are 4 three-person cells in Khashuri TDITDI. The area of cells is 11.1m<sup>2</sup>. There is central heating in cells. Natural lighting is unsatisfactory. Ventilation system in the cells emits noise, which is disturbing detainees. There are semi-isolated WCs in cells, with Asian type latrine. Within the cells there is regulator of a flushing tube. There is no washstand in cells. Sheltered courtyard for walking is organized at the TDI.

### **Borjomi TDI**

Borjomi TDITDI is equipped with 4 cells for detainees. Of these, 2 cells are single-person, 2 cells are two-person. The area of cells ranges between 5.4m<sup>2</sup>-6.5m<sup>2</sup>. Cells do not have



windows. There is no natural lighting and ventilation in cells. There is no heating in cells, according to TDITDI head, heating of the cells is ensured via the heaters installed in the hall. There is dampness in the cells, in some places walls are partially demolished. In general, sanitary-hygiene condition in cells is unsatisfactory. There are no WCs in cells, detainees use common WC located outside cells. There is no dedicated courtyard for walking detainees. According to the administration, detainees are taken for a walk to the inner yard of the police facility.

### **Batumi (Adjara and Guria regional) TDI**

There are 10 two and three person cells in the Batumi (Adjara and Guria regional) TDI. The area of cells ranges between 8.5m<sup>2</sup>-14.3m<sup>2</sup>. There are iron beds with mattresses in cells. There are 1 table with two chairs installed on the floor. Ventilation in cells is inadequate and dampness can be observed. Due to the lack of air, small windows on doors of cells are always open. Artificial lighting is adequate. Natural lighting and ventilation is inadequate. Central heating is provided in cells. Cells have semi-isolated WCs. In 8 cells water flushing taps are located outside cells and supply of water depends on duty officer of the TDI. In the remaining 2 cells, water tap is within cells and detainees regulate it. Water flushing tube is installed at 1 m. above the latrine. The mentioned is inconvenient and non-hygienic, for flushing the toilet, as well as for washing hands and face.

### **Marneuli TDI**

There are 6 cells for accommodating detainees in Marneuli TDI. The area of cells ranges between 12.00m<sup>2</sup>-12.2m<sup>2</sup>. Within cells, there is 1 installed table between beds. On small windows in the cells iron bars and grid are installed, therefore natural lighting and ventilation in cells is inadequate. The central ventilation system does not ensure adequate ventilation. WC in cells is not isolated. WC is separated via a small wall with width 1m 5cm. Length 1.96 cm, where Asian type latrine is installed. At 30 cm from the latrine, there is a water pipe, which serves as a flush. Individuals in cells refer to TDITDI employee for supplying necessary water for flushing, since water supply can be regulated from outside cells only. TDITDI has inner courtyard, where detainees are taken for a walk. There are no washstands in cells.

### **Chiatura TDI**

There are 4 cells in Chiatura TDI, of these, 3 are two-person and 1 is one-person cell. Area of cells ranges between 8.6m<sup>2</sup>-9.5m<sup>2</sup>. There are two-tier iron beds with mattresses, one table and two chairs in cells. Cells are heated via central heating. Natural lighting of

cells is inadequate, since cells are equipped with small 32x63 windows, covered by metal grid. There are semi-isolated WCs in cells, although there are no washstands. TDITDI employees supply drinking water to detainees. In addition to the above-discussed problems, in 2015, following the visits made by the Special Prevention Group members it has been established that in some cases detainees lacked toiletries. Deficiencies with regard to toiletries and bed sheets supply has been identified at the TDI.

During the visit to Samegrelo and Zemo Svaneti regional TDITDI,<sup>404</sup> detainees lacked toiletries (toilet paper, toothpaste, and toothbrush) and bedsheets.

Detainees at the Telavi TDI<sup>405</sup> lacked bed sheets and toiletries.

There was no supply of single-use plates and cups in Tetrtskaro TDI.<sup>406</sup>

Detainees<sup>407</sup> at Gori (Shida Kartli and Samtskhe-Javakheti regional) TDITDI lacked soap and towel.

It was established during the visit<sup>408</sup> to Zugdidi TDI, that there was no supply of bedsheets and personal toiletries at the TDI.

There is no isolated WC at any of the above-mentioned IsTDIs. This is especially a problem in cells for two and more persons, where detainees are not alone in cells and have to fulfill their natural needs in the presence of a stranger.

As has been discovered based on visits made in 2015, at MOIA temporary detention isolatorsTDIs the matters of organizing central heating, natural lighting and ventilation, complete isolation of WC, wash stands and toilet flushing devices remain outstanding.

Having dais instead of individual beds in cells is still problem in Rustavi, Tsalka, Gardabani and Akhalkalaki temporary detention isolators.TDIs. It should also be mentioned here that in relation to the given issues, the Public Defender, in 2014 Report to the Parliament applied with relevant recommendations to the Minister of Internal Affairs, although, as conducted monitoring has demonstrated, the above-listed problems at temporary detention isolators TDIsremain unaddressed.

According to amendments to the Code of Administrative Offences of Georgia, administrative detention period was shortened from 90 days to 15 days, which undoubtedly has to be assessed as positive change, although it should also be mentioned here that current situation at temporary detention isolators TDIsis not adequate for accommodating administrative detainees.

404 August 2, 2015.

405 During the June 22, 2015 visit.

406 During June 24, 2015 visit.

407 During September 17, 2015 visit.

408 August 2, 2015.

## Feeding of detainees

At temporary detention isolators At TDIs, detainees are provided standard food, bread, tea, meat paste, canned beef and dry package soup. Notably, bread designed for detainees is not supplied to the majority of temporary detention isolators TDIs in regions. The mentioned temporary detention isolators TDIs do not even have contracts for bread supply. There are cases when temporary detention isolator TDI employees are urged to buy bread for detainees from their own pocket. Detainees are primarily relying on the food products sent to them via packages. It should be taken into account that an individual may not have relatives who would send food and bread via package. An administrative detainee may be held at a temporary detention isolator TDI for up to 15 days. For individuals detained for a long period, relevant feeding and living conditions are even the more important.

As has been mentioned above, some temporary detention isolators TDIs lacked the supply of single-use plates, thus, heated beef would be served using large sheets of paper. In some cases, for this very reason, detainees refused to accept food served in such manner. It is also notable that in some cases they heat beef in a can container, since there is no special vessel dedicated for this at temporary detention isolators TDIs. It has been revealed during the visit to Chkhorotsku TDI<sup>409</sup> that they were serving canned beef without heating, in cold condition, which is also inadmissible.

### RECOMMENDATIONS TO THE MINISTER OF INTERNAL AFFAIRS

- Install central heating in cells of all TDIs TDIs, also ensure natural lighting and ventilation of cells
- Fully isolate WCs at all TDIs TDIs
- create conditions for maintaining hygiene at all TDIs TDIs, eliminate dais at all TDIs TDIs and ensure individual beds for all detainees
- ensure the supply of bed sheets and toiletries for detainees at all TDIs TDIs
- provide proper nutritious food to all TDIs TDIs, bread and articles necessary for cooking and serving the meals
- Ensure buttons for contacting duty officer in charge at all TDIs TDIs
- ensure 4m<sup>2</sup> per detainee at TDIs TDIs
- Install benches, allocate shelters from rain and sunshades; place garbage bins in courtyards of all TDIs TDIs.

409 August 4, 2015.

## 5. PROTECTION OF MIGRANTS FROM ILL-TREATMENT

### 5.1. CONDITIONS IN TEMPORARY ACCOMODATION CENTER

On December 17, 2015, Special Preventive Group of the Public Defender of Georgia monitored the Temporary Accommodation Center of the Migration Department of the Ministry of Internal Affairs. Documents obtained during the visit, as well as reports of the members of the monitoring group are stored at the Public Defender's Office. The report contains the main findings of the monitoring group and is compiled in such a way that the respondents cannot be identified due to the confidential nature of the interview. The monitoring group members were moving freely around the territory of the center and administration was not interfering to the monitoring process during the visit. Employees of the institution represented all available and necessary documents requested by the group.

It should be noted that during the visit, the Special Preventive Group has not received the information in respect of the use of physical violence or verbal abuse from the prison authorities toward the persons accommodated in the center. The temporary accommodation center accommodates 92 persons. During a visit 18 persons were in the institution. Among them were 16 men and 2 women, one of them was accommodated in - the women's department, and the another in the family unit.

International Human Rights Law emphasizes the importance of the persons' right to liberty and security and determines that person's arrest and imprisonment should be used as an exceptional rule, should be allowed only based on legislative provisions and appropriate justification.<sup>410</sup> Application of these principles is particularly important with regard to migrants, who do not represent persons accuse of committing a crime according to their status.

UN Special Rapporteur on the Human Rights of Migrants stresses that the relevant authorities are obliged to consider the alternatives of the detention (non-custodial measures) until usage of the detention measure. It is necessary to provide detailed instructions and appropriate training for judges and other public servants, such as police, border and immigration officers to ensure the systematic use of non-custodial measures.<sup>411</sup>

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410 International Covenant on Civil and Political Rights, Article 9(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 16(4).

411 Report of the Special Rapporteur on the human rights of migrants, report on right of the migrants, paragraph. 53, 2012, April 2, A/HRC/20/24, Accessible in English language at: <[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=97](http://ap.ohchr.org/documents/dpage_e.aspx?m=97)> [last visited 11.01.2016].

Migrant detention should be used only when alternative less restrictive detention measures are ineffective. It is important to assess whether the usage of detention is a last resort and it should not be the result of reflection.<sup>412</sup>

Punishment of torture and inhuman or degrading treatment includes obligation of not to expel or return the person to the country in which there is a reasonable doubt that she or he fears to be threats to be tortured or be subject of other ill-treatment. Accordingly, migrants should have free access to asylum procedures (or other procedures of the residence permit) that protects confidentiality and guarantees studying the human rights situation in other countries in an objective and independent manner. In addition, in cases of person's deportation from country of the origin or from the third country, the risk of ill-treatment should be individually assessed.<sup>413</sup>

## 5.2. DETENTION AND PLACEMENT IN THE TEMPORARY ACCOMMODATION CENTER

According to the rule of detention and placement of aliens in the temporary accommodation center, a person could undergo personal inspection along with his/her owned objects during reception in the center.<sup>414</sup> Examination room is functioning in the establishment, where detained alien is entering for the first time. In the mentioned room the objects are seizure and searched with detector. The detainees are asked about injuries and recording it in the relevant document. The process is attended by an interpreter. Confiscated items are sealed in the presence of the detained migrants. The inspection of a detained alien may be conducted only by a person of the same gender in presence of an individual of the same gender. It should be noted that the persons placed in the center has not complain about the inspection procedures.

The Public Defender's 2014 Annual Parliamentary Report issued recommendations calling for changes to the order №631 of the Minister of Internal Affairs of Georgia "on Approval of the Rule of Detention and Placement of Aliens in the Temporary Accommodation Center". The proposed changes was aiming to specify that a superficial examination of the person only mean inspection of the outer surface of the clothes by the hand, with special device or instrument.<sup>415</sup> It should be noted that mentioned provision has not

412 Visiting immigration detention centres, a guide for parliamentarians, pp. 28, Council of Europe, (2013). Accessible in English language at: <[http://www.apt.ch/content/files\\_res/guide-for-parliamentarians-visiting-detention-centres-en.pdf](http://www.apt.ch/content/files_res/guide-for-parliamentarians-visiting-detention-centres-en.pdf)> [Last visited 03.16.2016].

413 Standards of the European Committee for the Prevention of Torture, paragraph 30, Accessible in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

414 Order №631 of the Minister of Internal Affairs of Georgia "on Approval of the Rule of Detention and Placement of Aliens in the Temporary Accommodation Center", article 6.

415 The Public Defender's 2014 Annual Parliamentary Report, pp. 227.

been yet changed and accordingly, the recommendation has not been fulfilled.

Migrants detained should immediately be clearly explained about their rights and the procedures used toward them in a language they understand. It is important that detained migrants be provided with the document that explains the procedures used toward them and information about their rights. This document should be available in languages that are usually spoken by these individuals. If necessary, additional services of an interpreter shall be used.<sup>416</sup>

During the monitoring, the most of the persons accommodated at the center mentioned that at the moment of placement in the establishment they have been orally informed about their rights. However, at the center they are not provided with the special document, which consist the information about their rights in the relevant language.

### 5.3. LEGAL SAFEGUARDS FOR DETAINEES

Right to access to a lawyer must include the right to talk with him/her personally, as well as receiving the legal advice on the matters of place of residence, detention and deportation. This means that if the migrants do not have the means to hire a lawyer and pay for it, they should have access to the free legal assistance.<sup>417</sup>

According to Article 2, paragraph 4 of the decree N 525 of the Government of Georgia on Approval of the Procedure for Removing Aliens from Georgia in the process of the expulsion of aliens should be provided with the access to the legal advice. During the monitoring, the aliens have not complained about the accessibility to the legal advice. Nevertheless, some of them wanted to take full legal assistance regarding their expulsion process.

It should be noted that the obligation of providing legal advice defined by the law cannot be considered a full-fledged legal aid, as it is important that the person should provide with full legal assistance during the expulsion process, including drafting the legal documents, as well as representation in court or administrative body. It should be noted that the law on “Legal Aid” defines the persons benefiting from the legal aid, which does not include the alien that is in the process of expulsion. Accordingly, the relevant legislative changes are needed to implement abovementioned issue. It is noteworthy that the recommendation has been issued about the mentioned issue in the Ombudsman’s parlia-

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416 Standards of the European Committee for the Prevention of Torture, paragraph 30, Accessible in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

417 Standards of the European Committee for the Prevention of Torture, paragraph 82, Accessible in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

mentary report in 2014.<sup>418</sup> This recommendation still has not been fulfilled.

The qualified nurse, who reports to the doctor, should examine each newly accommodated detainee immediately. Right to access to a doctor should include the right of migrants to undergo a medical examination by a doctor chosen by him/her, according to their will; however, the detainee may have to cover the costs of such medical examination.<sup>419</sup>

The medical examination occurs during the detention and placement of aliens in the temporary accommodation center. The medical staff consists of two doctors, which implements initial medical examination of the detained aliens according to their symptoms and chronic diseases. It should be noted that the persons placed in the center have not complain about health services.

The most important guarantee for protection from torture and ill-treatment of detained aliens is an indication of the information on detainees' physical condition in the arrest report. Particularly, the description is the person had or not any damage to the body at the moment of the detention, specifically where, how many, what kind, etc. It should be noted that there is no column on body damage in the alien's arrest report, according to the Public Defender this is the major shortcoming and should be improved.

#### 5.4. CONDITIONS IN TEMPORARY DETENTION CENTERS

European Committee for the Prevention of Torture notes that the detention centers should not resemble a prison in any way. International guidelines stipulate that the detained migrants should be placed in specially designated centers, and detention conditions should be in consistent with the nature of their deprivation of liberty.<sup>420</sup>

Migrants should have fewer restrictions and a variety of activities provided in the agenda. For example, the detained migrants should have all the resources that promote reasonably maintenance their contact with the outside world (including telephone calls and frequent meetings) and the minimum limit of their freedom of movement in places of detention.<sup>421</sup>

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418 The Public Defender's Annual Parliamentary Report, accessible at: < <http://www.ombudsman.ge/uploads/other/2/2439.pdf> > [Last visited 17.01.2016].

419 Standards of the European Committee for the Prevention of Torture, paragraph 82, Accessible in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

420 Standards of the European Committee for the Prevention of Torture, quotation from the torture prevention 7<sup>th</sup> report, pp 54.

421 Standards of the European Committee for the Prevention of Torture, paragraph 79, Accessible in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

Public Defender welcomes existing good infrastructure and sanitary conditions in the temporary detention facilities. At the same time, the examination of internal and external visual conditions, we can say that the whole infrastructure is designed to provide enhanced safety, which creates feeling of the prison regime. In particular, the high walls and barbed wire surrounded area, with indoor and outdoor perimeter controlled by the security services. Area is under video surveillance, while there are the iron bars on doors in the entrance of section blocks at the center, which can be locked with a key.

Individuals placed in the center are limited of to move out of the wing, the palace and the dining room, without requesting to the personnel, which has a negative influences condition of the mentioned persons and creates the feeling of being resemble conditions as it is in the prison regime.

There are 3 Sections In the center: men's, women's and families'. On the day of visit there was one woman in the women's section. One family was placed in a section of the family (2 persons). The rest of persons were accommodated in the men's section. It should be noted that the departments of the rooms are provided with adequate lighting and ventilation. Toilets and bathrooms are in good condition, sanitary conditions are protected. There is the sitting room in the departments, which is equipped with the TV and books are available in different languages. It should be noted that the kitchen and dining facilities are in order in the institution, sanitary norms are protected. During the nutrition time persons accommodated at the center are brought to the dining room according to the sections, first of all family's and women's section, and then persons placed in the men's section. The mentioned procedure does not hinder individuals placed in the center to be under the same conditions in terms of providing with food.

We welcome the fact that the center provides a separate room for a disabled person, which is equipped with appropriate lighting and ventilation. The equipment in the room (with a moving wheeled table) gives the opportunity to consider the needs of persons with disabilities. Sanitary norms are protected sanitary facilities. However, there is no fixed railing on the toilet and shower the walls for the disabled persons.

The institution has a yard, which has the basketball / football playing grounds. There also is a covered space in the yard, where the detained persons can walk during the bad weather.

## 5.5. NUTRITION

Detained aliens complained about the food. Some of them are cited food ration among the problems, according to them it do not change. Some of them complained about usage large amount of bread in the food ratio and demanded its replacement with rice.



The monitoring revealed that food preparation process does not take into account nutritional characteristics of different religions and vegetarians.

## 5.6. CONTACT WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture noted that according to the will of a relative of a detainee or a detainee himself-herself, the promotion of the right to information for third-party can be guaranteed, if the migrants will have the right to own a cell phone or even have access to it.<sup>422</sup>

International treaties also recognized the right to consular assistance of the detained migrants. However, as far as all of the migrants may be reluctant to communicate with their state, realization of this right depends on the person's choice.<sup>423</sup>

At the center of the migrants' detention an important aspect of contact with the family is to have the right to use the telephone and the computer. According to the agenda of the center, the foreigners are allowed to use the phone only on certain days (Monday, Wednesday, and Thursday). Each phone call lasts four minutes.<sup>424</sup> It should be noted that in some cases telephone contact is the only opportunity to have contact with relatives for the detained aliens. During the visit to the center, one of the major problems identified in practice for the foreigners was impossibility to use of the telephone. In particular, during the monitoring the persons detained in the center pointed out that, the administration did not provide the opportunity to use the phone despite the allocated time of the call.

An important aspect of the contact with the outside world is the free time defined in the agenda for unlimited usage the computers. There was a single computer in the center. Center staff explained that it was possible to use the Internet, but the majority of the foreigners interviewed were not informed about the possibility of use of the computers and the Internet.

## 5.7. DAILY SCHEDULE AND ACTIVITIES

Migrant detention conditions should be inconsistent with their deprivation of liberty, in particular, should have fewer restrictions and a variety of activities in the agenda.<sup>425</sup>

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422 Standards of the European Committee for the Prevention of Torture, paragraph 82, Accessible in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

423 *ibid.*

424 On Approval of the Regulations of Temporary Detention Centers of the Migration Department of the Ministry of Internal Affairs of Georgia.

425 Standards of the European Committee for the Prevention of Torture, paragraph 79, Accessi-

The European Committee for the Prevention of Torture stating that the current regime of the migrant centers should include the activities such as walking, resting in the room listening to the radio, read the newspaper and watch TV capability, as well as other activities necessary for the recreation (e.g. : board games, table tennis). The longer a person is placed in the center, the more diverse activities should be provided.<sup>426</sup>

The daily schedule of the persons placed in the center is regulated by the agenda of aliens accommodated in the temporary placement center. According to the mentioned daily schedule, the free time is provided from 10:00 - 13:00 and 14:00 - 17:00 for the individuals placed in the center. Free time includes walking on the fresh air, using the library or the computer.

It is important that to set fewer restrictions on freedom of movement in the area of the center for the inhabitants during the free time. They also should have the opportunity to freely choose the activities and should not limit in time during using a variety of activities prescribed in the agenda. In this regard, it is worth noting the complaint of the persons placed in the men's section, which emphasized that, the use of the football field only for an hour in a day.

Based on the above mentioned, it is important, to offer more diverse activities, additional entertainment and sports activities for the accommodated persons, to develop a short-term training modules, etc.

## 5.8. MONITORING OF THE JOINT OPERATION FOR THE RETURN OF MIGRANTS

Monitoring of the joint operation for the return of migrants was conducted second time by the employees of the Public Defender's Office of the Prevention and Monitoring Department on October 20, 2015.

The mentioned monitoring was conducted in the framework of the readmission agreement between the European Union and Georgia.<sup>427</sup> The Public Defender's Office of the Prevention and Monitoring Department monitored the deportation of 35 citizens of Georgia from the European Union the countries. The persons deported from Germany (21 citizen), Switzerland (8 citizen) and Bulgaria (6 citizen). Among the deportees were 25 men, 9 women (1pregnant) and 1 minor.

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ble in Georgian language at: <<http://www.cpt.coe.int/lang/geo/geo-standards.pdf>> [Last visited 16.01.2016].

426 *ibid.*

427 Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, accessible at: <<https://matsne.gov.ge/ka/document/view/1250250>> [Last visited 18.03.2016].

The border police of German, Swiss and Bulgarian side transferred to the Georgian side (the convoy of the Ministry of Internal Affairs) on board of the aircraft (Dusseldorf and Sofia) the persons deported from the above-mentioned countries. Coordinated of the deportation was implemented by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union “ Frontex “. Georgia was participating in the process with involvement of the Migration Department of the Ministry of Internal Affairs of Georgia and the police officers. The employees of the Public Defender’s Department of Prevention and Monitoring within the monitoring left Tbilisi International Airport to the following destinations: Tbilisi - Dusseldorf - Sofia - Tbilisi.

It should be noted that during the flight monitoring, employees of the Prevention and Monitoring Department were moving freely and observing the plane and the situation on the outskirts of a ramp. The majority of the deportees boarding to the plane were carried out freely, without using any restraints. With the exception of five deported person who had plastic handcuffs and they were taken to the persons accompanying him on the plane, without using physical force.

It should be noted that after identified the absence of need of handcuffs after the boarding an airplane, the representatives of the Ministry of Internal Affairs removed the handcuffs for four deported persons. During the flight plastic handcuffs have not been removed from only one person, which was drug addict and was distinguished by aggressive acting. This person was mentioning that swallowed a razor with the conversation with the monitoring group members and demanded a thorough medical examination. By notification of the representatives of the Ministry of Internal Affairs the person was allowed on board on the basis of a verbal explanation of the sending country’s medical personnel. It is important that in such cases, the migration service of Georgia should allow the person on board only after presenting the appropriate medical certificate. It should be noted that the process of placement and travel of the deportees was conducted without any incidents.

## RECOMMENDATIONS

### TO THE GOVERNMENT OF GEORGIA:

- To change the wording “ legal advice” with the term “legal aid” in Article 2, paragraph 4 of the decree N 525 of the Government of Georgia on “Approval of the Procedure for Removing Aliens from Georgia”, which entitled the alien to the opportunity to take not only legal advice, but also a representation in court and administrative body

TO THE MINISTRY OF INTERNAL AFFAIRS:

- To change the Order №631 of the Minister of Internal Affairs of Georgia “on Approval of the Rule of Detention and Placement of Aliens in the Temporary Accommodation Center”, which concretizes that a superficial examination of the person only means inspection of the outer surface and objects by the detention eligible person
- To amend special column and indicate the information on body damage of the detainee in the alien’s arrest report
- To take all the necessary measures, to give the special document to the detained person in the center on the information about their right in the certain language
- To take all necessary measures to bring the ability of the uninterrupted phone calls to the persons placed in the center
- To take all necessary measures, in order to provide with freedom of movement the individuals placed the centre, including the movement out of blocks, in the yard, in dining room and in the sitting room
- To take all necessary measures to install fixed railing on the toilet and shower the walls for the disabled persons
- To take all necessary measures for to equip the computer room with a sufficient number of computers and ensure the unhampered enjoyment of the computer / Internet for persons placed in the center
- To revised food standards and take into account the cultural and religious characteristics of the persons accommodated in the center
- To take all necessary steps to offer a variety of activities to the detainees of the center
- To take all necessary measures for the escort members of the deported person to accept the deported person on board only after presenting the sending state’s health statement

PROPOSAL TO THE PARLIAMENT OF GEORGIA :

- To change the law on “Legal Aid”, according to which the alien to be expulsion will be given the right to legal assistance.

## 6. HUMAN RIGHTS SITUATION OF ASYLUM SEEKERS, REFUGEES AND HUMANITARIAN STATUS HOLDERS IN GEORGIA

### 6.1. INTRODUCTION

The right to asylum is a right guaranteed by international human rights law. Any person has the right to seek and enjoy asylum.<sup>428</sup> These rights are enshrined in the United Nations' the 1951 "Refugee Convention" and in its 1967 Supplementary Protocol.. Also, in accordance with Article 47 of the Constitution of Georgia, the state grants asylum to a foreign citizen or stateless person in accordance with the norms of international law.

The Public Defender's Office is actively implementing the monitoring of the human right situation of the asylum seekers, refugees and persons with humanitarian status.

Numbers of the asylum-seekers, refugees, and persons with humanitarian status applying to the Ombudsman's Office increased comparing to the previous years. Accordingly, during the reporting period the monitor the rights of those persons are particularly active in order to study and to identify the gaps. at the end of 2015, in the framework of the project "Support to the Office of the Public Defender (Ombudsman) to enhance its capacity to address the situation of Refugees, humanitarian status holders and asylum seekers in Georgia" prepared a special report<sup>429</sup> on asylum seekers, refugees and humanitarian status of the human rights situation in Georgia and was presented to the state authorities, also the diplomatic corps and representatives of the non-governmental organizations. The report provides a detailed review of the results of the monitoring carried out by the Public Defender's Office in regard the study of the human rights situation of the mentioned persons in the country. The document highlights the asylum seekers', refugees' and persons' with humanitarian status general situation in Georgia , their access to the state border, availability of the asylum procedure, on appealing the court cases. The report also pays particular attention to the shortcomings in the legislation; the special recommendations are developed on this regard.

It is important to note that in order to improve the asylum legislation during the reporting period, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia initiated the new draft law on "International Protection". Along with the other government agencies and international and non-governmental organizations, representatives of the Public Defender were participating in the discussions of the draft law. The report presented a brief overview of the bill.

428 Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, accessible at: <http://www.refworld.org/docid/3ae6b3712c.html>

429 <https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view?pref=2&pli=1>

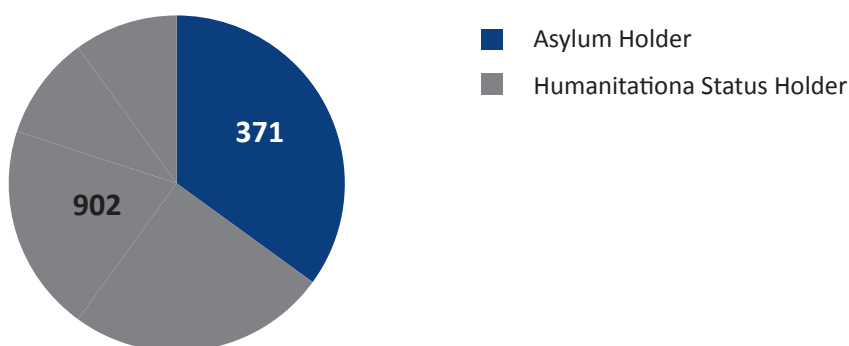
## 6.2. GENERAL INFORMATION AND STATISTICS ON ASYLUM SEEKERS, REFUGEES AND HUMANITARIAN STATUS HOLDERS

Georgia acceded 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Supplementary Protocol in 1999, thereby committed to the protection of asylum seekers, refugees and humanitarian status holders.

The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter the Ministry on Refugees) is the sole administrative body responsible for receiving, consideration of and taking decisions related to the applications of asylum seekers.

By the data of 2015 December 31,<sup>430</sup> 1273 refugees and persons with humanitarian status are living in Georgia. Out of the number mentioned 232 persons have been granted refugee status based on prima facie principle,<sup>431</sup> 139 persons are refugees, while 902 – have humanitarian status.

Statistics of the Asylum and humanitarian Status Holders



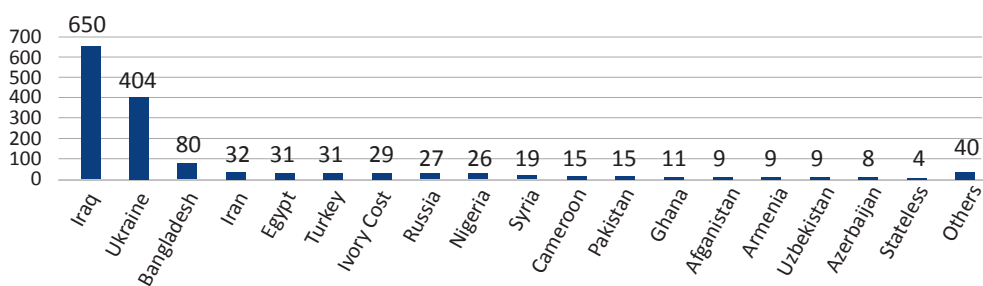
Refugee and humanitarian status holder mostly are Iraqi, Ukrainian, Russian and the Syrian citizens. The military situation and the conflicts in their country of origin, forced them to leave their homeland and seek for safe asylum in Georgia.

1449 asylum seekers applied to the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia in the reporting period. Out of this number the majority was Iraqi (650 persons), Ukrainian (404 persons) and Bangladeshi (80 persons) citizens.

430 The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia letter N1282/16, 27.01.2016.

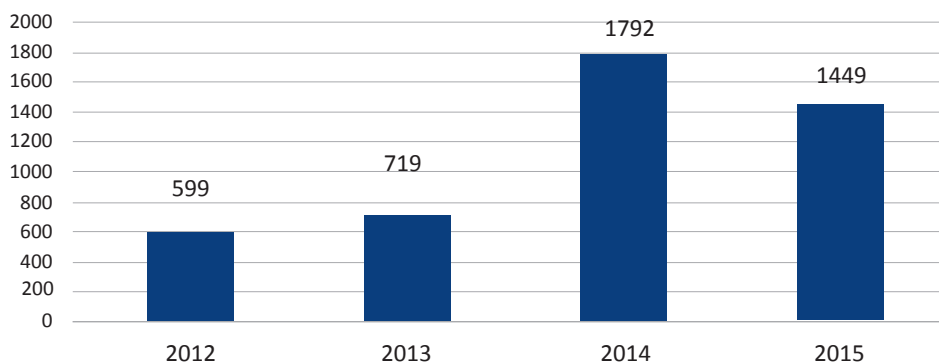
431 Latin: At first view.

### Statistics of Asylum Seekers by the Country of Origin



The rise of the number of asylum seekers started from 2012 and reached peak in 2014, when their number was 1 792 persons.

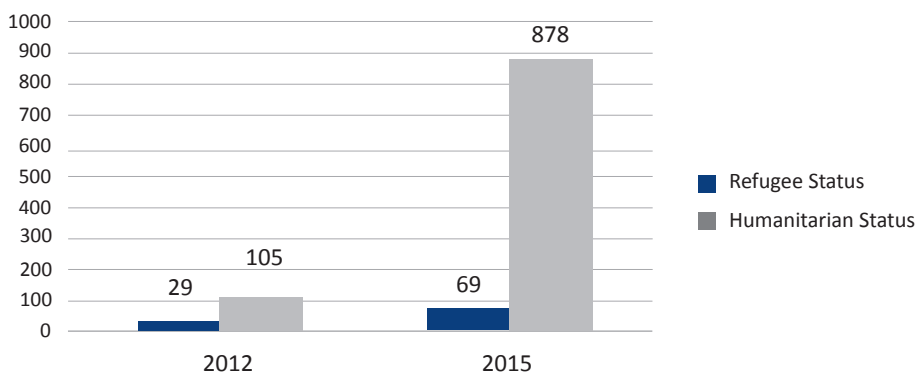
### Numbers of Asylum Seekers in 2012-2015



### The positive trends in terms of refugee and humanitarian status improve review procedures / increased number of granted status

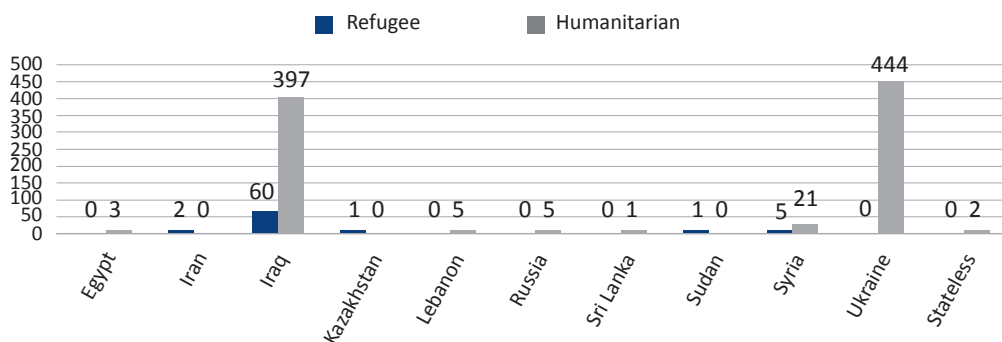
During the reporting period, the rate of granting refugee and humanitarian status has increased significantly compared to previous years. According the existing data for December 31, 2015, positive decisions were made in 75% of the reviewed cases (in 2014 - 37%). As for the numbers, 69 persons were granted refugee status in 2015, and the humanitarian - 878 persons (in 2014, respectively, 29 and 105 persons). The increase of mentioned numbers were influenced by changes in the state's approach to asylum policy and improvement of the asylum procedures, also development events in Ukraine; The worsening situation in Iraq and Syria, which led to an increase in the number of asylum seekers who were forced to leave their homeland in search of safe shelter.

### Granting the Refugee and humanitarians Status in 2014 and 2015



The majority of asylum seekers who were obtained the status in 2015, were citizens of iraqi and Ukraine.

### Statistics of Granting Refugee and humanitarian Status by the Country of Origin (from January 1 to December 31 in 2015)



2014-2015 have been especially prominent in terms of the improvement of the asylum system and the approximation with the EU standards. The rule of identification of asylum seeker at state border, accepting, transfer and mutual cooperation, approved under a joint order of the Minister of Refugees and the Minister of Interior has been issued and put into operation (here and after – united order).<sup>432</sup> The procedure of establishing refugee status has been harmonized with the standards and requirements envisaged under the Geneva Convention relating to a Refugee Status and its 1967 January 31 Supplementary Protocol.

Structural and procedural changes can be considered as a positive trend, which were implemented in 2015. Accordingly, Appropriate changes should be made in The Minister of Refugees of Georgia, order N 100 on Approving the Procedure for Granting Refugee

<sup>432</sup> The order N1033–N2975 (23.12.2014) issued by the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia along with the Ministry of Internal Affairs of Georgia .



or Humanitarian Status. For the purpose of Asylum interview process improvement was introduced electronic recording device for electronic footage the forms and interview process. The order clarifies the functioning of the department of the issues related to the obtaining the information on the country of origin. Herewith - seekers effective management procedures of the applications of asylum received in the Ministry.

Amendments of the order N100 also determined the asylum application form, registration and issuing dates of an asylum-seekers' identity document delivery and rules.

The legislative changes should be evaluated positively that have been implemented during the reporting period and discussed in details in the framework of "Human Rights Situation of Asylum Seekers, Refugees and Humanitarian Status Holders in Georgia" above mentioned special report <sup>433</sup>.

There is no a special unit at the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia who would be responsible on the asylum department reports' quality and implement the monitoring of it. Therefore, we welcome the news reported in the end of 2015. Although, with respect to this, the amendments to the Statute of the Ministry of Refugees that will enter into force from January, 2016, are commendable. Specifically, structural units of the Department of Migration, Repatriation and Refugees will be formed: (1) a unit for determining status and (2) quality control and trainings unit.

### 6.3. LEGISLATIVE REGULATIONS AND THEIR COMPLIANCE WITH THE EUROPEAN STANDARDS, PLANNED CHANGES AND EXISTING SHORTCOMINGS

Harmonization of the national legislation with the European Union Standards and the European legislative space is one of the priority directions on the path to EU integration. The Law of Georgia on Refugee and Humanitarian Status, passed on December 6, 2011, sets forth legal status of asylum seekers, refugees or holders of humanitarian status, rights and obligations, legal safeguards, social-economic safeguards of a person with refugee or humanitarian status, grounds and procedures for granting, terminating and revocation of refugee or humanitarian status in Georgia. Although the Law, to the extent possible, reflects the standards set forth under the Geneva 1951 Convention Relating to the Status of Refugees, envisaging the concept of a refugee, unity of the family, protection of unaccompanied minors, non-refoulement, the law still has certain shortcomings that may hamper the enjoyment of rights and freedoms by the persons protected by the law.

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433 <https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view?pref=2&pli=1>

During the reporting period, matter of the mentioned reasons, a new bill on “international protection” has been developed, the Public Defender hopes that its adoption will be possible during the year. The Public Defender’s representatives are actively involved in the discussion about the bill. Accordingly, the extensive analysis of the law was introduced during the discussions in the Parliament. However, it may be brief noted that the draft law, along with the refugee or humanitarian status is formulated new form of protection - “temporary protection”, which means the temporary registration for persons who massively entered the country and granting the status of temporary protection. The bill defined “country of origin” and “internal relocation alternative” concepts; a new term “refugee ground (sur place)” is introduced and etc. The bill is particularly important for the definition of “family members” and “derivative status” for the family members of the persons under international protection, with regards the family unity principle. According to the 1989 “Convention on the Rights of the Child” of the United Nations purposes, the bill introduced the procedure for protection of the best interests of the minor and other.

The bill provides the directives adopted for the international protection standards in 2011(European Parliament and Council Directive 2011/95 of 13 December 2011) and 2013 (European Parliament and European Council Directive 2013/32 of 26 June 2013) provisions of the qualification directives. Unlike the current legislation, the bill is harmonized with the 1951 Refugee Convention and, likewise, regulated the basis of international protection granting, contradiction and denying assigning the status, as well as the basis of refugee, humanitarian status or temporary protected status termination, cancellation or seizure.<sup>434</sup>

Despite the fact that this bill includes international protection standards and guidelines related to “refugee status” of the UN Convention provisions, there still are gaps, which we believe needs to be addressed and corrected. It should be noted that the bill covers the Ombudsman’s recommendations, which were introduced in in 2014 report of Public defender of Georgia on the Situation of Protection of Human Right and Freedoms of Georgia<sup>435</sup> and in 2015 special report on “Human Rights Situation of Asylum Seekers, Refugees and Humanitarian Status Holders in Georgia”.<sup>436</sup> Accordingly, the above-mentioned shortcomings in the report are no longer the issue. The major gaps that turned to be out of consideration during making the mentioned changes still are the main issue.

Despite the many positive changes, the articles that we consider that needs to be changed still remains in the existed bill. For example, refugee and humanitarian status determination procedure can be for the necessary period of six or nine months in case

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434 Explanatory note of the draft law on “International Protection”.

435 <http://www.ombudsman.ge/uploads/other/2/2439.pdf>

436 <https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view?pref=2&pli=1>

of prolonging; additionally the matters of period of appealing to the court. We believe that the proceedings period is rather long and has a particularly negative effect on the asylum seekers, who have no source of income (exceptions are the asylum seekers who live in the temporary accommodation centers and are provided with a monthly allowance along with other benefits) to live in a foreign country. Mentioned recommendation has not been incorporated into the new draft law on asylum-seekers and the proceeding period still remains the same. It is important to note that there is a need to clarify the specific reasons and circumstances, which defines the case of extension as an urgent need in the draft law. In addition, a provision on defining 4 months as the period of first interview after registration of the application, which is also quite unreasonable and long term.

We consider as an important matter including - instant (sur place) provision on the right of the international protection - to define more specifically, not come into conflict with the 1951 Geneva Convention on the Status of Refugees.

Chapter 2, Article 3(e) of the Law of Georgia on Refugee and Humanitarian Status is especially challenging;<sup>437</sup> it is about denying a refugee status on the grounds of state security. The Ministry applies the mentioned article based on a letter from the Counter Intelligence Department. According to the results of the examination performed by the Public Defender's Office, a document issued by State Security Office Counter Intelligence Department is not justified and does not comprise factual grounds, which is highly important for taking a relevant decision. It is important that the mentioned letter is justified to the extent possible and refer to at least those factual Grounds disclosure of which will not interfere in security interests and/or does not constitute a secret. Although information related to state security is confidential, State may not refuse asylum seeker by neglecting explanations and due process requirements. When a response of an administrative body does not contain justification due to the ignorance of factual circumstances, it cannot be verified whether there is a violation of asylum seekers' rights or discrimination, in terms of unequal treatment of individuals who are in equal conditions. Following the analysis of the cases by the Public Defender, it has been discovered that the mentioned article is applied without performing relevant assessment, and asylum seeker is not provided with an explanation and even minimum information as to the reasons for the refusal is not presented. It should be notes that the same law, the 2015 July amendments defines a potential threat to the state security of Georgia, which "includes cases where there is a reasonable belief that an asylum-seeker, or a refugee or humanitarian status holder, has connections with: a) the armed forces of a country and/or organisation which threatens the defense and security of Georgia b) the intel-

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437 e) who may, based on a reasonable assumption, pose threat to state security, territorial integrity as well as to the public order of Georgia- Law of Georgia on Refugee and Humanitarian Status, Chapter 2, Article 3. Grounds for Refusing a Refugee Status.

ligence services of other countries; c) terrorist and/or extremist organisations; d) other criminal organisations (including transnational criminal organisations) and/or the illegal trade in armaments, and/or weapons of mass destruction, and/or their components.”<sup>438</sup> However, during the reporting period, after making changes, there were no negative conclusions issued by the State Security Service. Accordingly, the provision of the article was not indicated as the grounds for the refusal that was mentioned several times by employees of Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. In this regard, providing minimum information to the asylum seeker person is substantial, due to the opportunity of the effectively appealing of ministry’s decision.

The second important issue that needs refinement and improvement is the individual administrative act and effective appeal proceedings of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, which are based on the State Security Service Counterintelligence Department report. In relation to the given issue, the established practice of the European Court of Human Rights (ECHR) is important. For the case *Liu and Liu v. Russia*,<sup>439</sup> court tried to identify whether the national law comprised sufficient safeguards for the enforcement of executive government discretion without abuse. In this regard, the ECHR stated that “even when national security is at stake, the concepts of legitimacy and the rule of law in a democratic society require that the measures related to fundamental human rights be subjected to any form of adversarial proceedings before an independent body, which would look into the reasons of such decision and relevant evidences (if this becomes necessary in relation to information classified through relevant procedural restrictions).” Court deliberated on the availability of an appeal mechanism, the possibility of challenging the allegation of the executive government that national security was concerned. According to the opinion of the court, naturally, executive government opinion with regard to what is regarded national security threat will be attached significant weight, but an independent body should be able to respond in a case when there are no reasonable grounds to invoke national security concept or it is revealed that the definition of national security is illegitimate, is inconsistent with common sense or is arbitrary. In the presence of such definition, police or another government entity would be able arbitrarily interfere into the rights protected by the Convention. Although during the reporting period, substantially improved the practice of the general courts and security grounds refugee and in the cases of humanitarian status refusal based on the individual administrative act judge asks for confidential information from the relevant entities, however, is necessary for the process to have irreversible character, in order to study a secret materials by a judge and not hinder effective litigation.

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438 Law of Georgia on Refugee and Humanitarian Status , article 25, paragraph 3.

439 ECtHR Judgement on the case *Liu and Liu v. Russia*, Judg. No 42086/05, Paragraph 49.

## 6.4. REVIEW OF THE MONITORING RESULTS OF 2015

During the reporting period, the monitoring of the decisions of Georgian state border, the asylum seeker and humanitarian status holder prisoners of Ministry of Corrections and Legal Assistance of Georgia, reception center of the asylum seekers and humanitarian status holder, temporary placement center of the Migration Department of the Georgian Ministry of Internal Affairs, processed asylum seekers cases in the common courts was implemented.

*For improvement access to the Georgian territory for asylum seekers and availability of the procedures*, the Office of the Public Defender, according to the schedule designed jointly with the UNHCR Georgia and the UN Association representatives performed the monitoring of state border of Georgia. Among them, the unannounced visits performed by representatives of the Public Defender and the results of this monitoring, is important.

The monitoring was implemented at the following border-immigration control units of the Ministry of Interior Patrol Police: Sarpi, Batumi Airport, Kutaisi Airport, “Tsozna (Lagodekhi), Dariali (Kazbegi), Poti Port, Vale Sameba (Ninotsminda), Red Bridge, Geguti, Sadakhlo, Railway Unit Sadakhlo. Furthermore, border migration control department at Tbilisi Airport. Visits were made to the Ministry of Internal Affairs state sub-agencies – Border Police of Georgia structural units, including sectors and at the Patrol Police Border-Migration units. 21 visits were made during the year.

In the framework of the monitoring the identification of asylum seekers on the border, including researching the information about them and after the supervision of the fulfillment the criteria of the order issued by the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia along with the Ministry of Internal Affairs of Georgia several issues during the visits were identified: police officers’ lack of information about the measures have to be implemented while the asylum seeker is passing through on the border. In this point, it is the most important to identify availability of the means of requesting asylum at the border for a foreigner seeking asylum who enters or wishes (legally or illegally) to enter Georgia territory.

Amenities of the border police and border checkpoints buildings are not in order with the standards. That is expressed in nonexistence separate room for interviewing the temporary detainee/ asylum seekers. Just few border checkpoints are set up according to modern standards. In most cases, the interview is not conducted in a confidential environment. Often, buildings do not include dedicated rooms for interviewing suspended travelers; aliens are suspended in the resting rooms of the border guards. Minimum standards for the detained persons is important at the border, often additional time and resources are necessary for examining the specific issue. Adherence to standards is

especially important in case of an asylum seeker, since, in addition to other procedures, it is necessary to ensure relevant language, and if requested, to ensure an interpreter of a relevant gender that demands time and resources.

Visa policy is very important and accessibility of visa procedures on the border. On September 1, 2014, following the entry of the new Law of Georgia on Legal State of Aliens and Stateless Persons, visa regulations were introduced for certain countries. New immigration rules have created certain barriers and problems for the foreigners in terms of the entry and living in Georgia. Although, by establishing an electronic visa portal (e-visa) (was launched on February 9, 2015), obtaining short –term visas for touristic or business visits became somewhat easier for aliens.

Based on the information obtained during monitoring it has been revealed that quite frequently, aliens are denied entry to the country due to the lack of a visa according to legislation. Although, in such cases especially alarming are facts that the mentioned persons predominantly include the citizens of Iraq, Syria and Iran; these are the countries that, as a result of the ongoing armed conflicts, give rise to a large number of the people in need of international protection.<sup>440</sup> According to the information provided by the Public Information department of the Ministry of Internal Affairs the statistics show that during 2015, a total of 8 405 persons were refused for obtaining visa. From these numbers there were 217 - Iraq, 401 - Syrian and 509- Iranian citizens.<sup>441</sup> We believe that, when there are trying to cross the border with lack of document by the mentioned countries' citizens, special attention should be paid to the procedures of asking specific information regarding the reasons of leaving the home country and while refusing the request of entering the country.

As for *the common court case on asylum seekers*, over the reporting period, from June to October, 2015, cases of asylum seekers at common courts have been studied. Decisions were solicited (city court – 58 decisions, court of Appeals – 20 decisions, Supreme Court – 5 rulings) and monitoring of court hearings was performed (city court – 13 hearings, Court of Appeals – 6 hearings). The aim of conducted monitoring of common courts is to study weaknesses and strengths of the justice system, through observation of court hearings and analysing cases solicited from courts, and through recommendations to improve the situation in terms of human rights protection and the implementation of the rule of law.

During monitoring, focus has been made on technical aspects of holding court hearing, which also had certain impact on the judicial proceedings. On several occasions, the parties had not been adequately informed about appointed hearing and the adjourn-

440 UNHCR Mid-Year Trends 2014, available at: <http://www.unhcr.org/54aa91d89.html> , p.5.

441 The letter of Public Information Unit of the Ministry on Internal Affairs of Georgia, N 713455 (22.03.2016).

ment of the hearing became necessary. There were cases when asylum seekers lacked awareness of the procedures and details of consideration of the case. Especially notable were the hearings where a party did not have a representative/attorney and the terms used by a judge, especially at the stage of reasoning and answers, when an appellant is allowed to make a statement, were unclear for such party. Although legislation does not envisage the duty to explain rights, in mentioned cases it is necessary for a party to be duly informed about own rights, in order to accurately formulate his/her opinion. In relation to the above-mentioned legislative amendment about free legal aid for asylum seekers, refugees and holders of humanitarian status that will enter into force from 2016 is highly important; we hope that following this amendment, the above-mentioned problems will to some be eliminated.

The most important issue that requires refinement and improvement is appealing of negative decisions made by the Ministry of Refugees and proceedings that are based on the conclusion of the Georgia State Security Office Counterterrorism Department. Over the course of monitoring special attention was directed at the appealing of such very decisions and judicial scrutiny.

In the opinion of the European Court of Human Rights, the use of confidential material may become indispensable, when the national security is involved. Although, according to court, this does not mean that public authorities should be exempted from effective control by courts when they decide to invoke national security and terrorism. There is a technique that enables that legitimate, security protection considerations related to the source and nature of intelligence to be taken into account and at the same time to ensure that an individual has access to essential due process.<sup>442</sup> The mentioned technique has been introduced in response to a court decision<sup>443</sup> in the United Kingdom. When deportation is made on the grounds of national security and the basis for a decision is confidential information, this procedure envisages holding a closed court hearing, at which secret information is presented, and it is not attended by an applicant or his/her representative, but an attorney verified and approved by the security office is defending the interests of an applicant.<sup>444</sup> When taking such decisions it is also important for the court to strike the balance between national security and a person's security.

The analysis of the practice of the ECHR confirms that public authorities should take into account the following circumstances:

- When the rights of an individual are suspended on the grounds of national security, such person is entitled to some safeguards against arbitrary action;

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442 The European Court of Human Rights Judgement on the case Liu and Liu v. Russia, Judg. No 42086/05, Par 56–57 and 63.

443 Case of *Chahal v. The United Kingdom*, No. 22414/93, November 15, 1996, Paragraphs 131–132.

444 Anti-Terrorism, Crime and Security Act 2001, Part 4: Immigration and Asylum.

- Allegation from the executive government that national security interests are involved does not exempt it from effective judicial control, which may require the examination of confidential information by court;
- A mechanism should be available that will enable the court to examine actual grounds of an executive government decision and at the same time to safeguard national security interests.

According to national legislation, judges of common courts have access<sup>445</sup> to secret information based on which a relevant office has issued a conclusion about inexpediency of granting a status. Furthermore, given that conclusions issued by the State Security Service of Georgia do not contain any justification, for the purposes of full-fledged scrutiny of case in court, it is essential that judges to solicit secret information retained at the security office or another relevant body that formed the basis for denying refugee or humanitarian status. Only following such consideration of a case in court will enable the protection of the right to due process and fair trial.

In turn, a problem is also a fact that neither a complainant/appellant nor his/her representative is authorized to review material based on which status was refused. Even in case court solicits secret materials of the case. Given this context, the role of a judge and the rendering of a justified decision relevant to the principles of fair trial by the judge is especially important.

One of the most important works conducted during the reporting period was the monitoring of the asylum seekers, refugees and persons with humanitarian status prisoners of the Ministry of Corrections and Legal Assistance of Georgia. During 2015 monitoring of foreign citizens residing in the Department of Corrections N8<sup>446</sup> and N5<sup>447</sup> establishments was implemented.

Monitoring involved visits to the cells, as well as face-to-face interviews with all asylum seekers who were at the penitentiary institution in the given period. During monitoring there have been cases when, based on specific needs, several visits were made to a single individual. Information about inmates was obtained from the Ministry of Penitentiary and Probation, as well as the Ministry of Refugees, although, notably, the number of asylum seekers and personal data were not complete and also did not match. Several asylum seekers and persons with humanitarian status were identified accidentally during monitoring, since they had not been recorded in the database of any of the ministries. During the reporting period, a total of 35 visits were made to penitentiary institutions.

445 Law of Georgia on State Secret, Article 6.

446 N8 penitentiary facility of the Ministry of Corrections and Legal Assistance of Georgia locate in Tbilisi, Gldani District VII, 2nd km.

447 N5 (women's) penitentiary facility of the Ministry of Corrections and Legal Assistance of Georgia located in the Gardabani municipality, village Mtisdziri.



According to Article 177(2) of the Criminal Procedure Code of Georgia, in case of detention of aliens, a prosecutor or subject to a prosecutor's instruction –an investigator shall provide information to the Ministry of Foreign Affairs of Georgia and a consulate of a relevant state. Although, the cases of detention of asylum seekers or refugees should be taken into account particularly, when it is not advisable to provide any information to the embassy of the country of origin. International human rights law provides for privacy and protects an individual against arbitrary or illegal interference.<sup>448</sup> In case of asylum seekers, it is necessary to take effective measures, to make sure that information concerning a person's personal life does not appear in the hands of a person or state that may use the information not in accordance with international human rights law. We believe that principle of confidentiality should not have been violated. According to the guidelines of the UN High Commissioner for Refugees (UNHCR) on the detention, the general principles of data protection and privacy should be protected in relation to information on asylum-seekers, including health-related issues.<sup>449</sup> According to the guidelines, the identity of the detainees and recording more detailed information about the detainee should follow the rules of relevant regulations; however the access to information should be balanced with privacy issues. The same provision covers the rule of informing the interested parties, relatives and lawyers.

The following findings have been made during the monitoring of individual cases:

- Majority of aliens/ stateless persons, asylum seekers, holders of refugee and humanitarian status deem general conditions of detention facilities satisfactory and assess the attitude of the administration as positive;
- discontent has been expressed with regard to feeding from prisoners that are followers of Islam, for, according to them, they were unable to eat food designated for them, while in the store there was the lack of nutrition;
- The issue of availability of interpreters at the institutions is a serious problem. Beneficiaries who do not have a command of language face problems, since they find it hard to communicate with the administration. Furthermore, translation of application or documentary material a prisoner wants to send is also problematic, for, during the examination of a specific case it has been established that sometimes it takes more than two months to translate a document.

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448 The Universal Declaration of Human Rights, December 10, 1948, 217 A (III), <http://www.refworld.org/docid/3ae6b3712c.html> [Last visited October 30 , 2015].

449 <http://www.unhcr.org/refworld/docid/503489533b8.html> [Last visited 20.03. 2016].

## RECOMMENDATIONS

TO THE GOVERNMENT OF GEORGIA, TO THE PARLIAMENT OF GEORGIA AND TO THE MINISTRY OF INTERNALLY DISPLACED PERSONS FROM THE OCCUPIED TERRITORIES, ACCOMMODATION AND REFUGEES OF GEORGIA:

To facilitate the adoption of the new law of Georgia on “International Protection” in 2016

TO THE MINISTRY OF INTERNALLY DISPLACED PERSONS FROM THE OCCUPIED TERRITORIES, ACCOMMODATION AND REFUGEES OF GEORGIA:

- to reduce the asylum-seeker’s application review and decision-making terms during the process of adopting the law on “International Protection”, which are determined under the article 14 of the current law on “Refugee and Humanitarian Status”
- To specify the reasons of factual statement in the individual administrative-legal acts of refusing to grant refugee or humanitarian status for the national security concerns, that does not contain a secret and / or information harmful to national security
- To permanently carry out data update of the beneficiaries placed in the penitentiary institutions

TO THE MINISTRY OF THE INTERNAL AFFAIRS:

- To ensure training of the border police, police and other relevant units of the Ministry Interior Affairs (operative-investigation unit), especially for the new employees on asylum issues
- To ensure adapting of the interview rooms according to the latest standards and provide appropriate temporary separation places on the borders

TO THE MINISTRY OF INTERNAL AFFAIRS AND STATE SECURITY SERVICE OF GEORGIA

- To ensure justification of the report grounds of national security reasons while granting refugee or humanitarian status, to the possible extent, informing those persons or their representatives who were denied to enjoy this right

#### TO THE COMMON COURTS:

- During the hearing the court should ask for and get acquainted to all those (including confidential) information existed in State Security Service Counter-intelligence Department of the Ministry of Interior Affairs, which become grounds for refusal of the person to a refugee or humanitarian status
- Common courts should be guided by the standards established by the European Court of Human Rights in cases when an individual administrative-legal act on the denying the status, issued on the grounds of state security interests is appealed, for the consideration of similar cases and courts should always examine secret information and materials that formed the basis for a decision made by the Ministry;

#### TO THE HIGH SCHOOL OF JUSTICE OF GEORGIA

- To improve training of the judges, as well as assistants and candidates of judge in refugee law.

#### TO THE MINISTRY OF CORRECTIONS OF GEORGIA:

- To ensure the updating of the database about prisoner aliens/asylum seekers, holders of refugee and humanitarian status for complete information
- To identify and solve the problems of the foreign citizens / stateless persons / asylum seekers, refugees and humanitarian status holders prisoners , provide the services of an interpreter in the institutions
- To carry out special activities to raise awareness of employees on the right of asylum seekers, refugees and humanitarian status holders

## 7. REPORT ON THE MONITORING OF MENTAL HEALTH INSTITUTIONS

### 7.1. INTRODUCTION

The present report encompasses the results of monitoring of the mental health institutions of Georgia, carried out under the auspices and within the mandate of the National Preventive Mechanism, from 9 October 2015 to 6 November 2015, by the Special Prevention Group of the Public Defender of Georgia. The Special Prevention Group together with the Department of Protection of the Rights of Persons with Disabilities of the Public Defender carried out the monitoring of the following mental health institutions:

1. LLC „Unimedi Kakheti“– Tbilisi Referral Hospital;
2. LLC „N5 Clinical Hospital“ (Tbilisi);
3. JSC „Acad. O. Ghudushauri National Medical Centre“ (Tbilisi);
4. LLC „Rustavi Psychiatric health centre“;
5. LLC „ Psychiatric health and drug-addiction prevention centre“ (Tbilisi);
6. LLC „A. Kajaia Surami Psychiatric hospital“;
7. LLC „Kutaisi Psychiatric Health Centre“;
8. LLC „Acad. B. Naneishvili Psychiatric Health Centre “ (Khoni, Kutiri);
9. LLC „Senaki Inter-regional Psycho-neurologic Dispensaire“ ;
10. LLC „Clinical Psycho-neurologic hospital of the Republic“(Khelvachauri);
11. LLC „Bediani Psychiatric Hospital“;
12. LLC „Tbilisi Psychiatric Health Centre“.

The monitoring group was created based on the multi-disciplinary method and consisted of members of the Special Prevention Group members and the employees of and the Department for Rights of Persons with Disabilities of Public Defender’s Office. At the preparatory stage the monitoring group had developed the monitoring methodology<sup>450</sup> under the supervision of the invited local<sup>451</sup> and international<sup>452</sup> experts.

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450 The said methodology was prepared with the assistance of the joint programme of European Union and Council of Europe “Human Rights in Prisons and Other Closed Institutions”.

451 The development of methodology was supervised and the Report was prepared with participation of Nino Makhashvili, Head of Fund “Global Initiative on Psychiatry –Tbilisi” and member of the consulting council of the National Prevention Mechanism.

452 Dr. Clive Mew, expert of the European Committee on the Prevention of Torture (CPT) also participated in the development of the methodology.

The monitoring aimed to assess the current situation regarding ill-treatment in mental health institutions, patients' rights, and the adequacy of psychiatric care in terms of identifying issues and provision of the practical recommendations directed at their resolution.

The technical reports of the members of the monitoring group, together with other materials were used to prepare this report. Documents obtained during the visit, as well as accounts of the members of the monitoring group are stored at the Public Defender's Office. The report contains the main findings of the monitoring group and is compiled in a manner that, the respondent patients, due to the confidential nature of the interview, cannot be identified.

During the monitoring process, group members inspected the hospital's infrastructure, and interviewed patients therein in a confidential environment. Group members also interviewed the administration, medical staff, physicians, social workers. The documents and logs of relevant institutions were also inspected during the monitoring.

During the visit, the monitoring group members were freely moving around the area of mental health institutions and were not interfered by the administration and authorities therein. Mental health institution personnel duly presented the requested information and documents.

## 7.2. GENERAL OVERVIEW

In order to respond to the problems and challenges in a systematic way, the Parliament of Georgia, in December 2013 adopted the 'National Concept on Mental Health'. This is the main mental health policy document of the country. The document states that 'Georgia recognizes the importance of mental health'. Moreover, 'Georgia undertakes to organize delivery of mental health services within the country in the manner that people with mental disorders receive treatment in the least restrictive environment, to the extent possible in their own home or close by, based on their basic needs; to ensure maximum protection of their rights and dignity and their full and effective participation in society on an equal basis with others'. To reach the goals identified in the National Concept, the Ministry of Labour, Health and Social Affairs has launched a national strategy and action plan for the years 2015-2020, which was approved in December 2014. This is definitely a step forward. Despite the declared government policy, the field of mental health is still in severe condition. The monitoring has identified a number of systemic problems.

First of all, the lack of funding for mental health must be pointed out, as the amount of funds allocated is directly related to the quality of psychiatric care. Since 2006, health

care spending for mental health in Georgia follows the increasing trend, but the ratio of percentage of the costs of mental health in relation to the overall costs on public health has not changed significantly. A large portion of funds is spent on inpatient psychiatric services and this figure remains high for years. The state's priority is assigned to inpatient care funding, whilst funding for psychosocial rehabilitation stands stagnant and only a small part of available financial resources is allocated to the outpatient care. Along with the lack of funding, the methodology of funding the long-term and acute cases is also a problem. 840 GEL per case is allocated for acute cases and 450 GEL per month for cases of long-term treatment. The scarcity of funding ultimately leads to the problems with insufficiency of qualified personnel at mental health institutions, the absence of adequate therapeutic environment, quality of treatment, care, psycho-social rehabilitation, as well as length of stay at hospitals and the lack of community-based services.

Georgian mental healthcare system is severely understaffed and lacks human resources. The deficit of psychiatrists is twice higher than the average European index. A 2015 study on mental health professionals found that in total, number of psychiatric health care personnel in state-funded institutions is less than 40% of the total of the employees. The training and professional development of the personnel of mental health institutions is equally problematic. The lack of qualified staff, in turn, has a negative impact on the quality of psychiatric care, supervision of patients and safe and secure environment in the institutions. This situation increases undue physical restrictions and the risk of use of excessive force when applying such physical restrictions. In addition, extremely hard working conditions result in severe psychological state of the personnel and negative emotions can lead to ill-treatment of the patients.

The monitoring group has received numerous reports about physical and verbal abuse of patients during the visits at the mental health institutions. In addition, according to the monitoring group, patients are subjected to ill-treatment due to extremely bad conditions of stay, facts of physical and chemical restraints, the methods of physical restraints, administering injections in the presence of other patients, lack of access to timely and adequate treatment of somatic diseases, long-term hospitalization due to the neglect and involuntary medical intervention. The monitoring also revealed that there is a problem of due protection of safety in mental health institutions from the violence among the patients.

The monitoring revealed that the legislative requirements as regards the use of physical restraint are systematically breached. According to surveys of patients, it was found that they are often 'tied down' for lengthy periods of time and left without adequate oversight. It was obvious that most of the institutions do not carry out the registration of cases of application of physical restrictions and there is no clear system - in most cases the record of the use of physical restraints is made in general logs and not in the pa-

tient's medical records or *vice versa*. The requisite 15-minute interval monitoring record of the dynamics of the patient's condition is found nowhere in any records. Sometimes the time is not set at start and end of application of physical restraint. The reasons for the use of physical restraint are formulated in a manner that is not particularly informative. In many cases, it could not be determined why the physical restraint was necessary and whether other alternative measures could be used. It should be noted that neither the Law of Georgia on Psychiatric Care nor the above mentioned instructions specify the maximum term for the use of physical restraint, which is dangerous, because it can lead to repetitive application of physical restrictions for 4 hours. The said normative acts also fail to establish the obligation that the information about the physical restraint be included both in the patient's medical record, as well as a special journal (special register). It is therefore important that the normative acts are brought to order, via including making changes to regulate those two issues.

It is noteworthy that neither the law nor the instructions mention chemical restraint as a measure of restriction. According to the assessment of Public Defender, the chemical restrictions are frequent and are often not documented properly. The institutions routinely apply physical restraint together with chemical restraint. There is no clear legal framework regulating chemical restraint and no justifications are provided for its application. This amounts to a violation of standards of international human rights law. The same guarantees of protection should be provided whenever chemical or mechanical means of restraint are used.

The interviews with patients and the inspection shows that the patients are placed in isolation rooms for more than a few days, and bearing in mind the conditions of the isolation rooms, such practice gives rise to concerns for the Public Defender. In the view of the Public Defender, the isolation rooms in the Republican Clinical Psycho-Neurological Hospital and Mental Health Center, as well as other mental health institutions are not specially and properly equipped and there is high risk of self-harm by patients in such rooms. In addition, the Public Defender considers that the bars on the door and the window are unacceptable, both in terms of safety, and the disruption of the therapeutic environment and its' association with the prison and the punishment cell. Hence, placement of a person in such isolation room may amount to degrading treatment.

The Public Defender is also concerned about the fact that despite the requirements that the usage of the physical fixation and specialized isolation together with the duration of use of these measures, shall be duly reasoned and documented in accordance with Article 16 of the Law of Georgia on Psychiatric Care and similar requirements established by abovementioned instructions, the isolation of the patient is not in reasoned, properly documented and is applied for a long time in violation of applicable laws.

The Public Defender deplores the fact that the physical restrictions are applied equally to formally voluntary and involuntary patients, which is also contrary to the CPT's position, according to which patients treated on a voluntary basis should not be subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) must be immediately initiated.

It is important that patients are provided with the material conditions which will facilitate their recovery and prosperity. It should be noted that some of the existing physical environment and sanitary conditions not only fail to contribute to a favorable therapeutic environment, but also create the situation, which in many cases amounts to inhuman and degrading treatment. In particular, old infrastructure, extremely bad sanitary and hygienic conditions, living space that does not correspond to the standards, poor sanitation and impossibility of privacy, as well as disruptions with regards to central heating and ventilation were between major problems at some institutions.

The monitoring group found that the informed consent is of the formal nature, without the explanation and provision of complete, objective, timely and comprehensive information. Obtaining of informed consent of the patient occurs to prevent the record of involuntary placement and the procedure is formally directed to place the signed consent form in the patient's medical record. Actually every inspected institution, the monitoring group members interviewed the patients formally undergoing voluntary treatment that no longer wanted to stay in the hospital and requested to be discharged.

In light of the spirit of the UN Convention on the Rights of Persons with Disabilities, the Public Defender considers that all measures must be taken that psychiatric care is predominantly applied on informed consent of duly informed patient and the practice of psychiatric care based on the person's involuntary hospitalization is gradually eliminated. The Ombudsman is concerned for vulnerable legal position of individuals who are hospitalised, actually involuntarily, based on formal informed consent. They are outside the control of the court, and thus unable to defend their rights and subjected to medical interventions and physical restriction against their will. Thus, the patients' right to personal liberty and security is violated, and being subject to conditions of arbitrary detention, in many cases, they are victims of inhuman and degrading treatment.

The Public Defender considers that in the short-term perspective, in order to avoid the vulnerable legal status, it is necessary that psychiatric institution immediately applies to the court if the patient undergoing voluntary treatment asks to be discharged from hospital, but the criteria for involuntary inpatient psychiatric care are met. The Public Defender also underlines that since the risk of hospitalization without any grounds and/or the risk of long- term hospitalization exists even under judicial control, until the final elimination of the notion of involuntary psychiatric care, it is important, in the short term perspective to create solid security guarantees in this regard.



The problems related to the involuntary inpatient care practices surfaced during the monitoring. In several instances, the petitions submitted to the court refer to only one criterion, while at least two criteria should be fulfilled. In addition, the reasoning for the motion is blanket and so are judicial orders. In addition, in many cases the past placement carries a negative impact on decision-making process. In particular, certain “presumption of illness” operates in such situations. Monitoring has shown that judges in most cases satisfy motions of mental health institutions. They tend to agree with the doctor’s opinion and disregard those of the patients’. Doctor psychiatrists believe that they know patient’s needs better and the judge, because of lack of medical education, shall not adopt a decision contrary to the doctor’s opinion. In such circumstances, the judicial review process, especially when it refers to assessment of a 6-month extension of involuntary psychiatric care, shall lay the importance on an independent psychiatrist’s opinion, which is not envisaged in the law, representing the essential defect in due protection of the patient’s rights.

Public Defender considers that patients should be furnished with the information on their treatment on a regular basis, in the language they understand, and this should be part of the therapeutic process. Mental Health Institutions and their medical personnel must respect the patient’s refusal of treatment, and they should try to persuade the patient by providing detailed information of the treatment and its anticipated consequences. This will guarantee the respect to the personal autonomy of the patient.

According to the assessment of Public Defender, the mental health facilities have the patients, who can be called “open-ended” or “perpetual” patients. “Perpetual” patients “in this case are the patients who for months and years, stay on inpatient treatment without in fact ever leaving the hospital. They often do not require active treatment, but cannot leave the hospital because “they do not have a place to go to”, or because the family avoids taking them home. It should be noted that managements of all of the institutions with the long-term care unit, declare that such “perpetual patients” represent 30-40% of their contingent. The reasons for delayed discharge of such open-ended patients is the lack of patient support systems, economic insecurity, absence of modern housing / long-term care facilities, lack of geographical access to outpatient psychiatric services and deficit of community-based psychiatric services, as well as shortage of the skills for independent life in patients. Longer hospital stays (in deteriorating environment) deprive patients of the skills for life and the limits their abilities to such depth that it leads to serious barriers associated with their reintegration in society and lengthens this process.

The public defender shares accepted norm, those patients whose mental state no longer requires hospitalization in a mental health institution, should not be forced to stay in hospitals due to the lack of adequate living and care conditions. Instead, their conditions

should be properly evaluated and they should be deinstitutionalized. Public Defender calls upon the Government to take all necessary measures to gradually move from the large Mental Health Institutions to the upgraded modern facilities, which requires community-based long-term care and the development of secure services.

Whilst examining standards for the treatment of people with mental disorders, the group found that in most institutions, managers, as well as staff, keep understanding of the treatment as reduced to pharmacological therapy only, which is not in compliance with the modern bio-psycho-social approach and evidence-based health care principles. Intensive pharmacotherapy method is expected to be associated in practice with emergency/high-risk departments, which aim to discharge the patient from the department as quickly as possible. According to the doctors of such emergency/high-risk cases departments, quick discharge of patients from such units is, unfortunately, not based on the medical evidence relating to severe accident management as it should be, but rather on the amount allocated for the treatment of such acute cases, as well as the period, which is optimal for spending the allocated funds. The Special Prevention Group also had the impression that the patient "Pharmacological activity" is actually the only way to control patients. Psychiatric cases are mostly managed without any complex therapeutic structure, and the involvement of the patients in meaningful activities is not ensured.

According to the Public Defender, the short period of management of the acute condition of the patient (10-14 days on average) is not enough to reach comparably solid improvements. Presumably, the improvements achieved as a result of intensive treatment start to deteriorate rapidly, as the remission stage is not achieved and the patient discharged from the hospital does not receive the due out-patient care at all, or due to lack of funding, treatment is limited much lower intensity. Out-patient services are fragmented and under-developed; therefore, none of these services are available to maintain the achieved improvements. Thus, there is a high risk of re-aggravation of the situation and repeated hospitalizations.

Monitoring shows that the purchase of high-quality medicines is prevented both by the scarcity of the resources allocated to the psychiatric care, as well as the legal framework governing public procurement. In particular, mental health institutions are buying medications through a simplified electronic tender. The winner of the tender will be the bidder, which offers the lowest price to the purchaser. Such a rule of purchase had a negative impact on the quality of the medication, because there are different producers offering the medicines with the same active substance, while the market price is directly related to the quality of the end product.

The monitoring demonstrated many shortcomings of the medical documentation. In some of the facilities, psychiatrists failed to regularly inspect the patients and thus the

results their observation, are also irregularly reflected in the medical cards. Medical files did not contain data on individual treatment plan. Many entries are practically illegible because of the doctor's handwriting. In most of the institutions the records describing the condition of the patient, the so-called "cursus" are not regularly kept. These records are of mostly blanket nature.

Based on the monitoring results, the Ombudsman concluded that there are severe problems related to the treatment of somatic diseases in mental health institutions. Situation is slightly better in the psychiatric departments / divisions of general hospitals (e.g. Acad. N. Ghudushauri National Medical Center's Department of Psychiatry). Such psychiatric departments / divisions have access to the services available in the various departments of the general hospital. Diagnostics of somatic diseases and treatment of the problem is particularly problematic in limited liability companies established by the state, such as LLC "A. Kajaia mental hospital", LLC ,, Senaki Dispensaire ", LLC ,, Republican Clinical Psycho-Neurological Hospital ", LLC ,, Bediani psychiatric hospital ", LLC ,, Acad. B. Naneishvili State Mental Health Center ". The administrations of the institutions state that they are not duly equipped, neither financially, or on the side of infrastructure to undertake the proper evaluation and treatment of patients with somatic diseases.

High patient mortality is of the issue of particular concern for the Public Defender. As it turns out the study of medical records of patients who died, there were many cases calling for appropriate investigation and treatment of somatic health condition, but conduct of any such examination and treatment is not confirmed by medical documentation.

Despite the efforts of staff of mental health institutions, to help beneficiaries in social issues, psychosocial support, rehabilitation and reintegration services in hospitals are barely developed. In some cases, their existence is only a formality and can be considered as a day-activity.

The monitoring showed prolonged hospitalisation of the children, which according to the Public Defender is the result of the improper performance of the social workers' duties. No multidisciplinary work is conducted in N5 Clinical Hospital. Work towards resolution of psychological and behavioural problems is absent from the children's individual development plans, which sticks solely to the pharmacological treatment of mental disorders. Apart from this, there is no individual service plan for each beneficiary, the fulfilment of which would be monitored by the person responsible for the dynamics to ensure that the patient receives a complete package of services. The Public Defender believes that the therapeutic activities in the children's departments do not meet modern standards and guidelines for international intervention, intervention strategies need to be developed, appropriate competence of the personnel has to be improved etc. The Public Defender is concerned by the cases of placement of children in the hospital units for adults and urges the staff to prevent such practices in the future.

Patients subjected to forcible psychiatric care and those transferred from the penitentiary institutions to undergo involuntary treatment are subject to undifferentiated approach. Patients have limited contact with each other. This includes only pharmacotherapy. Patients are not involved in the rehabilitation and improvement of programs, sports and other activities. The monitoring group was left with the impression that no psycho-social rehabilitation work is being practiced with the patients, and the psychologist help is scarce. Days are not anyhow planned or structured by meaningful activities and they generally run in the drab, mundane manner. Patients often engage in conflicts.

There is no individual approach towards patients in the Forensic Psychiatry Department of the National Center for Mental Health. Their individual needs are not identified and the necessary team is not created to perform the relevant multidisciplinary work. Patients are not involved in the treatment process. Patients are managed through intimidation and aggression between injections. The risk assessment procedure is not in line with international standards. It is unclear what the evidence of credibility of the instrument is, or how the degree of risk is integrated into the treatment scheme, the treatments are held in uniform, broad blanket structure.

Finally, it should be noted in particular that there is a problem of proper monitoring of psychiatric care in mental health institutions supervised by state and of protection of patients' rights. In this regard, the activities of the National Preventive Mechanism are crucial, but the Public Defender considers that bearing in mind the specific nature of the mandate of the National Preventive Mechanism, it is important to ensure effective operation of other state control mechanisms at the same time.

Mental health institutions formally have the internal complaint and feedback procedure, complaints boxes are installed, but the patients do not actually use this procedure and complaint boxes. Patients do not know their rights, and they do not know to whom to appeal. Public Defender identified the following three important problems which demand resolution: a) inform patients of their rights in a language understandable for them; b) introduction of the appeals procedure which is simple and effective taking into account the special needs of patients; c) introduction of proactive monitoring programme for both in-hospital and outside hospital (under the control of the state sector) patients. NPM also believes that in determination of the deadlines and other procedural issues of the appeals procedure the special needs of patients in mental health institutions and the practical difficulties that may be encountered by patients with the realization of the right of appeal shall be taken into account.

## 7.3. MENTAL HEALTH IN GEORGIA – REFORMS AND CHALLENGES

### 7.3.1. IMPORTANCE OF MENTAL HEALTH

Mental health is an integral part of individual and public health. There is no health without mental health. Therefore, the public mental health care is crucial to improve the mental health of the population.<sup>453</sup>

In recent years a significant intensification of the mental health issues was notable on the global and European policy agenda.<sup>454</sup> This increased attention and awareness on the side of the World Health Organization, international research institutions, governments and professional societies is truly justified.

Approximately 450 million people worldwide are suffering from mental health disorders. At any given moment, about 10% of adults suffer from this mental disorder; 25% will have it developed at some stage of life.<sup>455</sup> Mental health problems are common in every country, equally within women and men, at all stages of life, within rich or poor, in rural as well as urban conditions.

Mental disorders are associated with more than 90% of the million suicides committed annually. In fact, this figure is much higher, due to the fact that in many cases the cause of death is not reported openly.<sup>456</sup>

Mental health problems are responsible of about 20% of total burden of disabilities caused by the illness, but the so-called “treatment gap” between supply and the real needs of the service remains quite broad.<sup>457</sup>

Persons with mental disorders are vulnerable, often marginalized and excluded. The World Health Organization in its report “Mental health and development,” notes that

“Mental and psychosocial disorders have varied and far-reaching social and economic impact, lead to homelessness, poor educational and medical solutions and high levels of unemployment, which ultimately culminates in a higher rate of poverty”.<sup>458</sup>

In developing countries, considerable share of burden of taking care of the relatives with mental health problems in economic and social aspects lies on families, since there are

453 Saraceno B, Freeman M. and Funk, M. (2011) Public Mental Health. Oxford University Press.

454 Knapp, M., McDaid, D., Mossialos, E. and Thornicroft, G. (2007) Mental Health Policy and Practice Across Europe. WHO on behalf of *European Observatory on Health Systems and Policies Series*. Open University Press.

455 World Health Report 2001. Mental Health: New Understanding, New Hope. Geneva, World Health Organization, 2001.

456 Suicide prevention (SUPRE). Geneva, World Health Organization, 2007.

457 Kohn R., Saxena S., Levav, I. and Saraceno, B. The treatment gap in mental health care. *Bull. World Health Org.* 2004; 82(11):858-866.

458 World Health Organization (2010). Mental health and development: Targeting people with mental health conditions as a vulnerable group. WHO Press, Geneva.

no comprehensive mental health services in the state-funded network.<sup>459</sup> In XXI century, the stigma is still strong and responsible for many obstacles and resistances on the path of reforms.<sup>460</sup>

Either way, the lack of political support, inadequate management, overwhelming burden on health services and from time to time - resistance from policy makers and health care workers, slowed down consistent, sustainable development of mental health systems in low and middle income countries.

Psychiatric services were characterized by a high level of institutionalization of the former Soviet Union, with a pronounced emphasis on biological treatment. These characteristics are maintained in the post-Soviet states – introduction of modern, customer-focused and community-based services encounter major obstacles.<sup>461</sup> In many cases, psychiatric reform programs stopped and were even reversed.<sup>462</sup> It is against this background that a critical phase of the mental health reform program started a few years ago in Georgia.<sup>463</sup>

### 7.3.2. MENTAL HEALTH IN GEORGIA: BRIEF OVERVIEW

A drastic reduction in the number of psychiatric beds took place in the years following the independence of the country. It was a general trend in the post-Soviet countries. Since 1995, the psychiatric beds decreased by almost 5 times, which was caused by the lack of financing of health care services.<sup>464</sup> Unfortunately, like in other countries, the decrease of the hospital beds was not compensated by the necessary outpatient and community-based services.

Currently, inpatient mental health services are delivered through several specialised institutions and departments within general hospitals. Noteworthy, that according to the position of the World Health Organisation, in-patient treatment of mental disorders should preferably take place in general hospitals, however, a large number of countries

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459 Hudson, C.G. (2005). Socioeconomic Status and Mental Illness: Tests of the Social Causation and Selection Hypotheses. *American Journal of Orthopsychiatry*, 75, 3-18.

460 Petersen I, Bhana A, Flisher A, Swartz L, & Richter L (Eds). (2010). *Promoting mental health in scarce resource environments: emerging evidence and practice*. Human Sciences Research Council Press, Cape Town.

461 Tomov, T., Puras, D., Keukens, R. and Van Voren, R.: Mental health policy in former Eastern Bloc countries; in: Knapp, M., et.al.: *Mental health policy and practice across Europe*, McGraw/Hill, New York, 2007.

462 *Mental Health Reforms (MHR)*. 1-2011. Special issue on Lithuania. Global Initiative on Psychiatry.

463 Makhashvili, Nino, and van Voren, Robert. "Balancing Community and Hospital Care: A Case Study of Reforming Mental Health Services in Georgia". *PLoS Med* 10(1): e1001366. doi:10.1371/journal.pmed.1001366.

464 WHO, European health for all database (HFA-DB). Available at: <http://data.euro.who.int/hfad/> [last visited on 24 February 2016]

still rely on mental hospitals primarily.<sup>465</sup> The number of beds for psychiatric patients in general hospitals of Georgia amounted to 2.31 on 100 000 citizens in 2014, while in a mental hospital - 32,32 per 100 000 citizens.<sup>466</sup> Psychiatric hospitals beds per 100 000 inhabitants in Georgia exceeds the world average rate (17.5 beds per 100 000 inhabitants)<sup>467</sup>, However, this figure is almost 3 times less than, for example, in Latvia (105,09). It is also noteworthy that in Georgia per 100 000 inhabitants, the number of psychiatric beds in general hospitals is twenty times less, than for example, Estonia, (47,05), which moved to rendering inpatient care in general hospitals model and has only 7.71 beds per 100 000 population in mental health hospitals.

Apart from mental health hospitals and in-patient departments of general hospitals there are 18 psychiatric outpatient clinics (called dispensaries) in the country. However, mental health services are unevenly distributed in the country: in the poor remote areas, access to services and the quality is lower. About half (48%) of the Licensed psychiatrists are registered in the capital, Tbilisi.<sup>468</sup>

According to WHO's Mental Health Atlas (2011), neuropsychiatric disorders amount about to 22.8% of the global burden of disease. In 2006, global health spending amounted to 10.14% of GDP, while the government's health expenditure per capita (PPP International, in US dollars), 73 dollars.

In 2006-2011 years, the costs of mental health care in Georgia was characterized by an increasing trend, but the volume percentage of the costs of mental health in relation overall costs public health have not changed significantly, and remains at approximately 2.5%.<sup>469</sup> Georgia's per capita mental healthcare costs reach 2.8%, which is significantly less than the countries of similar level of development(Curatio, 2014).

Mental health services are mainly financed from the state budget. Corporate and private insurance share in funding mental health services in Georgia, as well as most countries around the world, is very limited.<sup>470</sup>

Acute and chronic inpatient care funding have been changed and re-evaluated in recent past:

- acute inpatient services are paid for by the state, according to the actual costs, but no more than a determined value of GEL 840 per case;

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465 Available at: [http://www.who.int/gho/mental\\_health/care\\_delivery/beds\\_hospitals/en/](http://www.who.int/gho/mental_health/care_delivery/beds_hospitals/en/) [last accessed 28.03.2016].

466 Available at: <http://apps.who.int/gho/data/node.main.MHBEDS?lang=en> [last accessed 28.03.2016].

467 Available at: [http://www.who.int/gho/mental\\_health/care\\_delivery/beds\\_hospitals/en/](http://www.who.int/gho/mental_health/care_delivery/beds_hospitals/en/) [last accessed 28.03.2016].

468 Makhashvili, van Voren, 2013.

469 International Fund Curacio 2014, Mental Healthcare in Georgia: Barriers and Ways of Overcoming them, Tbilisi

470 The private sector service shall be noted - for example; Inpatient clinic voluntary treatment of persons with mental disorders - "Mentalvita" - does not fall under the state regulation and supervision.

- Long-term hospital services are paid for by the state via monthly vouchers, the value of which is estimated at 450 GEL.

In 1995, Georgia has developed a **Mental Health Program** (as a part of the new general health care program), under which a psychiatric patients registered in the Registry, receive free services in hospitals and outpatient clinics.<sup>471</sup>

Thus, mental health services are delivered with the annual State Mental Health Program, which is administered by the Ministry of Labour, Health and Social Affairs; The program is reviewed annually. The program’s budget has been more than doubled from 2006 until 2011, to reach 12 million and continues to grow (15 645 400 GEL in 2015).

Table 1 describes the mental health care services in the state budget and changes from 2006 to 2015 period. The table shows a gradual increase in funding and diversification of services package offered in respect to persons with mental health problems. However, the table also shows that the priority is given to the financing of inpatient care, the psychosocial rehabilitation is in complete stagnation and only a small part of the funds are allocated to outpatient care.

Table 1. Mental Healthcare state budget for the years of 2006-2015 (in GEL)

Components	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Outpatient Care	1200000	2000000	2397442	2597232	2597232	2734000	2855000	2866000	2865300	2865300
Psycho-social rehabilitation		50 000	70100	70100	70100	47000	70000	70000	65700	70100
Children mental health				100688	151032	75000	151000	151000	151000	151000
Crisis intervention						14000	520500	662485	662300	662300
Community based mobile team service										96800
Inpatient care for adults and children	3750000	4900000	5882558	6933780	6933780	7457000	9244400	9280800	10420300	10778700
						99000				
Urgent inpatient care				45000	45000	45000	97600	3190	0	0
Alcohol related mental inpatient care services				48000	144000	144000	164200	225000	445900	481200
Provision of accommodation for mental patients								466500	536600	540000
total	4950000	6950000	8350100	9794800	9941144	10615500	13102700	13725000	15137100	15645400

Mental health program for children and adults needing psychiatric inpatient services includes the following components:

1. Acute inpatient care;

471 Sharashidze, M., Naneishvili, G., Silagadze, T., Begiashvili, A. and Beria, Z. (2004). Georgia mental health country profile, *International Review of Psychiatry*, 16(1–2), 107–116.



2. Long-term inpatient care;
3. Treatment and additional services (safety and security) of patients, who, under Article 191 of the Criminal Procedure Code, are subject to forced psychiatric treatment by hospitalization according to a court decision.

Additional services include: meals, personal care items, provision of emergency surgical and dental treatment and rehabilitation services.

Another service funded by the programme is notable – provision of accommodation to persons with mental disorders, including:

1. Service for the people with disabilities over the age of 18 with inherent and acquired mental disease resulting in dementia;
2. Service for the people under the program for persons with mental disorders in institutional patronage as of December 31, 2014.

Georgia spends a large part of the funds in-patient psychiatric services (about 70%) and this figure remains high for years. Developed European countries spend about 9-31% of inpatient psychiatric services and much more on out-patient services.

Typically, acute inpatient mental healthcare services require a major part of the budget allocated<sup>472</sup>. Therefore, reduction in the average length of staying in the hospital can be a significant goal of the system, especially if the resources freed up in this way can be spent on other components of the service.<sup>473</sup> That is the problem NPM monitoring team faced in the acute care units, which will be discussed in the results of the monitoring.

From the perspective of universal financing of the health care,<sup>474</sup> the dominance of the mental health hospitals limits general availability of mental health services.

In order to implement Comprehensive chain of healthcare the country needs development of out-hospital services - yet the program allocates only 28% of the funds to these services; community based services consume only 4.5% of allocated finances(-mental health reform in the National Strategy and Action Plan 2015-2020, the Government Decree N762, December 31, 2014).

The mental health care system of the country suffers severe deficiency in human re-

472 Knapp M, Chisholm D, Astin J, Lelliott P, Audini B. The cost consequences of changing the hospital-community balance: the mental health residential care study. *Psychol Med* 1997 May; 27(3): 681-92.

473 Sederer LI. Inpatient psychiatry: why do we need it? *Epidemiol Psychiatr Soc* 2010 October;19(4):291-5.; Lelliott P, Bleksley S. Improving the quality of acute inpatient care. *Epidemiol Psychiatr Soc* 2010 October; 19(4):287-90.

474 The world health report: health systems financing: the path to universal coverage. Geneva, WHO, 2010.

sources. Deficiency of psychiatrists compared to the European average index is twice higher and in absolute numbers it equals to deficit of at least 250 psychiatrists (Curatio, 2014). This applies to other specialists, as shown in the following Table 2.

Table 2. Mental health personnel per 100 000 inhabitants (2011)<sup>475</sup>

	Georgia	Average European Index
Psychologist	12.8	22.2
Nurse	7.68	45.3
Social worker	2.9	60
Psychiatrist	6.87	11

A research on the experts in the psychiatric field conducted in 2015<sup>476</sup> made it clear that, in the state-funded institutions, the mental health care personnel is less than 40% of the total number of employees. The data shows that in total, in 13 of 19 specialized (mental health) service providers mental health personnel are less than the non-specialized staff (administrative and support staff together). However, the general trend towards three types of personnel groups studied are as follows: the most numerous are the support staff (watchman, a cook, a maid, doctor / nurse assistant), then are the mental health staff, and finally - the administrative staff.

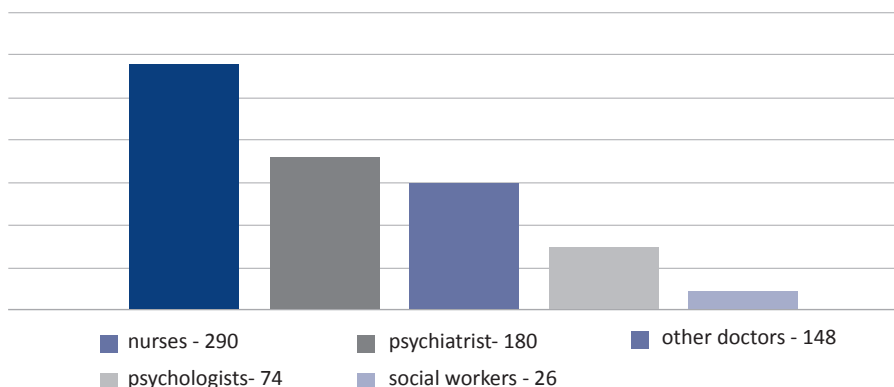
Mental health staff are employed full-time as well as part-time and hourly / consultancy basis (see. Figure 2) in service provider organizations. Overall, the most numerous of the mental health staff is group of nurses (290), while the smallest - social workers (26). In addition, all organizations interviewed had a psychiatrist, only 1 did not have a nurse, 2 did not have a psychologist, 5 did not have other doctors and 10 did not have a social worker.

As for the tax-free monthly payment for mental health staff, psychiatrists are paid significantly (by more than 50%) higher than the rest of the groups in terms of other doctors, nurses, psychologists and social workers, the median remuneration of which is not significantly different from each other. Among them, the social worker is the highest (360 GEL), while the lowest, is the compensation of the “other doctor”(325 GEL).

475 Adapted from International Fund Curatio. 2014. *Psychiatric Health Care in Georgia: Barriers and the ways to resolve them. Policy Document*. Tbilisi.

476 Association of Social Workers of Georgia (2015). *The professional of Mental Health: local tendencies, Report*. Tbilisi.

## Exhibit 2. Mental Health Personnel



In conclusion, this report suggests the following: in terms of numbers, the first three regular employment positions are shared by the nurses, psychiatrists and other doctors, and the last two by psychologists and social workers. However, the latter is significantly lower than the former. Workload of the specialist groups vary from one specialist to 31 beneficiaries (other doctor) to 53 beneficiaries per specialist (social worker). In general, the lack of improvement of qualification is notable.

Georgia still has to undergo a fundamental transformation from the old Soviet system of mental health care structure towards humane direction in which basic human rights standards are satisfied (GIF-Tbilisi (2007). Situation in the Mental Health Sector, Report. Tbilisi). Georgia recently conducted studies showing the extent of the problem and the connection among mental health, social exclusion and poverty (GIP-Tbilisi, 2009).

The violations of the rights of hospital inpatients are described in the Public Defender's reports,<sup>477</sup> as well as in the reports of the European Committee for the Prevention of Torture (CPT), which are based on regular monitoring of the closed psychiatric institutions.

The evidence of human rights violations submitted to policy makers throughout years is a strong incentive to start reform process of the mental health care.

### 7.3.3. LEGISLATIVE FRAMEWORK

Adoption of the 2007 Law on Psychiatric Care was generally a progressive move which, among other innovations, determined the necessity of a court decision in case of involuntary hospitalization and the need of legal grounds for application of physical restraints<sup>478</sup>. The by-laws determined the practical procedures, such as, for example, phys-

477 Reports, available at: <http://www.ombudsman.ge/uploads/other/0/100.pdf> and: <http://www.ombudsman.ge/uploads/other/1/1726.pdf>, additionally: <http://www.ombudsman.ge/uploads/other/2/2253.pdf> [last accessed:20.03.2016].

478 The "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs, dated 20 March 2007

ical restraint procedures. In 2009, Georgian experts have analyzed the implementation of the law,<sup>479</sup> based on which several further changes were made to the law. Significant changes were also made in 2014, the most noteworthy of which is the introduction of compulsory psychiatric treatment related provisions. In addition, the Constitutional Court decision on the legal capacity had particular beneficial effect on improvement of the legal framework.<sup>480</sup>

#### 7.3.4. PROGRESS OF THE REFORM

Since 2004, the state budget allocated to psychiatric healthcare more than doubled and increased funding for mental health allowed the Ministry of Labour, Health and Social Affairs to gradually expand available mental health services. These included improving the quality of treatment, rehabilitation of some of the leading psychiatric institutions, improvement of living conditions of inpatients on compulsory treatment and initiation of psychosocial rehabilitation program.

In 2008, a new model of funding for hospital services (global budget) has led to the gradual reduction of the number of inpatients. However, these reforms were not implemented sufficiently.

In 2011, the most important achievement of the newly initiated reform was the beginning of the process of deinstitutionalization. One important step is closing the Asatiani mental hospital, which was designed for 250 beds. The so-called “restructuring” of beds took place. Acute patients (in the form of a 30-bed unit) were redirected to the new mental health units in general hospitals (currently 3 multi-functional hospitals are operating for adults); The new, 10-bed pediatric psychiatric hospital opened in general hospital N5 in Tbilisi; established a new independent Mental Health Center (Kavtaradze Street) was also established in the capital with services, such as acute care unit, long-term care unit and outpatient services, which also included mobile teams for crisis intervention center (the location if the crisis service has changed in 2015). In addition, Rustavi Mental Health Centre for long-term care (40 beds) was opened; Crisis teams started to operate in some other cities, e.g. Batumi, Rustavi and Kutaisi.

Since 2011, a new funding model was introduced for acute and long-term patients (State Mental Health Program in 2011, the Ministry of Labour, Health and Social Affairs).

These changes immediately reflected in the sharp decline in the average length of stay

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479 GIF-Tbilisi(2009). *Analytical Review of the Law of Georgia on Psychiatric Care*. Tbilisi.

480 Citizens of Georgia – Irakli Kemoklidze and David Kharadze v Parliament of Georgia, Judgement of the Constitutional Court of Georgia 2/4/532,533, 8 October 2014. Available at: <https://matsne.gov.ge/ka/document/view/2549051#> [last accessed:20.03.2016].

for patients<sup>481</sup>, an average of 2-3 months of delay period was reduced to an average of 14-21 days of delay.<sup>482</sup> On the background of these changes, experts, service providers and beneficiaries note the lack of beds for long-term patients, lack of community services and the inadequacy of the funding.

In 2011, with the support of the United Nations Development Program (UNDP) the modules for basic training for mental health staff were created. European experts conducted training sessions for local professionals. The first phase of training began in summer of 2011. Selected mental health professionals were invited to training courses, which were conducted for free. According to the results of the tests, 67% of trained persons acquired the necessary knowledge and skills. By the end of 2012 than 300 mental health care workers were trained; Basic training course included 160 hours, the Advanced - 240 hours (GIP-Tbilisi, Annual Report, 2012). The expert trainers in the process of training conducted irregular supervision / overseeing of the personnel to ensure the correct application of acquired skills in everyday practice. Unfortunately, the program was suspended due to lack of further funding and the regional mental health staff could not take part in the training activities.

In October 2011, a multidisciplinary working group reviewed the Georgian national clinical guidelines for schizophrenia and depression treatment. These revised guidelines were provided to the Ministry of Labour, Health and Social Affairs and the Ministry for approval in 2013 and were subsequently approved. The group of experts has developed guidelines for depression in children and adolescents as well.

In order to implement the desired changes, the Ministry of Labour, Health and Social Affairs, created the Consultative Council of the reform (consisting mainly of psychiatrists). In February 2015, the Ministry renewed the membership in the Council, and appointed a mental health service beneficiary's family member to the Council (the order on amendment of the decree of creation of a consultative body - Mental Health Policy Council, 01 / 530; of February 25 2015). It should be noted that high-ranking officials of the Ministry take an active part in discussions and consultations.

The structural reform of the National System of Mental Health requires long-term dedication. One of the major challenges of the reform is integration of the fragmented programs and services, filling in the existing gaps in treatment and ensuring effective and continuous support through the development of essential services.

Overcoming this challenge is hampered by two main barriers: deficiency of psychosocial rehabilitation services and the insufficient strenght of the movement of service users -

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481 For acute patients, the average length of time encompasses time from hospitalization to discharge, or transfer to the long-term care unit.

482 International Fund Curatio. 2014. *Psychiatric Health Care in Georgia: Barriers and the ways to resolve them.Policy Document*. Tbilisi.

persons with mental disorders. Although the voice of persons with mental disorders is growing and increasingly taken into account in the decision-making process, but beneficiary support programs are still scarce in Georgia.

A very important challenge for mental health improvement process in Georgia, as well as many other countries in the region, is the resistance from the service providers themselves. In general, the **psychiatrists might cause significant obstacles to the filling of the gaps within the** treatment system.<sup>483</sup> This obstacle is widespread in the former Soviet Union, where the general characteristic of the anxiety about the future and **reform is** often automatically perceived as a threat to their own survival.

### 7.3.5. STATE CONCEPT, STRATEGY AND ACTION PLAN FOR 2015-2020

In order to respond to the problems and challenges in a systematic way, the Parliament of Georgia, in December 2013 adopted the “National Concept on Mental Health”.<sup>484</sup> This is the main mental health policy document of the country. The document provides that “Georgia recognizes the importance of mental health”. Moreover, “Georgia undertakes to organize delivery of mental health services within the country in the manner that people with mental disorders receive treatment in the least restrictive environment, to the extent possible in their own home or close by, based on their basic needs; to ensure maximum protection of their rights and dignity and their full and effective participation in society on an equal basis with others”. This is an important provision, which defines the strategic priorities of the reform and emphasizes the affordability and access to services, which should be ensured through the principles of balanced care.

The State Concept defines directions of the balanced care: “balanced development model includes in-patient care, community-based services and strikes a balance between drug treatment and non-medicine treatment; personal, family and community interests; as well as prevention, treatment and rehabilitation methods”.

It also declared that the effective care must be comprehensive, client-focused and continuous, “ supply of a continuous chain of care and integration of mental health in different forms and methods of co-ordinated, consistent and continuous system, which focuses on maximum sustainable results, integration of the service recipients / patients in the health care and social services, as well as their involvement and participation in the community, instead of isolation. “

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483 Saraceno B, van Ommeren M, Batniji R, Cohen A, Gureje O, Mahoney J, Sridhar D, Underhill C (2007). Barriers to improvement of mental health services in low-income and middle-income countries. *Lancet* 370, 1164–1174.

484 The Ordinance of the parliament of Georgia dated 11 December 2013 on the “National Concept of the Psychiatric Health Care”, Available at: <https://matsne.gov.ge/ka/document/view/2157098> [last accessed:19.03.2016].

To reach the goals identified in the Concept the Ministry of Labour, Health and Social Affairs has launched a national strategy and action plan for the years 2015-2020, which was approved in December 2014<sup>485</sup>.

This document is based on the action plan of the World Health Organization for the years 2013-2020, which was approved by the World Health Assembly on the 66<sup>th</sup> session.<sup>486</sup>

The WHO action plan has the following main objectives:

- to strengthen effective leadership and governance for mental health.
- to provide comprehensive, integrated and responsive mental health and social care services in community-based settings.
- to implement strategies for promotion and prevention in mental health.
- to strengthen information systems, evidence and research for mental health.

The introductory part of Georgian national strategy and action plan describes the hospital sector:

The end of 80's marked significant trend of the decrease of the psychiatric beds in Georgia, as well as in former Soviet republics. The World Health Organization data provides that in 2011 the number of beds in specialized mental health hospitals in high-income countries was 3.09 / 10000, and in Georgia - 2.86 / 10000. General hospital beds built in Georgia is 0.22 / 10,000 population (high-income countries - 1.36 / 10,000 inhabitants). Residential housing community of high-income countries 1,015 / 10,000, while in Georgia, there is no such service. Day care centers and other community service beds / seats, being most in EU countries amounts approximately to  $\approx 4.3 / 10000$ , whilst in Georgia, this figure is not more than 0.1 / 10,000.

The Action Plan also notes that according to the Public Defender's report<sup>487</sup> and the Council of Europe study of 2013<sup>488</sup> violations of human rights still occur in the specialized mental health hospitals in Georgia; These institutions unfortunately, often do not meet quality standards of treatment and care ( p.3).

Strategic directions of the state action plan are the following:

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485 The Ordinance N 762 of the Government of Georgia on "Establishment of the Strategic Document of Development of Psychiatric Health and Action Plan 2015-2020" dated 31 december 2014, Available at: <https://matsne.gov.ge/ka/document/view/2667876> [last accessed:19.03.2016].

486 WHO Mental Health Action Plan 2013-2020 (2013). WHO Geneva, Available at: [http://apps.who.int/iris/bitstream/10665/89966/1/9789241506021\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/89966/1/9789241506021_eng.pdf) [last accessed:20.03.2016].

487 Public Defender of Georgia, National Mechanism of Prevention (2012) Report of the Situation in the Psychiatric facilities of Georgia, available at: <http://www.ombudsman.ge/uploads/other/0/100.pdf> [last accessed:20.03.2016].

488 Council of Europe(2013) Assessment of Mental health care services

- State management in the mental health care sphere;
- Development of human resources;
- Provision of psychiatric health care services;
- Mental health in the penitentiary system;
- Raising the awareness of the public.

Each direction is followed by a list of tasks and activities and performance dates. According to the action plan, by the end of 2015 the state should have offered to its citizens:

- operation of the special unit of coordination and supervision of the state policy of the Mental Health (process and results)
- Identification of Human resources / personnel needed
- to launch preparation of the protocols and guidelines based on the latest scientific evidence and best practices (including primary health care and penitentiary system)
- Evaluation and assessment of needs with regards to the mental health services of inmates within penitentiary system
- integrated, unified program of mental health care in the penitentiary system
- community mobilization (mental health education and awareness) and long-term strategies
- launch of suicide prevention programs
- launch of the strengthening organizations for the persons with mental disorders and their family members
- raising the mass media awareness on key issues of mental health policy.

Unfortunately the Ministry has not presented the report on the fulfillment of these obligations by the end of 2015.

### 7.3.6. REFORM OF THE SYSTEM OF LEGAL CAPACITY

Legal Incapacity reform is an important step, encompassing changes in the legislation related to legal incapacity, as regards persons with mental disabilities. The reform was carried out in 4 main areas:



- Review of the legal capacity institute and bringing it in line with the decision of the Constitutional Court and the provisions of the Convention on the Rights of persons with Disabilities. With respect to persons who have deemed legally incapable on the grounds of ‘mental retardation’ or ‘mental disorder’, the introduction of an individual assessment was proposed, which will not only be based on the medical model, but will also take into account social evaluation system.
- Introduction of special provisions for court proceedings on the cases related to legal capacity in order to protect procedural rights of persons with disabilities.
- Strengthening the role, duties and responsibilities of the Social Guardianship and Care Agency of the Ministry of Labour, Health and Social Affairs, as the representative of the state.
- For implementation of the individual assessment reflecting the social model, Introduction of the new individual assessment system within LEPL L.Samkharauli National Forensics Bureau, according to which the assessment / examination report is issued by a multidisciplinary team.

As a result of these amendments the system of a complete neglect was changed towards the system of support and, in exceptional cases, replacement mechanisms. Such large-scale legislative changes were due to the decision by the Constitutional Court on 8 October 2014, in which existing regulations limiting the capacity of persons with disabilities caused by mental disorders was declared unconstitutional.<sup>489</sup>

## 7.4. ILL-TREATMENT

No one shall be subject to torture,<sup>490</sup> or to inhuman or degrading treatment or punishment.<sup>491</sup> According to Article 10 of International Covenant on Civil and Political Rights, all

489 Irakli Kemoklidze and David Kharadze v. the Parliament of Georgia, the decision of the 2<sup>nd</sup> Collegium of the Georgian Constitutional Court, №2/4/532,533, 8 October 2014, Available at: <https://matsne.gov.ge/ka/document/view/2549051#> [last visited 19.03.2016].

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

491 The European Convention on Human Rights, Article 3.

persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. According to the United Nations Human Rights Council, the protection of inherent dignity represents an international norm which is non-derogable.<sup>492</sup>

According to Article 15 of the United Nations Convention on the Rights of the Persons with disabilities, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. The State Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

During the visits at the mental health institutions the monitoring group has received numerous notices regarding physical violence and verbal abuse of patient. In addition, the Monitoring Group considers that the extremely bad conditions of patients in some mental health institution can also amount to ill-treatment, which in some cases is topped by the facts of application of physical and chemical restraints, the method of application of the restraints in the presence of other patients, inaccessibility to the timely and adequate treatment of the somatic diseases, negligence of the long hospitalization and involuntary medical intervention.<sup>493</sup>

In **A. Kajaia of Surami Mental Health Hospital**, the Special Prevention Group received information about the cases of violence against patients. In particular, 8 patients indicated that they had been subject to the physical abuse by nurse assistants (orderlies) side. In addition, most of the patients said that physical violence also occurs among patients.<sup>494</sup>

Patients explain that the violence from the orderlies is expressed by beating with the hands and sticks. It is remarkable that three patients had physical injuries, such as bruises on the upper limbs and eye socket.<sup>495</sup> Importantly, these injuries were not mentioned in the patients' medical records. Also noteworthy is the fact that members of the Special Prevention Group discovered the sticks referred by patients in the nurse room between the wall and the wardrobe, in the one-story building of the Women's Department of this facility, which were used to beat patients.<sup>496</sup>

492 UN Human Rights Committee General Comment N 29, CCPR/C/21/Rev.1/Add.11 (2001), 31 August 2001 para. 13(a), available at: <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en)> [last accessed:29.03.2016].

493 These problems are addressed in detail below in the respective sections

494 Since the patients said they did not feel safe at this point, they refrained from application to the investigative body officially. Accordingly, due to the principle of confidentiality we can not provide the information about the identity of these patients.

495 2 of the referred patients were females, and one male.

496 The photos of the sticks were taken by members of the Special Prevention Group. In order to pre-



Based on the results of the inspection, the Special Prevention Group concluded that, in A.kajaia Surami Mental Health Hospital patients are at high risk of systematic violence. Inspection revealed that the facility personnel has aggressive attitude towards patients.

On October 28, 2015, the Public Defender submitted the above-mentioned facts, for the effective investigation to the Chief Prosecutor. Office of the Chief of December 25, 2015 replied to the Public Defender on 31 October 2015, that the Ministry of Internal Affairs and the Khashuri district police office launched criminal investigation N038311015001 case,<sup>497</sup> under Article 126 of the Criminal Code. During the investigation, the site was examined. The witnesses were questioned, together with the personnel of mental health hospital. Forensic medical examinations were held to determine the health conditions of the 53 women and 43 men inpatients.<sup>498</sup> The Chief Prosecutor's Office informed Public Defender on 4 February 2016, that the inpatients were not interrogated during the investigation due to their health conditions. At this stage, the investigation has not presented the charges to anyone and the case is still ongoing.

In the view of the Special Prevention Group, the approach of the Office of the Chief Prosecutor that the patients were not to be interrogated lacks substantiation and casts a reasonable doubt on the effectiveness of the investigation. Moreover, the letter shows stereotyped attitude towards patients in psychiatric institutions, as if they could not provide reliable information to the investigative body. In this regard it should be noted that the Criminal Procedure Code, Article 50, paragraph 2 only a person, who has a physical or mental disability which results in his/her inability to comprehend, remember and recollect the facts relevant to the matter and provide information or to give evidence shall not be interrogated as witness. As is clear from the wording of the provision, the mental disorder cannot be reason for automatic refusal to interrogate the witness. This

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vent the destruction of evidence, the discovery of the sticks was not disclosed to the personnel of the institution.

497 N13/80119

498 N13/6551

norm instead lays focus on a person's inability to properly absorb, remember and recall all important circumstances of the case and give evidence.

It is wrong to assume that the mental health hospital patient is devoid of all the above-mentioned ability. If such assumption is to be made, it turns out that neither the monitoring nor the investigation body have to inquire and question the mental hospital patient, which is directly contrary to the rights under Article 13 (Access to Justice) of the UN Convention on the Rights of the Persons with Disabilities, which states that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

In order to help to ensure effective access to justice for persons with disabilities, the said Article 13 of the convention requires that States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff. Thus, it is important to ensure that the prosecutors and investigators of different investigative bodies within Georgia are prepared on the issues of access to justice for the people with disabilities. It is additionally recommended to create special regulations.<sup>499</sup>

One of the interviewed patients of Surami Mental Health Hospital blames the violence on nurses' assistants (orderlies) and the patients which are pushed by them. According to him, the orderlies sometimes instigate violence by setting the patients against him/her and he/she may be beaten by a pot in the head or fists in his throat. The same patient says that patients "are rarely tied", but if the patient is tense, "the orderlies will surround him/her, patients are helping them, and he/she may be beaten; The patient stops and he/she gets injected to calm down; Patients chase each other with sticks and orderlies also have sticks. "

One of the patients had a scratched surface wound on the nose during an interview and a bruise on the left eye. He says that he was often beaten by other patients and blames the orderlies for that. One of the patients of the female department of the mental hospital had bruises in the left eye and forehead area, and excoriations on the right eyebrow area. The patient said that "they beat his head against the wall". In terms of women's hygiene department, the patient clarified on the trend of majority of patients with short

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499 UK legislation and practice are interesting in this regard. Legislation is available at: <http://www.legislation.gov.uk/ukpga/2003/44/contents> detailed information on the topic is available at: [http://www.cps.gov.uk/legal/v\\_to\\_z/victims\\_and\\_witnesses\\_who\\_have\\_mental\\_health\\_issues\\_and\\_or\\_learning\\_disabilities\\_-\\_prosecution\\_guidance/](http://www.cps.gov.uk/legal/v_to_z/victims_and_witnesses_who_have_mental_health_issues_and_or_learning_disabilities_-_prosecution_guidance/) and: [https://www.cps.gov.uk/publications/docs/supporting\\_victims\\_and\\_witnesses\\_with\\_mental\\_health\\_issues.pdf](https://www.cps.gov.uk/publications/docs/supporting_victims_and_witnesses_with_mental_health_issues.pdf), additionally, at: [https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB\\_Mental\\_disability\\_2013+\\_finalised\\_.pdf](https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_Mental_disability_2013+_finalised_.pdf) [last accessed:26.02.2016].

hair that if the patient refused to have her hair cut, then the so-called “Uborshchiki” (Female Patients who take up cleaning), would beat her.

At the very entrance in the **Mental Health and Drug Dependency Prevention Centre**, rough, aggressive attitude from the personnel towards patients was observed, which was expressed in referring to the patients in offensive/abusive forms. Patients recalled the cynical attitude from the nurse assistants during the interview process. According to one patient, apart from psychological violence, there is physical violence, which is mainly manifested by spanking the patients on their head. Some patients recalled kicking the patient in head with the key-chain by an orderly. According to the patient, they are often provoked and punished further. According to patients, on any matter of protest they are threatened with chemical (injection) and physical restrictions. Several patients recalled the injections being made by the nurse in the corridor, in front of other patients.

**In Clinical Psycho-neurologic hospital of the Republic (Khelvachauri)** – the patients declared that they are threatened with “taking them to the cells with bars on the window and locking them up”. One of the patients told the monitoring group that he was once caught by the orderlies in the corridor and injected, during which process his clothes were torn. This fact was asserted by his roommate.

**One patient of the “Unimed Kakheti”** Psychiatric Division said that personnel physically abused him after which he was subjected to physical restraints and injection.

**In National Center for Mental Health (Qutiri)** the conditions of treatment vary from department to department. In some departments patients do not allege any physical or verbal abuses by personnel, and state that the treatment has improved, whilst in other departments there are complaints that the staff treats patients rudely, shouts and threatens them by physical violence. Patients mention ‘they fixate us in the corridors, where the security guys look at us’, ‘the nurse was doing injection, and the sanitarian covers us with blanket’.

**In Bediani psychiatric hospital** the fact that almost all beneficiaries had the similar very short haircut was striking. The personnel of the institution stated that this practice was adopted to prevent lice. The haircuts are made by the housewife.

Interviews with beneficiaries revealed the practice, when the beneficiaries are not informed in advance about preventive measures for which the haircut is necessary and no consent is sought from them. Sometimes a haircut is imposed involuntarily and forcibly, which is degrading for the beneficiaries and is perceived as violence and ill-treatment. Similar reports were made by several female patients of the National Center for Mental Health (Qutiri).

The European Court of Human Rights, in the judgment on the case *Yankov v. Bulgaria*, declared that shaving the prisoner's hair forcibly, violently without any legal basis and justification may be qualified as degrading treatment considering the particular circumstances of the case.<sup>500</sup> Although personnel states that the haircut is necessary for lice removal, *i.e.* for the protection of hygienic conditions, the Special Prevention Group considers that involuntary and forcible haircuts/shaving constitute unjustified use of force. If it is important to ensure the hygiene and the use of alternative measures is not enough, this should be explained to the patient and his consent shall be obtained.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE CHIEF PROSECUTOR

- Ensure the investigation of the cases of physical violence both from the personnel and instigated by the personnel
- Ensure the preparation of the prosecutors in the specificities of interrogation of persons with mental disorders
- Create the guidelines for interrogation of persons with mental disorders

### RECOMMENDATIONS TO THE MINISTER OF THE INTERNAL AFFAIRS

- Ensure the adequate addressing of the cases of violence against patients within mental institutions
- Ensure the preparation of the investigators in the specificities of interrogation of persons with mental disorders

### RECOMMENDATIONS TO THE MINISTER OF HEALTH AND SOCIAL AFFAIRS

- Provide regular training in mental institutions on the issues of protection of human rights, management of agitated/tense patients, non-violent de-escalation and physical restraint measures
- Develop and implement the plan of elimination of deplorable and degrading conditions and ill-treatment in the A.Kajaia Surami Psychiatric Hospital, National Center of Mental Health (Qutiri) and Bediani psychiatric hospital and ensure that patients of these facilities are placed in conditions compatible

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500 *Yankov v. Bulgaria*, ECtHR Judgement of 11 December 2013, application No 39084/97, para. 114-121.

with human dignity compatible and therapeutic environment; At the same time take all necessary measures to facilitate the discharge of the patients, which are staying in the hospital without necessary medical evidence.

#### RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Maintain vigilant surveillance of their own staff, especially on the behaviour nurse assistants, and regularly remind them that any forms of ill-treatment of patients is not acceptable and will be severely punished; In case of such treatment respond adequately, including notifying investigative bodies
- Provide regular training of their staff on the issues of protection of human rights, management of agitated/tense patients, non-violent de-escalation and physical restraint measures
- Improve living conditions in the facility, so that patients live in the conditions compatible with human dignity and therapeutic environment
- Eradicate and prevent any practice abusive to human dignity
- Ensure the discharge of the patients, which are staying in the hospital without necessary medical evidence

### 7.5. VIOLENCE AMONG THE PATIENTS AND THEIR SAFETY

As a matter of principle, hospitals should be safe places for both patients and staff. Psychiatric patients should be treated with respect and dignity, and in a safe, humane manner that respects their choices and self-determination. The absence of violence and abuse, of patients by staff or between patients, constitutes a minimum requirement.<sup>501</sup>

Monitoring has revealed the problem of due protection of security of patients and proper protection from violence in mental health institutions. For example, conflict situations among patients are common in **Mental Health and Drug Dependence Prevention Centre**. Some informal hierarchy is observed among some patients. One patient said that conflicts occur for the usage of the TV as well. One of the young man interviewed by the monitoring team in acute care unit had an eye bruise, which was not documented in the patient's physical condition at hospitalization. Examination of the documents revealed that the patient was physically restrained twice, because of the conflict with other patients.

Patients of **National Centre of Mental Health** complain that medical and security per-

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501 16<sup>th</sup> General Report of the CPT [CPT/Inf (2006) 35], para. 37, available in English language at: <http://www.cpt.coe.int/en/annual/rep-16.htm> [last accessed:10.03.2016].

sonnel adopt the selective “biased” attitude towards patients; there are “elite patients.” Patients also talk about the conflict between the patients and the facts of physical confrontation.

At **A. Kajaia Surami Psychiatric Hospital** the violence among the patients is of systematic nature. During the visit of the Monitoring group, a large portion of patients were in the condition of psycho-motoric agitation in the men’s section of the corridor, they shouted at each other and argued loudly. Cries and shouting were heard from the Women’s section as well. One patient threatened another patient, whilst the latter begged not to hit her. The monitoring team observed that the staff was not able to timely and adequate respond, which raises concern to the Special Prevention Group.

Some of the men patients interviewed had excoriations and bruises on the face, and they said they were beaten by patients. The interviewed men talk about the violence among patients, and identified the orderlies two of the ‘privileged’ male patients as the main source of violence in men’s department, and so called ‘Uborshchiks’ (cleaners) in the women’s section.

Patients often have conflicts and resort to violence in the dining room. The cause of the conflict between the patients is the extortion of food by others, and there are cases when some patients remain without food. The reason for the quarrel with one another is sometimes the theft of snacks, cigarettes or clothing from the rooms.

According to the Special Prevention Group, the facility is not documenting the cases of conflict and violence, and the measures taken in response to these facts, which raises serious doubts that the staff is trying to cover up the problems and / or has created a conciliatory attitude towards the situation.

**Bediani mental health hospital** personnel state that there are quite a few cases when patients resort to conflicts and violence. For example, once a patient hit another in the face with a piece of wood. According to personnel, such cases are unexpected and sudden and prevention becomes impossible. The doctors and nurses do not keep official log about such cases, although doctor keeps notes unofficially, on separate pieces of paper. According to him, the medical staff daily, orally reports to him information about what is happening in the department. In the view of Special Prevention Group, the situation is precarious in the facility with regards to the prevention of violence and the conflicts between the patients. It is important that staff have conflict and violence prevention strategy and a pre-determined action plan as far as possible, and the personnel shall be conducting direct supervision and monitoring of patients as much as possible. It is also important that all cases of conflict and violence, together with the measures taken in response are duly documented.



**Tbilisi Mental Health Center** nurses register the cases of the violence among patients as well as cases of the patient's aggression towards staff in the physical restraints log. Despite the existence of the problem of documentation of the conflicts and violence in the facility, the monitoring group has identified several important cases. In one case, the patient was aggressive towards nurse assistants, and tried to jump out the window, after which the physical restraints were applied. In other cases, one patient jumped from the window, but, fortunately, the case did not end fatally. There were also cases where a physically restrained patient managed to set fire to mattresses and remove restraints. This event was noted in the physical restraints' log and the nurse's diary as the 'check of the quality of fixation', *i.e.* the observation was conducted, but nonetheless the patient managed remove binding means and put the mattress on fire. Therefore, the Special Prevention Group concludes that in spite of the record, in fact, physically restrained patient was not under proper supervision, which is unacceptable.

It should also be noted In connection with this incident that the staff of the institution, in order to avoid similar cases, took away the lighters and matches from the patients who are smokers. Special Prevention Group believes that the facility is subject to certain restrictions imposed by the security regulations, but these restrictions, in all cases, should be adequate and proportionate and should not be imposed on the patients for the comfort of the staff of the institution and the failure of the personnel to fulfil their basic function - proper supervision and observation of patients cannot be justified by the mere mention of the impossibility of performance.

Based on the results of the monitoring, the Special Prevention Group concludes that there is no common approach formed within mental health institutions as to the treatment of the conflict among the patients and general security issues. Accordingly, the institutions are not protected from violence, and do not constitute a safe environment. The risk factors of conflicts, violence and other incidents are tight distribution of the patients within the chambers, existing living conditions and social problems, non-existence of the risk assessment scheme related to specific patients on the side of the personnel, insufficient number of qualified staff, improper monitoring / observation<sup>502</sup> and absence of immediate and adequate response at the initiation of the threat, absence of pre-defined strategy of intervention and de-escalation, as well as the lack of personal accountability and responsibility. Especially noteworthy is an attempt of personnel to establish the order and security within the facility via a certain group of patients, referred

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502 According to the Report of the European Committee for the Prevention of Torture, based on the visit of 1-11 December 2014 in Georgia, at the psychiatric institution of Kutiri (National Centre for Mental Health), the delegation witnessed episodes of inter-patient aggression, which was hardly surprising considering the low staffing numbers and the chaotic living environment. The Report is accessible in English at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [last visited on 28 February 2016]

to as “privileged” patients by interviewees. This practice is deemed unacceptable by the Special Prevention Group. Based on the foregoing, it is crucial to adopt measures directed at the elimination of the risk factors listed above.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF LABOUR, HEALTH AND SOCIAL AFFAIRS

- Take all necessary measures to prevent violence among patients in mental hospitals and ensure the security, including the creation of regulatory framework by regulating mechanisms of assessment of risks arising from specific patients by mental institutions and a preliminary evaluation system, multi-disciplinary work, the protection of the patients and security via preventive activities, proper supervision/ surveillance of the patients by the staff, the proper training of the personnel, standard operating procedures and de-escalation strategy, as well as timely and adequate intervention whenever the threat emerges, documentation of abuse cases/incidents and the measures taken in their response, accountability and liability of personnel.
- Create internal mechanism in the healthcare system that will ensure proper supervision of the violence and security situation patients in mental health institutions
- Provide regular training in mental health institutions on the issues of management of agitated/tense patients, non-violent de-escalation and physical restraint measure, mediation, security and other issues

### RECOMMENDATION TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Ensure prevention of violence among patients and protection of the security including introduction of mechanisms of assessment of risks arising from specific patients by mental health institutions and a preliminary evaluation system, multi-disciplinary work, the protection of the patients and security via preventive activities, proper supervision / surveillance of the patients by the staff, the proper training of the personnel, standard operating procedures and de-escalation strategy, as well as timely and adequate intervention to address the threat, documentation of abuse cases / incidents and the measures taken in their response, accountability and liability of personnel.

- Provide regular training in mental health institutions on the issues of management of agitated/tense patients, non-violent de-escalation and physical restraint measure, mediation, and other issues of protection of the security.

## 7.6. PHYSICAL RESTRAINTS, ISOLATION AND CHEMICAL RESTRAINTS

In any mental health facility, there is a need to apply restraining methods towards agitated and/or aggressive patients.<sup>503</sup> Thus, it is important to have clearly defined policy on the issue of the usage of restraints. Such policies shall be made to ensure that at the initial stage, non-physical methods of limiting aggressive or agitated patient (e.g. verbal instruction) are applied as far as possible, and, if necessary, the use of physical restraint methods is limited to manual binding.<sup>504</sup> The mental health institutions staff should be trained in the techniques of non-physical dealing and of manual binding of the aggressive and agitated patients. Such techniques would allow the staff, a room for choice how to act into a difficult situation, to assess and choose the most matching method for the situation, which will greatly reduce the risk of injury to personnel and patients.<sup>505</sup>

The use of means of physical restraints (belts, strait jackets, etc.) is justified only in extreme cases, only upon the direct order of a physician, or the doctor should be notified immediately after the use of such means. If, as an exception, the use of physical restraint methods is allowed, restraint should be discontinued at the earliest opportunity<sup>506</sup>; the use of methods of restraint or protraction of their use for punishment is prohibited. The

503 Notable that the Special Rapporteur of the UN Special Sub-Committee Against Torture calls upon the states to impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual use of restraint and solitary confinement, for both long- and short-term application. Report of the Special Rapporteur Juan Mendez, A/HRC/22/53, para. 89(b) Available in English language at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf) [last accessed:27.02.2016].

504 Importance of the training of the personnel is also emphasized in the Recommendation of the Committee of Ministers of the Council of Europe Rec (2004)10 “On the protection of the rights and dignity of the persons with mental disorders”, Art. 11, Available in English language at: <https://wcd.coe.int/ViewDoc.jsp?id=775685> [last accessed:27.02.2016].

505 CPT standards, para. 47. Available in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [last accessed:27.02.2016].

506 UN Subcommittee on Prevention of Torture, considers that the physical restriction is a form of restriction of freedom, and therefore it should benefit from the guarantees of legal protection for restriction of freedom. It shall be applied only in extreme cases, and safety considerations should be used. Since these measures are at high risk of violence, it is better not to apply them, but if it has to be used, it should be under strict legal regulations of the relevant criteria, including, the maximum term, supervision, control and right of appeal. (Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the rights of persons institutionalized and medically treated without informed consent, para. 9, Available in English language at: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx> [last accessed:29.02.2016]).

restraints shall not be used because of convenience to staff, relatives or other persons.<sup>507</sup>

According to standards established in international human rights law, the isolation or physical binding of the patient should be used in adequate infrastructural conditions, to avoid immediate and imminent threat of harm to the patient or other patients and its application must be sizeable and proportionate to the risk. Isolation<sup>508</sup> and physical binding should be used only under medical supervision and proper documentation of the conditions. The cause and duration of the measures should be included in the patient's medical record and a special register.<sup>509</sup> The record on the patient's physical restraints or isolation should additionally include the circumstances of the use of this measure, the name of the doctor who issued the order or authorization and the information about the patient or staff if they received any trauma. This will greatly simplify the management of such situations, as well as the control of the frequency of usage of these methods.<sup>510</sup>

According to Article 16 of the Law of Georgia on Psychiatric Care, Psychiatrist has the right to apply methods of physical restriction to the hospitalized patient if there is a real danger that the latter inflicts harm to him/her or others and this danger may not be otherwise avoided. Methods of physical restriction are: isolation of the patient in a specialized ward and/or physical restraint. Applying the methods of physical restriction shall be terminated once the danger stipulated above ends. Applying methods of physical restriction or prescribing medicines for the purpose of punishment or intimidation of the patient is inadmissible. Decision on applying methods of physical restriction of patient shall be made by the doctor-in-charge or duty physician that is fixed in medical records. A patient who was subject to the physical restriction, his/her legal representative or in case of the absence of the latter – a relative, may appeal to the court challenging the legality of the physical restraint.

According to the "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs, dated 20 March 2007 the physical restraint is designed to reduce the patient's aggression and expose the patient to the necessary treatment. Isolation wards where the patients are placed have to be specially equipped in order to prevent the patient's self-inflicted harm. The physical restraints are carried out via special means for such restriction. Permit for application of physical restraint is issued for 4 hours.

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507 *ibid.*

508 According to the Subcommittee on Prevention of Torture, in case of isolation of the patient, constant supervision shall be carried out and the isolation shall be managed in the manner that the patient has the possibility to interact with other patients. Isolation shall be used for the smallest periods of time possible and it shall be properly documented and controlled, including with the possibility of appeal and review by an independent organ and a court. (Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the rights of persons institutionalized and medically treated without informed consent, para. 10).

509 Recommendation of the Committee of Ministers of the Council of Europe Rec (2004)10, Art. 27.

510 CPT standards, para. 50.

According to the same instructions, the physical restriction is carried out by the specific personnel designated under the internal rules of the institution, with the necessary qualifications and experience in the use of physical restraint methods. The internal regulations of the institution shall designate the person responsible for supervising the patient who is physically restrained. The person responsible for monitoring the patient's condition shall check every 15 minutes if needed her help. The attention shall be paid to the following factors: whether the patient needs additional medical care; whether the patient has any signs of mechanical-traumatic injury; suffers from a serious inconvenience; are the needs for food, water and other physiological necessities met to the acceptable level. The patient, subjected to physical restraint, should be kept in proper conditions. If after 4 hours the patient's condition is still in need of physical restraint methods psychiatrist shall re-make the record and follow-up continues in the same conditions.

It should be noted that neither the Law of Georgia on Psychiatric Care nor the above mentioned instructions include the upper limit on the maximum period for the use of physical restraint, which is dangerous, because it can formally lead to repetitive physical restrictions formally that continue for 4 hours. The said normative acts also fail to establish the obligation that the information on the physical restriction be included both in the patient's medical record, as well as a special journal (special register). It is therefore important that the normative acts are brought to order, via including making changes in the way to regulate those two issues.

It is noteworthy that neither the law nor the instructions mention chemical restrictions as a measure of restriction. The concept of chemical restriction<sup>511</sup> lies on the distinction whether the patient is taking medication as part of the treatment, or the medications are given to control his/her actions. If drug is part of treatment, assigned after the evaluation of the status and the rational part of the plan of care, there is a conventional treatment process, and, if on the other hand the patient is given the medicine, as the response/reaction to the patient's behaviour, it is a chemical restriction.

Accordingly, the same drug in different cases can be described as a treatment or chemical restriction. The use of the chemical restriction is not allowed to punish the patient or to prevent the discomfort of staff.

According to the assessment of the Special Prevention Group, the use of chemical restraint is widespread in these institutions and is not documented properly. The institutions routinely apply physical restraint together with chemical restraint. There is no clear legal framework regulating chemical restraint and no justifications are provided for its application. This amounts to a violation of standards of international human rights law.<sup>512</sup> The same guarantees of protection should be provided whenever chemical or

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511 „Care for Agitated Patient“ – Training Module (2011). GIF-Tbilisi.

512 “If recourse is had to chemical restraint such as sedatives, antipsychotics, hypnotics and tranquilizers, they should be subjected to the same safeguards as mechanical restraints. The side-effects that

mechanical means of restraint are used.<sup>513</sup>

Monitoring results reveal that the physical restriction is applied via the wide wrappings made out of the bed linen / sheets and the restriction usually lasts an average of 20 to 60 minutes, which corresponds to the required time of effectiveness of the sedative substance after its introduction / injection. Almost all the institutions have special shiny belts. According to Personnel, these belts are “rough and squirt the skin.” The Monitoring Group has received several reports of physical restraint being applied with the use of excessive force and physical violence.



**“Unimedi Kakheti”** Mental Health Centre involuntary inpatient patient said he’s been subject to the physical violence (slam in the face) from the personnel whilst applying physical restraints. According to the patient, the binding process occurs with excessive use of force and nurse assistants “do not know how to approach a patient”. According to him, some of them are “particularly aggressive”.

According to patients, the physical restrictions are often used in cases of self-injury. According to information received from patients, each of them had been at least once subject to the physical restriction for more than 4 hours, without due justification. One patient said that he spent the whole night in the tied condition, while he had to satisfy his physiological needs in the bed, because the staff did not pay attention. One patient said he was offered to put on sanitary napkins before physical restriction, what he perceived as humiliation.

Physical restrictions are applied in the three chambers near the procedural ward, mainly in the fifth ward, because according to the personnel nurses’ directly watch this chamber. Despite the fact that the patients are placed in the chamber, if necessary they are

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such medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion.” (CPT standards, p. 96, para. 41, Available in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [last visited on 28 February 2016]).

513 CPT Report to Georgian Government on the Visit in Georgia on 1-11 December 2014, para. 152.

removed in order to apply restrictions to others with soft bands. Before applying physical restraints sanitary napkins are put on the patients, since, according to the staff “some are lying that they need to go to the toilet to get released of physical restraint.”

**The Mental Health and Drug Dependence Prevention Center** has the Order of the Director General of the September 17, 2015 №01 / 109, which regulates the physical restraints and the allocation of the special room in short and long term psychiatric departments. According to the order of the Director, room has to be allocated in each of the short and long-term departments for psychiatric patients with physical restraints. Nevertheless, the monitoring revealed that no room had been allocated in the acute care unit. In addition, according to the order, the patient’s physical restrictions should be implemented in a specially designated room for patient safety and protection of personnel, in the presence of physician / doctor on duty and 3 procedural nurses and nurse assistants (or nurse on duty). Junior staff can be involved in the process, having passed the proper training. According to the named order, authorized persons can register the decision on use of physical restraints on the patient in the patient’s medical record with indication of the reasons and timing of the physical restraints. Records must be made after the physical restriction as well. The force shall be applied proportionally whilst binding the patient, so that it does not grow into violence. Supervision of Physical restriction is the responsibility of the heads of the short-term and long-term departments, and the control on the implementation of the order shall be carried out by the clinical director of the Centre.

The monitoring revealed that the systematic character of the breaches of the legislative requirements for the physical restriction in the facility. According to surveys of patients, they are often subject to ‘fixation’ for a long time, during which they are left without adequate oversight. According to the patient, because of the lack of supervision, they often manage to release themselves. In addition, a long restriction via the sheets results in various types of injuries.

According to one patient, he once demanded release from the physical restraints to go to the toilet, after being restrained for long time, which was rejected by the staff and he had to satisfy the physiological needs in bed. In the view of the Special Prevention Group, this is unacceptable and constitutes degrading treatment.

The monitoring revealed significant shortcomings in the process of keeping the log of physical restraints and filling the patients’ medical records, in the view of their compliance with the logs of the doctor on duty. The records are less informative on why it was necessary to apply the physical restraint and whether there was possibility of using alternative measures. For example, a patient’s medical record states reasons for his physical restriction in the following way: ‘he was jumping on the window frames and pulling eyes’. Record does not contain information as to why the alternative measures could not

be applied. It should be noted that, in this case physical restraints were used in parallel with the chemical restrictions. In particular, the patient has been injected “tizertsin” and “CARDIAMINE” at 17:30. He was injected again with “tizertsine”, “Cordiamine”, “Relanium” and “haloperidol” at 18:00. The same patient on February 3, 2015, in the first half has been injected with “Cordiamin”, “Relanium”, “Aminazin”, “haloperidol”, and later - “Cordiamin”, “Relanium”, “tizertsine” and “haloperidol”.

According to the medical card of one of the patients the patient was physically bound on October 1, 2015, 04:00 am to 05:40 pm, but there is no record in the relevant physical restrictions log. In addition, the physical restrictions log states that on October 2, physical restraints were applied to the same patient, a fact which is not reflected in the medical card. The same is true of physical restraints on October 3 incident. According to the patient’s medical record on October 5, the patients had a fixation strap as a result of injuries received after being physically restrained, which is not specified in the physical restraints log.

Another patient, who was placed in a hospital for medical treatment voluntarily, was physically bound from 23:30 am to 00:15 pm, on which the medical record and the doctor on duty in the journal are silent. Accordingly, it is not clear what the cause of applying restraint was, whether the requirements established by law were met and whether it occurred under proper supervision.

In **Rustavi Mental Health Centre**, the monitoring team found the case of the physical injury of the patient, which was not fully documented. There is a log in the physical restriction journal on 1 July 2015 about the use of the restraints on the patient. Physical restraint is also recorded in the patient’s medical record and a nurse’s diary. The nurse’s diary describes the injury of the patient, which is not specified in the medical card. Nurse’s diary holds the record that in the first half of the day the patient was calm, but in the evening he started aggressive actions, shouting, biting lips and hands, was not oriented in time and setting. When trying to escape he fell on the stairs, which is why his left eye area is injured. On 18:20 pm he was restrained with a physician’s consent and underwent “tizertsine” injection of one ampoule. On 18.30, the patient received 1 pill of “Anapriline.” The patient shouted, and cursed with abusive language. On 19:30 pm he was given “Relanium.” After he turned relatively calm, on 19:55 he was released from restraints. He had difficulty to fall asleep, and on 22:30 he was injected 1 ampoule “tizertsine” and 1 “Cordiamine.” It should be noted that there are no requisite 15 minute records in the physical restrictions journal to observe the dynamics of the patient. The Deputy Director noted that this case was considered suspicious by the administration and the incident was therefore, subject to the close study, but they could not identify physical abuse. No materials evidencing such study were submitted to the monitoring group.



In **A.Kajaia Surami Psychiatric Hospital**, the physical restraints log was studied, which encompassed three cases of physical restraints in 2015 without specifying dates. In one case, nurse's diary entry made on September 16, 2015 reads as follows: The patient became ill late at night, requested to be tied, the doctor on duty gave permission and "Am-inazin" 4.0 ml, left for the cases of necessity was injected. The accident record is absent from the patient's medical card, since the last record on the card is dated September 15, 2015. This shows requirements of the law with respect to the physical restrictions are grossly neglected.

**Acute Care Unit of Ghudushauri Republic Hospital** registered 40 cases of physical restraints in 2015, for the majority of which the medical records are incomplete. It should also be noted that the monitoring group witnessed the fact of physical restriction of one of the patients. Female patient to whom staff referred as the "demential patient" was asking to go out, but the guards refused. The patient, who was hospitalized formally voluntarily, asked staff when she would be released to go home. Monitoring Group felt that the patient got agitated, when the staff asked her to calm down and began her manual binding. The head of psychiatric department immediately gave an indication to apply the physical restraints. Monitoring Group estimates that for that moment there was no legal basis of physical restraint and the decision was taken hastily, which in the end led to the patient's extreme agitation.

Agitated patient was taken to the second floor. When ascending the stairs, the patient resisted and there was a risk of physical injury to the patient. In the second-floor hallway the patient, for a while, sat on the floor near the wall, when due to the closeness to the wall there was a high risk of self-harm. The special concern of the monitoring group was caused by the fact that before reaching the place where she was supposed to be fixated the personnel had to drag the patient on the floor. The patient has been injected after being fixated on the bed and she calmed down after a little while. She was kept under constant surveillance.

The Special Prevention Group is concerned with the above accident. It believes that this case reveals an unjustified practice of applying physical restraint at this institution. The problem of hasty decision-making is apparent, if physical restraint is not urgently needed and there are other means of managing the case. At the same time, the problem of applying physical restraint safely and in a manner that does not undermine human dignity got revealed. The Special Prevention Group urges the staff to do everything in order to avoid such cases. It is essential that the personnel receive appropriate training and strict supervision exercised on the competent performance of their functions.

In the **National Center for Mental Health (Qutiri)**, during the interviews with the Monitoring Group the patients were especially cautious when talking about physical and

chemical restraints. The Special Prevention Group considered this as self-censorship. Interviews with patients revealed that physical restrictions ‘are not applied as often as before’, but they are still applied. The patients perceive this not as the procedure directed to their own safety and safety of those around, but as a method for securing obedience and/or punishment.

According to patients, there are cases when the physical restrictions and chemical restrictions (as they call ‘tying’, ‘binding’, ‘injecting’) are applied in combination in the degrading form and for long-term, when the bed-ridden patients have to satisfy their physiological demand in the bed with their clothes on.

According to the patients, they receive pills in the crushed form, and they do not know the name of the medications. If patients refuse to take the medication or request the information, complained about the side effects or it is noticed that they try to avoid taking the medication, the staff threatens them with injection. If they still refuse to take it, they are given an injection. Patients say that the staff (guards, nurses, orderlies) manually restricts the patient and the nurse administers an injection. If the patient attempts to resist aggressively, then physical restraint is applied in the corridor in front of other patients, in the ward or very rarely in the isolated ward. The Special Prevention Group finds such practices unacceptable. It is impermissible for security guards that are not adequately trained<sup>514</sup> to participate in applying physical restraint and forced injection process. It is equally unacceptable to apply physical restraint in front of other patients.<sup>515</sup> As regards involuntary medical interventions, it is worth noting that international human rights law standards generally call for avoiding involuntary medical intervention<sup>516</sup> in the absence of an informed consent, because it is at odds with the patient’s personal autonomy.<sup>517</sup> Only in clearly and strictly exceptional circumstances defined by the law can patients be subject to such intervention.<sup>518</sup>

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514 According to the European Committee for the Prevention of Torture, it is desirable to limit the function of security guards to the protection of the outside perimeter, because their presence in the units hinders creation of therapeutic environment. CPT Report to Georgian Government on the Visit in Georgia on 1-11 December 2014, para. 143.

515 *Ibid.* para 152.

516 The UN Convention on the Rights of Persons with Disabilities, Article 24 (d).

517 Dignity must prevail” – An appeal to do away with non-consensual psychiatric treatment World Mental Health Day – Saturday 10 October 2015, United Nations Special Rapporteurs on the rights of persons with disabilities, Catalina Devandas-Aguilar, and on the right to health, Dainius Pūras, Available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16583&LangID=E> [last visited on 1 March 2016].

518 According to the European Committee for the Prevention of Torture, ‘Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.’ The European Committee for the Prevention of Torture, p. 84, para. 41.

Patients also claim that complaints on the living environment and conditions of the existing regime, uncomfortable questions to the staff, objection, application to human rights defenders can lead to physical and chemical restraints; If the patient resists to the staff, “the procedure” of physical restriction is long (e.g. Two days) or ends in isolation.

As a result of interviewing different patients on the physical restrains issue, the narratives obtained by the monitoring group are identical, but the requisite records of the cases of physical restriction in the physical restraint registration journal, medical cards and staff blogs are either non-existent or much less time is recorded.

According to the Physical restraint registration journal, one patient was restrained twice in 2015, in one case for 2 hours, and the second time for 2 hours and 15 minutes which does not correspond with the narrative of the patient. According to the patient, because the room was cold and the water was leaking, he entered the nurse room for heating; he expressed affective reactions and verbal aggression, when nurses gave him a warning, which resulted in his physical and chemical restriction (from 14:00 pm to next morning, 19 hours a day) and a month of isolation in the locked room. The staff did not give him access to a toilet and he had to pee in bed during physical restriction. He refused food in protest to the physical restrictions.

One patient describes physical restraint procedures similarly: when expressing discontent to the staff’s and he “insists”, he is tied with sheets in front of other patients in isolator or bedroom, and there were cases when the isolation with physical restriction lasted for 2 days and the patient had to pee in bed. He refused food in protest to the physical restrictions. Personnel did not change the urine soaked underwear and bed linen to any of the patients during their physical restriction.

Patients of the **Senaki Psycho-Neurological Hospital in-patient department** say that “they’re never fixed”; “those who feel bad – get the injections and sleep.” The nurse explained to the monitoring group, that the physical restraint log is empty, as they had no cases of physical restraint. The monitoring group has the impression that due to the use of the chemical restraints in the facility, there is no need for physical restraints.

No entries to the physical restraints log were made in 2015 in the **Acute Care Unit of the N5 hospital of Tbilisi**. Administration representatives state that physical restraints are used only with the extreme cases and are not applied almost at all. If application is unavoidable, it will be recorded in the relevant documentation. Instead of physical restraints, if necessary, agitated patients are placed in the 1 person Chamber under the special supervision conditions.

Acute care unit of the **Republican Clinical Psycho-Neurologic Hospital (Khelvachauri)** has 3 isolation rooms, which have metal door grills and can be locked by padlocks. The

isolation rooms, according to the personnel, are used to “calm the agitated patients, for therapeutic purposes”, but the placement in these rooms is perceived as some form of punishment by patients.



Transfers to the isolation rooms are not recorded in medical logs. According to the staff, “officially it is the same department, so it’s simple transfer from the chamber to chamber”. In a few days, the patient is transferred back to his/her ward. One patient said she was “they transfer people from calm to agitated to intimidate them, they do the injections, block the lock, but they do not bind them.”

Isolation room (“isolator”) is also used at the **National Center for Mental Health**. The interviews with patients and the inspection show that patients are placed in the isolation room for a few days, which bearing in mind the conditions of the rooms causes the concern of the Special Prevention Group.



There is a clear trend in modern psychiatric practice in favor of avoiding seclusion of patients, and the CPT is pleased to note that it is being phased out in many countries. For so long as seclusion remains in use, it should be the subject of a detailed policy spelling

out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive. Isolation should never be used as a punishment.<sup>519</sup> It should be noted that according to CPT, the same obligations of documenting apply to seclusion in the isolation as to the other methods of physical restraint.<sup>520</sup>

According to the “Instruction for application of physical restriction methods on mental patients” established by Order #92/n of the Ministry of Labour, Health and Social Affairs dated 20 March 2007 Isolation wards need to be specially equipped to prevent the patient’s self-inflicted harm. In the view of the Special Prevention Group, in the National Center for Mental Health and Republican Clinical Psycho-Neurologic Hospital, as well as in other mental health institutions, the isolation rooms are not specially and properly equipped and the patient placed in those room faces with a high risk of self-harm. In addition, the Special Prevention Group believes that the bars on the door and the window are unacceptable, both in terms of safety, and the disruption of the therapeutic environment and its’ association with the prison and the punishment cell. Hence, placement of a person in such isolation room may amount to degrading treatment.

The Special Prevention Group is also concerned about the fact that despite the requirements that the use of the physical fixation and specialized isolation together with the duration of use of these measures, shall be duly reasoned and documented in accordance with Article 16 of the Law of Georgia on Psychiatric Care and similar requirements established by abovementioned instructions, the isolation of the patient is not in reasoned, properly documented and is applied for a long time in violation of applicable laws. Special Prevention Group calls on the Ministry of Labour, Health and Social Affairs, as well as the directors of psychiatric institutions, to take all necessary measures to eliminate the vicious practice. They also call not to use the isolation rooms before the proper infrastructure and special equipment to ensure the protection of the patient from self-harm and compliance with the legal requirements is not ensured.

Based on the foregoing, the Special Prevention Group came to the conclusion that the requirements of the rules and procedures of physical restriction are systematically breached. It was obvious that most of the institutions there is no clear system of registration of restrictions applied - in most cases the record of physical restraints on the use of physical restraint is made in the journals and not in the patient’s medical record or - on the contrary. The requisite 15-minute interval monitoring record of the dynamics of the patient’s condition is nowhere to be found in any record and sometimes the time is not set at start and end of application of physical restraints.

The Special Preventive Group deplores the fact that the physical restrictions are ap-

519 The European Committee for the Prevention of Torture, standards, para. 49.

520 *ibid*, para. 50.

plied equally to formally voluntary and involuntary patients, which is also contrary to the CPT's position, according to which formally voluntary treatment of patients should not be subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) must be immediately initiated.<sup>521</sup>

The Special Preventive Group believes that the instructions on the use of physical restraints should be broadened by adding instruction on the use of the chemical restraints. In addition, regular training should be provided in agitated patient management, tension de-escalation and restriction techniques, which should involve the whole staff (doctors, nurses, nurse's aides); Principles developed should be regularly reviewed / updated. It is very important that both staff and administration officials are involved and support the creation of the guidelines. The hospital's management must exercise regular supervision of the systematic implementation of these principles into practice. In this part, the breaches by the staff shall be followed by an appropriate response.

The Special Preventive Group also believes that patients shall be informed on a regular basis in the language they understand (written as well as oral form) about the appeal structure of physical and chemical restraint procedures applicable in the establishment. Such information will help patients (and their representatives) to understand the justification of physical restraint measures. This is important in so far as the physical restrictions are currently perceived by patients as a form of punishment. Awareness shall be increased to promote the change of this perception. Also, it is important that the staff talk to the patients who were subject the physical restrictions and / or those who have witnessed the use of physical restraint at the end of the procedure. This will help the doctor-nurse-patient relationship and therapeutic action, and also, presumably, will allow the patient to articulate their feelings and emotions which led to the physical restraint, which could lead to a better understanding of the behaviour of the patient by the staff.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF LABOUR, HEALTH AND SOCIAL AFFAIRS

- Amend the "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs, dated 20 March 2007 to include the following: the maximum length of application of physical restriction; recording obligation regarding physical restraint, injuries suffered by including the patient and / or

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521 CPT Report to Georgian Government on the Visit in Georgia on 1-11 December 2014, para. 151.

staff of in the process on a special register (special register); Special Registry (special journal) form; Detailed instructions for the implementation of physical restraint; the specific characteristics of the means to be used for Physical restraints; regulation of the place and who may be present during the process of the physical restrictions; requirements towards the isolation room; the video surveillance system-related issues during the process of physical restriction; the obligation to inform the patient by the hospital's staff on the right to appeal

- take all necessary measures not to use the isolation rooms before the proper infrastructure and special equipment to ensure the protection of the patient from self-harm and compliance with the legal requirements is not ensured
- the creation of system of adequate supervision and response to breaches of the rules of physical restraints, isolation and chemical restrictions
- to define the list of mandatory training, for the personnel involved in physical restriction procedure
- Organize trainings on the issue of physical and chemical restraints and develop instructions on chemical restriction

#### PROPOSALS TO THE PARLIAMENT OF GEORGIA

- Amend the Law of Georgia on Psychiatric Care and provide the definition chemical restrictions, and the rules and procedures of its use as the, as well as determine that the Ministry of Labour, Health and Social Affairs adopt the detailed instruction on the use of chemical restrictions
- Amend the Article 16 of the Law of Georgia on Psychiatric Care and to determine the maximum duration of physical restraint and the obligation to record the information in a special register and obligation to apply the special requirements for isolation, physical restraint of the video surveillance system-related issues and disabilities after the hospital's staff and patients of the right to appeal, the obligation to inform the interview, the video surveillance system-related issues during the process of physical restriction and the obligation to inform the patient by the hospital's staff on the right to appeal
- Amend the Article 16 of the Law of Georgia on Psychiatric Care and determine that patients formally on voluntary treatment should not be subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) the must be immediately initiated

## TO THE DIRECTORS OF THE MENTAL HEALTH INSTITUTIONS

- Take all necessary measures to ensure that the physical restraint, isolation and chemical are used only as a last resort, when all other reasonable means prove ineffective and in any case will not be used to compensate for the lack of qualified personnel and for the comfort of the staff, or as a punishment
- Take all necessary measures not to use the isolation rooms before the proper infrastructure and special equipment to ensure the protection of the patient from self-harm and compliance with the legal requirements is not ensured; Also ensure that the patient does not occur in isolation for the failure of the staff to perform their duties, or to relieve the staff from performance of their obligations
- Ensure that physical restraint measures are used for as short period of time as possible
- Take all necessary measures to ensure that patients formally on voluntary treatment are not subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) the must be immediately initiated
- Ensure that the relevant personnel undergo regular training in physical and chemical restraint procedure and de-escalation techniques and use strict control over the fulfilment of the requirements of the instruction and the practical implementation of the knowledge gained by the staff
- Ensure that the patient's physical restrictions do not occur in the presence of other patients, except in cases when the patient requires the presence of another patient
- Ensure that the patient, who was subject to the physical restriction is under constant supervision of the qualified employees who help them satisfy their physiological needs and control water and food intake
- Take all necessary measures to ensure that physical and chemical restraints and isolation are comprehensively recorded and documented in the patient's medical record and the special register (special register), as well as a doctor and/or nurse blogs by the appropriate personnel
- Ensure provision of the information on the possibility of appeal and interviewing of the patient after physical restraint is applied
- Undertake strict control on the due fulfilment of the duties by the staff in or-



der to prevent inhuman and degrading treatment of the patients; in cases of the breach of the rules applicable to physical restraint procedure and ill-treatment of patients, react accordingly; in case of commission of actions containing a crime by personnel, duly refer to the relevant investigating authorities.

## 7.7. MATERIAL CONDITIONS – SANITARY-HYGIENIC CONDITIONS, THERAPEUTIC AND SAFE ENVIRONMENT

The European Committee for the Prevention of Torture emphasizes the need for securing adequate living conditions for patients and treating them with respect and dignity. Inadequacies in these areas can lead to situations falling within the scope of the term “inhuman and degrading treatment”. It is necessary to create material conditions for patients that are conducive to their recovery and well-being, in psychiatric terms, a positive therapeutic environment. This is important not only for patients, but also for the personnel of psychiatric institutions. Besides, adequate treatment and care, both psychiatric and somatic, must be provided to patients, having regard to the principle of the equivalence of care.<sup>522</sup> Living conditions in mental health facilities should be as close as possible to normal living conditions of persons of similar age.<sup>523</sup>

Living conditions and quality of treatment is dependent on available resources. The European Committee for the Prevention of Torture emphasizes that the provision of certain basic necessities must always be guaranteed in institutions where the state has persons under its care and/or custody. This includes adequate food, heating and clothing as well as – in health establishments – appropriate medication.<sup>524</sup>

In order to evaluate the existence of positive therapeutic environment in mental health institutions of Georgia, members of the Special Prevention Group checked 12 mental health institutions in Tbilisi, Rustavi, Imereti, Samegrelo, Samtskhe-Javakheti and Adjara.

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522 Standards of the European Committee for the Prevention of Torture, p. 80, para 32, Georgian version available at <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [last visited 03 March 2016].

523 Resolution of the UN General Assembly on the Protection of Psychiatric Patients and Improvement of Mental Health, 17 December 1991, available at <http://www.un.org/documents/ga/res/46/a46r119.htm> [last visited on 3 March 2016].

524 Standards of the European Committee for the Prevention of Torture, p. 80, para 33, Georgian version available at <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> (last visited 03.03.2016)

## BEDIANI MENTAL HOSPITAL



As a result of external and internal examination of the building of this institution, it may be concluded the entire infrastructure is old and dysfunctional. Material conditions are not conducive to health and well-building of patients.



The use of wood furnaces and coverage of windows with cellophane to keep the building warm is insufficient. Patients have individual beds, but the space allocated to each patient is less than standard 8 square meters.<sup>525</sup> Multi-patient units are overcrowded, with 4, 5 square meters per patient and sometimes even less.<sup>526</sup> There is limited free space in each unit. The distance between the beds is sometimes even less than a meter.

525 Decree of the Government of Georgia of 17 December 2010 No. 385 about the Rules and Conditions of Issuing Licenses for Medical Activity and Giving Permissions for Opening Hospitals” Appendix no. 2.

526 For example, the unit for male patients includes 8 rooms (there are 2 patients in a 9,3 sq.m. room, 4 patients in a 15,7 sq. m. room; 11 patients in a 48, 16 sq. m. Room); In the unit for female patients, there are 5 rooms, (with 7 patients in a 24, 2 sq. m. Room; 8 patients in a 24 sq. m. room; 3 patients in a 17,5 sq. m. room, etc).

In the Unit for Male Patients, there are two rooms (No. 4 and 5) that are connected and are not isolated. No separate heating device is secured for these rooms. They are heated indirectly with heating devices installed in other rooms.

The conditions in units for male patients and in units for female patients do not correspond to the standards established by the Decree on Issuing Licenses for Medical Activities and Permissions for Opening Hospitals.<sup>527</sup>



The sanitary facilities in these units need to be repaired. In the unit for male patients, the sanitary-hygienic conditions are inadequate. In the units for female patients, the situation is better in this regard, but some repair and renovation needs to be done. Inviolability of personal space is not secured at sanitary facilities. The needs of the elderly patients and those with mobility restrictions are not properly taken into account.

Sanitary-hygienic conditions are satisfactory in the dining room and living room for male patients. However, it is still advisable to renovate these rooms. The infrastructure of the kitchen area needs to be repaired. The cooking equipment is old and sanitary-hygienic condition is far from being satisfactory.



527 Decree of the Government of Georgia of 17 December 2010 No. 385 about the Rules and Conditions of Issuing Licenses for Medical Activity and Giving Permissions for Opening Hospitals”.

Sanitary-hygienic conditions are not satisfactory in staff rooms. The room needs to be repaired. Sanitary hygienic conditions are inadequate in all storage rooms of the institution. Food is not properly stored. Laundry rooms are old and need to be renovated.



Sanitary-hygienic conditions are satisfactory in the room for art therapy. The environment necessary for art therapy is secured.

The hospital has a sufficiently large yard, with green spaces, but the problem lies in the small size of the living room and the absence of necessary equipment.

#### CLINICAL PSYCHONEUROLOGICAL HOSPITAL (KHELVACHAURI)



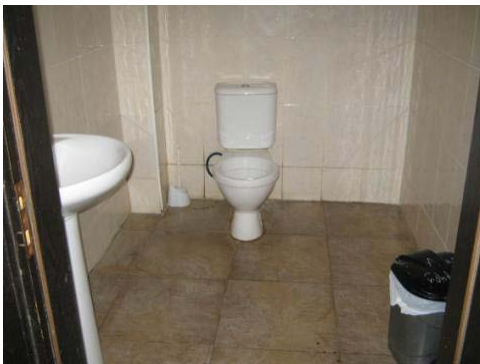
The infrastructure and sanitary-hygienic conditions of the first and the second buildings of the Clinical Psychoneurological Hospital considerably differ. The infrastructure of the first building is adequate. All the units are properly lit and ventilated. Sanitary-hygienic conditions are satisfactory. The infrastructure of the second building is in a deplorable

state. It is not conducive to the health and well-being of the patients on an equal basis.

The third unit in the first, main building has been repaired. Patients accommodated in private rooms are allocated space in accordance with the standard.<sup>528</sup> The infrastructure of the second building is in a deplorable state. The walls are dirty. The interior is damaged due to moisture and needs to be repaired. Furniture is old and few. There is a bad smell in rooms. There are insects. Overcrowding is a problem.<sup>529</sup> There are extra beds in some of the rooms.



The sanitary facilities are in a relatively better state in the first building than in the second building. In the second building, walls are damaged and repairs are needed. Walls and floors are damp and damaged in bathrooms.



The laundry room for the second building is in a separate building that is old and needs to be repaired. As regards the laundry room of the first building, washing machines in-

528 9,9 sq. meters per patient. Two-patient rooms are 14.24 sq. meters, three-patient rooms are 18, 75 sq. meters.

529 The unit for male patients has 9 units for acute care and 9 units for long-term stay (3 patients – 19 square meters; 4 patients – 21,59 square meters). In some rooms there are extra beds. For example, in one room (21,24 square meters), there are 2 patients and 3 beds. In another room (41,24 square meters, there are 6 beds and 5 patients).

stalled there are in good shape. The common kitchen is also in a good shape. The music room is also satisfactory. Patients from the first, second and third units come to this room. They can watch movies and play the piano. There is a table. There are also some chairs and decorative flowers.



After rain, the personnel do not let patients go to the yard, since the holes in the ground are filled with water.



## TBILISI CENTRE OF MENTAL HEALTH



As a result of external and internal examination of the building, it can be concluded that the entire infrastructure of the building needs to be repaired. The environment is such that it is not conducive to health and well-being of patients. All the rooms, bathrooms and toilets need to be repaired. The furniture is insufficient and most of it is damaged. There is no ventilation in the rooms. On a positive note, a central heating system works. The units for male<sup>530</sup> and female<sup>531</sup> patients are equipped with individual beds for each patient, but there is less than the required 8 square meters of living space per patient, with the exception of a few rooms.<sup>532</sup>



530 There are two rooms, with four beds each (one is 17,57 square meters and the other one is 23,24 square meters).

531 3 beds – 3 rooms – 17,00 square meters, 4 beds – 2 rooms – 34,00 square meters, 5 beds – 3 rooms – 32,6900<sup>2</sup>, 7 beds – 1 room – 41,645 square meters, 6 beds – 2 rooms – 35,885 square meters).

532 The unit for male patients (7 rooms with 3 beds 24,760 square meters), the unit for female patients (2 beds, 4 rooms, 17,87 square meters and 4 beds in 2 rooms 34,00square meters).

There is a shortage of sanitary facilities in units for male and female patients. Sanitary-hygienic conditions are not satisfactory. The sanitary facilities need to be repaired. There is a common bathroom for all units. There is a schedule for its use for different units. Toilets in mixed units for male and female patients work properly. The state of the common dining-room and storage rooms is satisfactory.

The institution has a good size yard that can be used for the purpose of recreational activities. The sports room is out of order and is not used.

### GHUDUSHAURI NATIONAL MEDICAL CENTRE



The external and internal examination of the building allows concluding that its entire infrastructure needs to be repaired. The central heating is secured only in the corridors. Air conditioning devices are used for heating patient rooms. As water pipes get frequently damaged, the corridors get flooded.

It is to be pointed out that in units for male and female patients a standard 8 square meters per patient is secured. Sanitary-hygienic conditions in patient rooms are satisfactory, but the mattresses of some beds are dirty and damaged. Furniture needs to be repaired. The building needs to be renovated.





In sanitary facilities for men and women, ceiling and walls are damp and moldy. Floors are wet and dirty. There is air pump and natural ventilation in sanitary facilities. Flash toilets have no plastic seats, making it impossible to sit. The condition of the kitchen is normal overall, but walls are damp and in need for renovation.

The institution has a yard, with artificial ground cover. A table and chairs are under the roof. Patients can play table tennis in one of the rooms. They can also watch TV in a specially designated area, with couch and armchairs.

#### KUTAISI MENTAL HEALTH CENTRE



The examination of the building reveals that the environment and sanitary hygienic conditions are satisfactory. The building was repaired//renovated four years ago. The entrance to the building was adapted to meet the needs of persons with disabilities. There is a central heating system in the building. The yard is surrounded by a metal fence and is in good condition.



The overall condition of patient rooms is satisfactory. On a positive note, patients in units for male and female patients have individual beds and a standard living space of 8 square meters.<sup>533</sup> Conditions of shower facility and toilets are generally satisfactory. Shower facility for male patients and toilet of female patients need minor repairs. The kitchen is clean.

The Centre has a yard and a room for various activities to secure recreation.

#### CENTRE FOR MENTAL HEALTH AND PREVENTION OF DRUG DEPENDENCE



The external and internal examination of the building showed that its entire infrastructure is in need for additional reparational works. In rooms for long-term stay, patients have individual beds, but they are not secured with the standard living space of 8 square meters.<sup>534</sup> Mattresses for beds are stained. Air conditioning devices are installed in all

<sup>533</sup> Two-patient rooms are 16, 27 square meters and 17.86 square meters.

<sup>534</sup> Two-patient rooms are 14 square meters, three-patient rooms are 17, 88 square meters or 16,64 square meters.

rooms, but most of them are out of order.

There is a rehabilitation room in the unit for a long-term stay. Due to a small size of the room, there is a lack of air if the number of patients in the room is large. The requirements related to living space are generally observed in acute care units, except for several three-patient units that are 15 square meters.



The state of sanitary facilities is satisfactory, but repairs are still needed. Corners of the bathroom are covered with mold, due to moisture. Flush toilets have no plastic seats. As shower cabins are only half-isolated and are in the same space as toilets. This undermines inviolability of personal space of patients. The situation in the kitchen (sanitary-hygienic conditions) is satisfactory.



The conditions are inadequate in the storage room for medications. The refrigerator for storing medications did not work. There was no air conditioning and the temperature regime necessary for storing medications could not be secured.

There are rooms for joint activities. In the yard, there are volleyball net and basketball courts. There are also armchairs. The walls are decorated with paintings. Since the yard

is between two buildings, it is not properly ventilated and does not get any sunshine.



#### N5 CLINICAL HOSPITAL



It may be concluded, based on external and internal examination of the building, that its entire infrastructure is in need for additional repairs. The existing environment is not conducive to the health and well-being of patients. The second unit of the hospital is divided into sub-units for adults and children.

The unit for adults is not properly ventilated. The rooms are properly lit. Heating of rooms is secured through air source heat pumps. In contrast to rooms, central heating is installed in corridors. The smoking room does not get properly ventilated. Not all rooms correspond to the living space standards.<sup>535</sup> The Unit for Children fulfills this standard.<sup>536</sup> It is also satisfactory in terms of securing lights and ventilation. There is a small playground. Food is delivered with plastic containers and vacuum flasks. The dining room is in good shape.

The Adult Unit has sanitary facilities separately for men and women. There is no natural ventilation in the sanitary facilities for female patients. In sanitary facilities for male patients, a few toilet seats are damaged. The walls are covered with mold. The sanitary facilities are in order in the unit for children. Sanitary-hygienic conditions are adequate.

Patients do not have an access to the yard of the institution. There is no special room for joint activities, except for the Unit for Children.

#### RUSTAVI MENTAL HEALTH CENTRE



The external and internal examination of the building of this institution allows making a conclusion that the entire infrastructure is satisfactory. The entrances to the yard and to the ambulatory care unit are equipped with wheelchair ramps. Central heating system works in the corridors and in the sanitary facilities. Air-conditioning devices are available in all patient rooms. The living space per patient corresponds to the standard.<sup>537</sup> Sanitary-hygienic conditions are generally satisfactory in patient rooms.

535 Rooms are between 12, 5 and 17 square meters. There are two beds in each room.

536 Each room is 17 square meters, with two beds.

537 The room that is 10,63 square meters is for 2 patients.

Sanitary-hygienic conditions in bathrooms and toilets are satisfactory, but the toilet on the first floor is not properly ventilated. The flush toilet in the sanitary facility for female patients does not have a plastic cover.

The Centre has a common dining room in a good condition.



Recreation room is organized in the corridor of the second floor. The Centre also has internal yard for patients.

#### “UNIMED KAKHETI” TBILISI REFERRAL HOSPITAL



The entire infrastructure is old and in disrepair. It is not conducive to health and well-being of patients. There is a moisture problem in most rooms in the northern part of the building. The mirrors are missing from the doors of some patient rooms. All door locks are broken. Windows are closed at all times and hence there is no natural ventilation.

Artificial ventilation is not secured. There is no sufficient artificial light in patient rooms. Most of the light bulbs do not work. They can be turned on and off only from outside the room.

Living space for each patient is 8 square meters as required. Even though mattresses of beds are stained and damaged. Sanitary facilities need to be repaired. In bathrooms, inviolability of personal space is not secured.



The hospital has a yard, with some greenery. However, there are no chairs and other equipment to secure adequate recreational environment.

#### SENAKI INTER-DISTRICT PSYCHONEUROLOGICAL DISPENSARY



The entire infrastructure of the building is old and in disrepair. This does not facilitate health and well-being of patients. The building was repaired in 2002, but moisture damage can be observed on the walls inside and outside. The sewerage pipe is damaged

and leakage causes a contamination of the yard. Medical and other remains are thrown out into the yard.



The walls of patient rooms are damaged. There are holes at the edges of floors. Living space per patient is inadequate,<sup>538</sup> except for a few rooms.<sup>539</sup> Light switchers are outside patient rooms and are controlled by the personnel.



The main storage room for medications is at the pharmacy on the first floor, but the Monitoring Group found expired medications in the room of the nurse. The walls in the lab for conducting tests (full blood exam, glucose test, syphilis test) are damp. At the time of monitoring, there was no sterilizer in the lab.

There are sanitary facilities on both floors, but hot water is available only on the first floor. Walls are damaged with mold. Only cold water is available for washing hands. Both toilets are ventilated with small windows. Water basin for flushing water is out of order.

The laundry room is next to toilets. Moisture damage can be observed on the walls. There is no hot water in the kitchen and dishes are washed with water warmed up with the gas stove. This does not allow having adequate sanitary-hygienic conditions. The

538 E.g. 3 patients in a 20 sq. m. room, five patients in a 26 sq.m. room, etc.

539 One patient in a 16 sq. m. room, three patients in a 32 sq. m. room, etc.



situation in the kitchen and dining room is generally satisfactory.



The hospital has a yard, with inadequate sanitary-hygienic conditions. It is not equipped with armchairs and other furniture. This hinders creating recreational environment.

#### AL. KAJAIA SURAMI PSYCHIATRIC HOSPITAL



The entire infrastructure of the building is old and in a state of disrepair. This does not help secure health and well-being of patients. The buildings were last repaired approximately twenty years ago. Coal is used for heating. At the time of monitoring, none of the buildings were heated.

Patient rooms are not artificially lit and heated. Due to the absence of thermal insulation, cold gets into the rooms. There is moisture damage on the walls. Furniture is old. Sanitary-hygienic conditions are not satisfactory. Smell in the rooms is unpleasant. The unit for male patients is overcrowded. Living space per patient does not correspond to

the standard.<sup>540</sup> Furniture and generally the environment is the same in all rooms.



Sanitary facilities are in bad conditions. The infrastructure is in a state of disrepair. Sanitary-hygienic conditions are inadequate, except for one toilet for male patients that was renovated a year ago but still does not function.



The laundry room is old and in a state of disrepair. Walls and ceiling of the dining room are dampened. The floor is dirty. Sanitary-hygienic conditions are not adequate.



Taking into account inadequacy of sanitary-hygienic conditions in the buildings, the yard is the only place for rest and recreation.

<sup>540</sup> For example, eight patients are located in a 35, 74 sq. m. room; 9 patients in a 35, 26 sq. m. room

## ACADEMIC B. NANEISHVILI NATIONAL CENTRE FOR MENTAL HEALTH



The infrastructure of most buildings of the Centre is old and in a state of disrepair. This does not help secure health and well-being of patients. They are kept under conditions violating their dignity.

Living space per patient is insufficient<sup>541</sup> except for a few rooms.<sup>542</sup> (The standard requirement is 8 square meters per person). Rooms for multiple patients are overcrowded. The actual living space per person is 4 square meters or even less.<sup>543</sup> The beds are made of metal and in some instances, patients have no mattresses. One may notice moisture damage on the walls of most rooms and corridors. These need to be repaired.

When it rains, the ceiling leaks. Doors are damaged. Central heating system is installed, but does not work in most units. Centralized ventilation is not also secured. Sanitary-hygienic conditions are not adequate in patient rooms.



541 10 patients in a 25, 27 sq. m. room, 10 patients in a 33.19 sq. m. room.

542 4 patients in a 52, 8 sq. m. room, 4 patients in a 51, 9 sq. m. room.

543 In the Unit for Male Patients, there are 8 rooms (2 patients in a 9,3 sq. m. room, 4 patients in a 15, 7 sq.m. room, 11 patients in a 48,16 sq. meters room). In the Unit for Female Patients, there are 5 rooms (7 patients in a 24,2 sq.m. room, 8 patients in a 24 sq. m. room, 3 patients in a 17,5 sq. m. room).

The interior and equipment is old and needs to be repaired. The walls and ceilings are dirty. Sanitary-hygienic conditions are unsatisfactory. Ceilings leak. Walls are covered with mold. Hold water is available only in bathrooms.



The situation in the kitchen is satisfactory, but it is difficult to keep kitchen clean. Part of cooking equipment is old.



The units for patients undergoing forcible treatment and patients transferred from penitentiary institutions for involuntary psychiatric care are isolated from the rest of the hospital. Such patients have a separate yard surrounded with a metal bar fence and roofed with metal bars.

As regards the rest of the hospital territory, the buildings are located in the yard with the greenery and environment appropriate for the recreational activities. As found out as a result of the visit, only the patients that clean the yard are allowed in. Other patients spend most of the time the buildings and in the small area surrounded with a metal net.

## RECOMMENDATIONS TO THE MINISTER OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Take all necessary measures to repair the buildings of Bediani Mental Health Hospital, Adjara Clinical Psychoneurological Hospital (the second building), Senaki Inter-district Psychoneurological Dispensary, “Unimed Kakheti” Tbilisi Referral Hospital, Al. Kajaia Surami Psychiatric Hospital, Naneishvili National Centre for Mental Health; to secure necessary therapeutic environment.
- Take all the necessary measures to ensure that infrastructure is renovated and positive therapeutic environment is created at Gldani Mental Health Centre, Ghudushauri Mental Health Hospital, Centre for Mental Health and Prevention of Drug Dependence, N5 Clinical Hospital, Rustavi Mental Health Centre.
- Take all measures necessary to secure psychiatric care for all patients on an equal basis.
- Take all measures to control compliance of conditions at mental health institutions with the standards established by the Decree about Issuance of Licenses for Medical Activities and Permissions for Opening a Hospital.
- Take all measures to ensure that each patient of a mental health institution is secured with sufficient living space, in accordance with the standards.
- Take all measures to equip all institutions with necessary furniture, including bedside tables and closets to ensure that patients have the possibility to store personal items.
- Take all necessary measures get rid of common rooms with multiple patients.
- Take all measures to secure necessary lighting, heating and ventilation for patients in all mental health institutions.
- Take all measures to secure adequate sanitary-hygienic conditions.
- Secure taking into account needs of the elderly patients and patients with disabilities.
- Take all measures to secure provision of necessary facilities in patient rooms and recreational areas in all mental health institutions in order to stimulate patients.
- Take all measures to guarantee proper sanitary facilities and secure inviolability of personal space.
- Take all necessary measures to provide food to patients in satisfactory sanitary-hygienic conditions.

## 7.8. LEGAL GUARANTEES FOR PROTECTION

### 7.8.1. HOSPITALIZATION AND INFORMED CONSENT

The State Parties to the UN Convention on the Rights of Persons with Disabilities undertake to require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent, by raising awareness of the human rights, autonomy and needs of persons with disabilities, through training and the promulgation of ethical standards for public and private health care.<sup>544</sup>

The UN Special Rapporteurs on the Rights of Persons with Disabilities and on the Right to Health called on states to eradicate any form of non-consensual psychiatric treatment, to put an end to arbitrary detention, forced institutionalization and forced medication, in order to ensure that persons with developmental and psychosocial disabilities have their human rights respected. According to the Rapporteurs, the concept of ‘medical necessity’ behind non-consensual placement and treatment falls short of scientific evidence and sound criteria. Non-consensual interventions are very often misused and overused, turning exceptions into rule. The legacy of excessive use of force in psychiatry is against the ‘do no harm’ principle (*‘primum non nocere’*) and should not be accepted.<sup>545</sup>

In a system of psychiatric care that is based on personal dignity and inviolability, informed consent of patients must be a precondition for providing treatment. According to the European Committee for the Prevention of Torture, consent to treatment can be regarded as free and informed only if it is based on full, accurate and detailed information about the patient’s condition and the treatment proposed.<sup>546</sup>

According to the decision of the Constitutional Court of Georgia, ‘modern international law requires taking into account the will of patients with cognitive or other disabilities to a maximum extent possible and establishes a range of mechanisms to minimize interference with their personal autonomy. National legislation of a large number of states shares this approach and envisages an obligation to take into account the views of the person regarding the questions of placement in a medical establishment and even more frequently, medical treatment. Mental disorders may influence ability to give consent to medical treatment. At early stages of treatment of grave forms of diseases, a patient may not be able to give an informed consent, but subsequently it may get that ability back. Whenever an adult is able to give free and informed consent regarding interference with

544 Article 25 (1) (d), Convention on the Rights of Persons with Disabilities.

545 Dignity must prevail” – An appeal to do away with non-consensual psychiatric treatment World Mental Health Day – Saturday 10 October 2015, United Nations Special Rapporteurs on the rights of persons with disabilities, Catalina Devandas-Aguilar, and on the right to health, Dainius Pūras.

546 Standards of the European Committee for the Prevention of Torture, para 41.

his/her health, such interference should be carried out only with his or her consent. In case of grave form of illness, when an adult is unable to give free and conscious consent, interference may still be carried out, if it is in the best interest of this person.<sup>547</sup>

Under Georgian Law on 'Psychiatric Care' (Article 4 (j)), informed consent is consent of a person or his or her legal representative to psychiatric treatment, given on the basis of full, objective and comprehensible information about illness and medical intervention, provided in a timely manner. Under Article 15 (1) of the same law, hospitalization is voluntary, except for cases envisaged by Articles 16 (methods of physical restraint), Article 18 (Involuntary inpatient Psychiatric Help) and Article 22<sup>1</sup> (forcible psychiatric treatment). A patient is placed in an adequately licensed mental health institution, if warranted by his or her medical condition. Under Article 5 (c), a patient has the right to get full, objective and comprehensible information about the illness and planned treatment in a timely manner. If a patient is unable to make a decision, information will be given to his/her legal representative and in the absence of the latter, to his/her relative.

The Monitoring Group found that in practice, patients give consent without first getting adequate explanation, full, objective, comprehensible information in a timely manner. Informed consent<sup>548</sup> is essential to avoid involuntary placement of a patient in a mental health institution. This entire procedure is directed at having a consent form with a signature included in medical files to meet this formal requirement.

The survey of patients conducted by the Centre for Mental Health and Prevention of Drug Dependence revealed that informed consent is given on paper, but not in practice. Particularly, patients are not informed about their rights, essence, methods and duration of treatment. No explanation is given about the function of informed consent to treatment and factual/legal consequences of giving consent or refusing treatment. As reported by one patient, at the time of arrival at the institution, he was told that he had to sign papers to agree to a ten-day stay. It was not clear to the patient why he was not allowed to leave the hospital after the indicated term expired.

Another patient indicated that he wanted to be discharged. He had not given consent to voluntary treatment. There was no judicial order imposing involuntary psychiatric treatment. The medical files of the patient were checked to verify this information. The patient was hospitalized on 15 September 2015 by emergency medical personnel and underground patrol police. He was diagnosed with mild mental retardation, with impairment of behavior and psychotic tendencies (F70.1). Informed consent form included in

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547 *Irakli Kemoklidze and David Kharadze v. Parliament of Georgia*, the Decision of the Constitutional Court, 2<sup>nd</sup> collegium, №2/4/532,533, 8 October 2014, para. 50.

548 Medical Documentation Approved by the Order No.108/N of 19 March 2009 of the Minister of Labor, Health and Social Protection of Georgia – Form NIV-300-12/a – Informed consent of a patient on medical care.

the medical files was not signed. There was no court authorization for hospitalization to undergo involuntary psychiatric treatment. Accordingly, there was no legal basis for keeping this patient in the mental health institution.

Under Article 17 (3) (b) of Georgian Law on Psychiatric Care, a patient placed in a medical establishment for voluntary treatment is to be discharged at his/her request at any stage of treatment. However, the survey revealed that wishes of patients are systematically disregarded and they are kept in mental health institutions forcibly.

In a psychiatric division of the 5<sup>th</sup> Clinical hospital, one patient, undergoing voluntary psychiatric treatment according to medical records, wanted to leave the hospital due to improvement of conditions. When interviewed, he declared that the doctor neither lets him leave the hospital nor explains how long he will remain hospitalized.

In the **National Centre of Mental Health (Qutiri)**, in a civil psychiatric division, absolute majority of patients with severe psychosis and with chronic mental disorder are hospitalized on a voluntary basis (medical files of each includes an informed consent form), but according to the interviews, patients are not allowed to leave the Centre, notwithstanding their demands.

In **Surami Psychiatric Hospital**, most patients either do not know what they signed or assert that they had to sign an informed consent form, because doctors threatened them with a court-imposed six-month medical treatment if they refused. A number of patients could not clearly understand the essence of informed consent to treatment when interviewed, due to their own mental state. Some of them were fully aware of their state, wanted to be discharged to continue treatment on an outpatient basis and did not understand the reasons for the refusal. One patient that has been hospitalized since July 2015 said that he wanted to go home, but did not know why he was not allowed to, did not know “what he was treated for and what medicine he got”, did not know his rights.

In the **Clinical Psychoneurological Hospital (Khelvachauri)**, all medical cards include an informed consent form, but medical documentation frequently shows that patients are brought by the medical emergency units or patrol police. It is unclear why patrol police or medical emergency unit was needed if the patient gave consent to hospitalization. The doctors explained to the Monitoring Group that they ‘convince patients to agree to treatment.’

It is worth noting that based on medical records, no patient was hospitalized involuntarily. This was notwithstanding the fact that a few patients requested to be discharged. According to the Special Prevention Group, in such cases, a patient should either be discharged from a hospital immediately or if health state warrants involuntary hospital-



ization for psychiatric treatment, a court should be requested to authorize such hospitalization.<sup>549</sup>

The representatives of the hospital Administration explained to the Monitoring Group that ‘they could not let the patient leave if there was no one to accompany them’ or ‘the patient had nowhere to go’. According to the Special Prevention Group, a timely and adequate intervention is necessary in such instances in order to avoid keeping a patient hospitalized without any medical necessity<sup>550</sup> and without any legal basis.<sup>551</sup>

The Monitoring Group expresses concern that voluntarily hospitalized patients report about not being allowed to take walks in the yard or leave the territory of the medical establishment temporarily.

According to Article 18 (1) of the Georgian Law on Psychiatric Care, involuntary hospitalization for psychiatric treatment is appropriate when a patient is unable to make a conscious decision because of mental disorder and it is impossible to treat him/her without hospitalization, and also if the delay in providing treatment creates a threat to life and/or health of this patient or other person; the patient must suffer considerable property damage as a result of his/her own action or inflict such damage on others.

The necessity for involuntary hospitalization for psychiatric care is determined by a doctor of emergency medical service or other adequately certified doctor. Law-enforcement authorities are obliged to place the patient in a psychiatric institution if requested. A doctor on duty makes a preliminary decision about involuntary hospitalization. Involuntary hospitalization starts from the moment of placing the patient in a hospital. Within 48 hours from that moment, the Committee of Psychiatrists must examine a mental state of the patient and decide on appropriateness of involuntary hospitalization. For the decision regarding involuntary hospitalization to be reached, majority of members of this Committee should regard it necessary. If the votes are divided, the decision is made by a clinical director of a psychiatric institution. If the latter is not present, the

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549 Articles 17 (4) and 18 of Georgian Law on Psychiatric Care

550 The UN Committee on the Rights of Persons with Disabilities recommends the state party to review its laws that allow for the deprivation of liberty on the basis of disability, including mental, psychosocial or intellectual disabilities [...] to adopt measures to ensure that healthcare services, including mental healthcare services are based on the informed consent of the person concerned. Concluding Observations on Spain (2011), CRPD/C/ESP/CO/1, para. 36, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en) [last visited on 5 March 2016].

551 UN Committee against Torture recommends that the State party “take measures to ensure that no one is involuntarily placed in mental health institutions for reasons other than medical [...] ensuring that hospitalization for medical reasons is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed; UN Committee against Torture, Concluding Observations about Turkmenistan (2011) CAT/C/TKM/CO/1, para. 17, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTKM%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTKM%2fCO%2f1&Lang=en) [last visited on 5 March 2016]

decision should instead be made by a properly authorized person that replaces him. Dissenting views of psychiatrists will be attached to the decision of the Committee.

If the Committee of Psychiatrists concludes that the requirements envisaged by Article 18 (1) are fulfilled and involuntary hospitalization is necessary, management of the mental health institution addresses a court with the request for authorizing such hospitalization within 48 hours from the moment of placing the patient in that institution. The patient, his/her legal representative and in the absence of such, his/her relative will be informed about the Committee's decision. If the patient is a foreign citizen, the respective diplomatic representation will be informed. The court is obliged to examine this request within 24 hours of its receipt, in accordance with the Code of Administrative Procedure and decide on involuntary hospitalization. It is essential to secure participation of the patient in the hearing. The legal representative of the patient or his/her relative and a lawyer represent him/her before the Court. If the patient does not have a lawyer, a public counsel is appointed.

Judicially authorized involuntary hospitalization is warranted as long as the relevant criteria remain fulfilled, but it cannot be extended beyond a six-month term. The Committee of Psychiatrists is obliged to review the appropriateness of continued hospitalization for psychiatric treatment every month.

The results of monitoring reveal that staff of mental health institutions prefer to obtain consent of patients at the early stage of hospitalization and subsequently, neglects their right and wish to leave the hospital. Importantly, consent to hospitalization is obtained by unethical means, specifically, with the 'threat' of requesting a court order that authorizing involuntary hospitalization for six months.

In the spirit of the UN Convention on the Rights of Persons with Disabilities, the Special Prevention Group calls for taking measures to ensure that psychiatric treatment is primarily provided based on informed, conscious consent of patients and the practice of involuntary hospitalization is finally, gradually eradicated. At the same time, the Special Prevention Group is worried about the vulnerable legal position of individuals that are hospitalized voluntarily according to medical records, but in practice, their hospitalization is involuntary. These patients remain beyond judicial control. They cannot protect their own rights and are subjected to medical interventions and physical restraint contrary to their will. The rights of these patients to personal liberty and inviolability are breached and under the conditions of arbitrary restrictions, they are frequently victims of inhuman and degrading treatment.

The Special Prevention Group considers that in a short-term perspective, in order to avoid the above described state of vulnerability of patients, it is necessary for the mental

health institutions to address the court immediately if a patient undergoing treatment on a voluntary basis requests to be discharged from the hospital, but at that point, the criteria for involuntary hospitalization for psychiatric care are fulfilled. The Special Prevention Group also underlines that the risk of hospitalization without any grounds and/or the risk of long-term hospitalization exists even under judicial control. Accordingly, in a short-term perspective, until full eradication of the concept of involuntary psychiatric care, solid guarantees of protection must be created in this regard as well.

The Recommendation 2004 (10) of the Committee of Ministers of the Council of Europe to member states concerning the protection of human rights and dignity of persons with mental disorder lists the following conditions for involuntary placement in a mental health institution: a) the person has a mental disorder; b) the person's condition represents a significant risk of serious harm to his or her health or to other persons; c) the placement has a therapeutic purpose; d) no less restrictive means of providing appropriate care are available; e) the opinion of the person concerned has been taken into consideration.<sup>552</sup>

Article 18 of the Georgian Law on Psychiatric Care is reflective of the above listed conditions, but the Special Prevention Group regards the inclusion of the risk of infliction by the patient of substantial property damage to himself/herself or to other person among the criteria impermissible.<sup>553</sup> It is also important to take into account the opinion of the patient in deciding on his or her involuntary hospitalization in a mental health institution.

The monitoring revealed a range of problems related to the practice of involuntary hospitalization for psychiatric care. In a few instances, the requests to courts referred only to one criterion, while at least two criteria need to be fulfilled. Requests substantiating the necessity for involuntary hospitalization as well as court orders authorizing involuntary hospitalization are formulated identically, following the same pattern. Besides, prior hospitalization experience is frequently decisive in authorizing involuntary placement in a psychiatric institution. Some kind of 'presumption of illness' applies. The monitoring revealed that judges fulfill requests of mental health institutions and authorize involuntary hospitalization. They readily accept opinions of doctors and take little interest in opinions of patients. Psychiatrists think that they are in a better position to determine what patients need and judges with no medical education should not rule contrary to their opinions. Under such conditions, especially if court proceedings involve assessment of appropriateness of prolonging involuntary psychiatric care, it is important to hear the views of an independent psychiatrist. According to the standards of European

552 Recommendation 2004 (10) of the Committee of Ministers of the Council of Europe to member states concerning the protection of human rights and dignity of persons with mental disorder, Article 17(1).

553 Article 18 (1) (b) of Georgian Law on Psychiatric Care.

Committee for the Prevention of Torture, judicial decision regarding involuntary hospitalization is to be made taking into consideration a psychiatric opinion independent of the hospital in which the patient is placed.<sup>554</sup> The absence of this requirement in the Georgian legislation constitutes a significant shortcoming from the perspective of protecting the rights of patients and should immediately be corrected.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Examine cases of patients that according to medical files are undergoing psychiatric treatment on a voluntary basis, but in practice, are hospitalized against their will; take all the necessary measures to secure immediate discharge of patients, if a legal basis for involuntary psychiatric care is lacking.
- Take consistent steps to intensively develop services outside hospitals in order to reduce hospitalizations.
- Take all necessary measures to gradually introduce an exclusively consent-based model of psychiatric care.

### RECOMMENDATIONS TO THE HIGH SCHOOL OF JUSTICE OF GEORGIA

- Provide training to judges regarding the issues of mental health and relevant international human rights standards.

### RECOMMENDATIONS TO THE DIRECTOR OF THE SERVICE OF LEGAL AID

- Secure training of public counsels on issues of mental health and relevant international human rights standards.
- Amend Article 18 of Georgian Law on Psychiatric Care to introduce the obligation to obtain an opinion of a psychiatrist independent of the hospital in which the patient is placed when deciding on involuntary hospitalization for psychiatric care or extension of the hospitalization term.

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554 The European Committee for the Prevention of Torture, Report on Finland, CPT/Inf (2009) 5, paras. 138-139, available at <http://www.cpt.coe.int/documents/fin/2009-05-inf-eng.pdf> [last visited on 20 March 2016].

## RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Take all necessary measures to discharge patients undergoing treatment on a voluntary basis from the hospital at their request immediately, if there is no legal basis for involuntary placement for psychiatric care.
- Take all necessary measures to ensure that patients are given full, precise and detailed information in an understandable form about planned psychiatric care and consequences of refusing such care, at the time of hospitalization as well as subsequently, on a regular basis.
- Reinforce activities of social workers to facilitate discharges of patients from hospitals.
- Revise excessively restrictive conditions and regime of stay of patients undergoing voluntary treatment; Taking into account safety risks, secure their free movement inside the institution and also let them leave the institution for a short period of time.

## PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Remove Article 18 (1) (b) of the Georgian Law on Psychiatric Care, listing the likelihood of infliction of significant property damage by a patient upon himself or herself or upon another person as one of the criteria for imposing involuntary care.

### 7.8.2. THE PROBLEM OF LONG-TERM HOSPITALIZATION

The UN Committee on the Rights of Persons with Disabilities expresses concern about institutionalization of persons with disabilities and lack of community-based support services. It recommends states introduce support services and implement effective deinstitutionalization strategy, as a result of consultations with organizations of persons with disabilities.<sup>555</sup>

<sup>555</sup> The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Spain (2011) CRPD/C/ESP/CO/1, paras. 35-36, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en) [last visited on 12.03.2016]; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on China (2012), para. 26, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/CHN/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/CHN/CO/1&Lang=En) [last visited on 12.03.2016]; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Argentina, (2012), para. 24, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ARG/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ARG/CO/1&Lang=En) [last visited on 12.03.2016] The UN Committee on the Rights

In addition, the Committee asks states to allocate more financial resources to secure community-based support to persons with disabilities.<sup>556</sup> Monitoring revealed significant problems and challenges in terms of fulfilling this request.

According to the Special Prevention Group, there are patients in mental health institutions that do not need intensive treatment, but do not leave because they either ‘have nowhere to go’ or their families are reluctant to take them home. Importantly, administrations of all institutions with units for prolonged stay<sup>557</sup> declare that such patients constitute 30-40 % of overall number of patients in such units.

Discharge is delayed even if according to medical files patients are treated on a voluntary basis and want to leave the hospital. It is clear that delays in discharging patients are not always due to their state of mental health. The problem of prolonged stay is especially acute in Bediani and Surami psychiatric hospitals and National Centre for Mental Health (Qutiri).

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of Persons with Disabilities, Concluding Observations on Paraguay (2013), para. 36, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/PRY/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/PRY/CO/1&Lang=En) [last visited on 12.03.2016] The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Austria (2013), para. 30, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUT%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUT%2fCO%2f1&Lang=en) [last visited 12.03.2016] The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Sweden (2014), para. 34, available [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SWE/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SWE/CO/1&Lang=En) [last visited 12.03.2016] The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Costa-Rica (2014), para. 30, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/CRI/CO/1&Lang=Sp](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/CRI/CO/1&Lang=Sp) [last visited 12.03.2016] The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Azerbaijan (2014), para. 29, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AZE/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AZE/CO/1&Lang=En) [last visited on 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Ecuador (2014), para. 29, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ECU/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ECU/CO/1&Lang=En) [last visited on 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Mexico (2014), para. 30, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/MEX/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/MEX/CO/1&Lang=En) [last visited on 12.03.2016].

556 The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on China (2012), para 26; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Austria (2013), para. 31; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Sweden (2014), para 36.

557 The European Committee for the Prevention of Torture voices the view that it is better not to have sections for prolonged stay in psychiatric institutions, since long-term treatment should be associated with psycho-social rehabilitation, to be secured in the institutions for social care. Only patients with acute psychotic conditions should be treated in psychiatric hospitals. Others should benefit from community-based services. (“Institutionalisation Versus Timely Discharge from a Psychiatric Institution (Factors that impede timely discharge)”, document prepared by Mr Vladimir Ortakov, 2005, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), available in English at <http://www.cpt.coe.int/en/working-documents/cpt-2005-91-eng.pdf> [last visited 13.03.2016]).

The doctors interviewed name a few reasons for prolonged stay: absence of support system for discharged patients, financial insecurity, and absence of institutions for prolonged care, geographic inaccessibility of outpatient care, inadequacy of community-based psychiatric services as well as lack of abilities to live independently.

Importantly, prolonged-stay patients (the ones that do not leave because ‘they have nowhere to go’ or the ones whose families do not want them back) manifest the so called institutional/hospitalism syndrome<sup>558</sup> and learnt helplessness.<sup>559</sup> In some instances, prolonged hospitalization deprives such patients of life skills and causes disabilities that make their rehabilitation into the society a long and difficult process.

Article 19 of the UN Convention on the Rights of Persons with Disabilities establishes the right of these persons to live independently and be integrated in the society. Their prolonged segregation constitutes a human rights violation, depriving them of the right to live independently in a society. The two biggest groups staying in mental health institutions are individuals with mental disorders and intellectual/cognitive deficits.<sup>560</sup> Institution is not defined only by its size.<sup>561</sup> Institution is any place for isolation, segregation and/or concentration of persons with disabilities. The terms such as ‘institutionalization’ and ‘institutionalized’ are used to characterize persons that are placed in such institutions, often involuntarily and that are deprived of the possibility to make decisions about their own lives. Institutionalization reinforces stigma and prejudice that persons with disabilities cannot or should not participate in social life.<sup>562</sup>

Article 19 of the UN Convention on the Rights of Persons with Disabilities obliges the states to secure the equal rights of persons with disabilities and ‘prevent their isolation or segregation from the society.’<sup>563</sup>

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558 Wright, E. R., Gronfein, W. P., & Owens, T. J.. (2000). Deinstitutionalization, Social Rejection, and the Self-Esteem of Former Mental Patients. *Journal of Health and Social Behavior*, 41(1), 68–90. Retrieved from <http://www.jstor.org/stable/2676361> [last visited on 13 March 2016].

559 Leite, L. C., & Schmid, P. C. (2004). Institutionalization and psychological suffering: notes on the mental health of institutionalized adolescents in Brazil. *Transcultural psychiatry*, 41(2), 281–293.

560 Mansell J *et al*, Deinstitutionalization and Community Living – Results and Costs, Report, 2nd ed. (Canterbury: Tizard Centre, University of Kent, 2007) [http://www.kent.ac.uk/tizard/research/DECL\\_network/documents/](http://www.kent.ac.uk/tizard/research/DECL_network/documents/) [last visited on 13 March 2016].

561 Parker C. and Clements L, The European Union and the Right to Community Living: Structural Funds and the European Union’s Obligations under the Convention on the Rights of Persons with Disabilities (Open Society Foundations 2012), <http://www.opensocietyfoundations.org/sites/default/files/europe-community-living-20120507.pdf>; European Coalition for Community Living: Lost time, Lost Money, Lost Life, Lost Possibilities? (2010) 78, <http://community-living.info/documents/ECCL>; International Organization of Inclusion, campaign about Article 19 of the Convention on Rights of Persons with Disabilities, [www.inclusion-international.org/home/inclusion-international-campaign-on-article-19/](http://www.inclusion-international.org/home/inclusion-international-campaign-on-article-19/).

562 United States Supreme Court, *Olmstead v. L.C.*, 527 US 581 (1999).

563 Report of the UN Special Rapporteur on Torture, available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/> [last visited on 4 March 2016].

The National Preventive Mechanism envisages the norm according to which patients whose mental state no longer requires hospitalization in a mental health institution, but who remain hospitalized due to absence of conditions of care outside hospitals, should be assessed and de-institutionalized. National Preventive Mechanism calls the state for taking all necessary measures to change large mental health institutions with smaller, modernized institutions gradually, which necessitates developing community-based services of long-term care.<sup>564</sup>

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Take all necessary measures to establish specific, differentiated programs of care and rehabilitation for prolonged-stay patients to gradually restore their life skills.
- Take all necessary measures to start the process of consistent assessment of medical needs and social conditions of prolonged-stay patients, especially the ones neglected by their families and gradually transfer them to protected residences for re-socialization.
- Work out deinstitutionalization strategy, with a special emphasis on securing long-term community-based residential care.
- Secure development of community-based services in order to reduce the need for hospitalization and create the network of services of care focused on patients.

### RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Take all necessary measures to establish specific, differentiated programs for care and rehabilitation of prolonged-stay patients to gradually restore their life skills.

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564 Shepherd G, MacPherson R. Residential care. In: Thornicroft G, Szmukler G, Mueser K, Drake RE, editors. *Oxford Textbook of Community Psychiatry*. Oxford: Oxford University Press; 2011. p. 178-187.



### 7.8.3. COMPLAINTS PROCEDURE AND INSPECTION

The existence of effective procedures for filing complaints and for inspection is particularly important in mental health institutions, because in such institutions the risk of violence and violations of fundamental human rights is high. According to the United Nations Committee Against Torture, each state party is obliged to prohibit and prevent torture and other ill-treatment in all contexts of deprivation/restriction of liberty or control, such as prisons, hospitals, institutions that engage in the care of children, the aged, the mentally ill or the disabled. The obligation also extends to institutions and contexts where the failure of the state to intervene enhances the danger of privately inflicted harm.<sup>565</sup>

The obligation to prevent torture and ill-treatment extends not only to public servants but also medical personnel and social workers. The state must exercise due diligence and prevent human rights violations and if such violations are committed, must secure investigation, prosecution and punishments.<sup>566</sup>

According to Article 15(2) of the UN Convention on the Rights of Persons with Disabilities, the state parties must take effective legislative, administrative, judicial or other measures, to prevent persons with disabilities, on equal basis with others, from being subjected to torture or crucial, inhuman or degrading treatment or punishment. Under Article 16 (2) of the same Convention, the state parties must secure effective monitoring of all programs and arrangements created for persons with disabilities by independent bodies, in order to avoid exploitation, violence and abuse.

The UN Convention on the Rights of Persons with Disabilities recognizes the significance of access to justice. Article 13 of the Convention specifies the obligation of the state parties to ensure effective access to justice for persons with disabilities, through procedural and age-appropriate accommodations, facilitating their effective role as direct or indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. The state parties should secure training for those working in the sphere of administration of justice, including police and prison personnel, to secure effective access to justice for persons with disabilities.

Under Article 5 (1) (g) of the Georgian Law on Psychiatric Care, a patient has the right to file a complaint/an application to the court and other state institutions. Article 5 (1) (f) envisages the right of a patient to a lawyer. The Administration of the psychiatric institution is obliged to guarantee that the patient meets his/her lawyer without presence of a third party, if mental state of the patient allows. The Law on Psychiatric Care envisages

565 General Comment no. 2 of the Committee against Torture (2007), para 15.

566 General comment No. 2, paras. 15, 17 and 18; See also Committee against Torture, communication No. 161/2000, *Dzemajl et al. v. Serbia and Montenegro*, para. 9.2; Human Rights Committee, general comment No. 20 (1992), para. 2.

the right of the patient, his/her legal representative or in the absence of latter, a relative to appeal against a judicial order about involuntary hospitalization<sup>567</sup> as well as to challenge the appropriateness of resort to physical restraint before the court.<sup>568</sup>

Importantly, Georgian Law on Psychiatric Care does not regulate the procedure for examining complaints and exercising monitoring.<sup>569</sup> However, the State Agency for Regulating Medical Activities, a legal entity of public law which is a part of the Ministry of Labor, Health and Social Affairs of Georgia, among other activities, controls the quality of medical care provided to patients by natural and legal persons, including care provided within the framework of state healthcare programs<sup>570</sup> and examines complaints filed by citizens.<sup>571</sup> The Agency of Social Services, a legal entity of public law, controlled by the Ministry of Labor, Health and Social Affairs also examines applications, complaints and proposals of citizens.

The monitoring revealed the problem of state supervision over provision of psychiatric care and protection of the rights of patients. The National Preventive Mechanism has a decisive role in this regard. However, according to the Special Prevention Group, taking into account the specific character of the mandate of the National Preventive Mechanism, it is essential to secure effectiveness of other state mechanisms of control.

The procedure for internal complaint and feedback is available in mental health institutions. There are also boxes for complaints. However, patients do not use this procedure and boxes. Patients interviewed do not know their rights. They also do not know whom to address with their complaints. According to the Special Prevention Group, measures must be taken to a) inform patients about their rights in an understandable language; b) create simple and effective procedure for examining complaints, taking into account special needs of patients; c) secure proactive monitoring over inpatient and outpatient care (within the framework of sectoral state control). The National Preventive Mechanism suggests that in determining the terms and other procedural questions within the framework of the procedure for examining complaints, it is necessary to take into account special needs of patients in mental health institutions and practical difficulties that they may encounter in implementing their right to complain.<sup>572</sup>

567 Article 18 (14) of Georgian Law on Psychiatric Care.

568 Article 16 (6) of Georgian Law on Psychiatric Care.

569 In contrast, Prison Code of Georgia includes separate chapters on monitoring of execution of prison sentences (Chapter IV) and procedures for examining complaints (Chapter XVI).

570 Under Article 7, Appendix no.11 (Mental Health) of the Decree no. 308 of 30 July 2015 of the Government of Georgia (State Program of Healthcare for 2015) (program code 35 03 03 01), the organ responsible for the implementation of the program is the Agency of Social Services, a legal entity of public law under the state control of the Ministry of Labor, Health and Social Protection.

571 Article 2 (3) (b) (c) of the Statute of the Agency of State Regulation of Medical Activity – a public law entity, approved by the Order of the Minister of Labor, Health and Social Protection of 28 December 2011 No. 01-64/N

572 Problems related to giving effect to the right to complain are examined in the Report of Public De-

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTER OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Secure the review of the existing system of state supervision over provision of psychiatric care and monitoring of protection of the rights of patients; to introduce a simple and effective procedure for examining complaints and an effective mechanism of state supervision over provision of psychiatric care and monitoring of protection of the rights of patients.
- Regulate common intra-hospital procedure for the examination of complaints and feedback.

### RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Inform patients about their rights, including through reinforcement of social services of mental health institutions and through securing increased accessibility of information about the rights of patients and about services.
- Inform patients about internal and external procedures of complaint and feedback, including about the addressees of complaints, legal aid and also about sectoral monitoring organs outside hospitals.

### PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Amend Georgian Law on Psychiatric Care to regulate the procedure for examining complaints in clear terms and the foundations of supervision over provision of psychiatric care, monitoring of protection of the rights of patients, carrying out supervision/monitoring by sectoral bodies outside hospitals.

## 7.9. PSYCHIATRIC CARE

Under Article 4 (c) of the Georgian Law on Psychiatric Care, ‘psychiatric care’ involves a set of measures aimed at the examination of a person with mental disorder, treatment, prevention of aggravation of the illness, facilitation of social adaptation and integration into the society.

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fender of Georgia to the Parliament, pp. 188-190, available at <http://www.ombudsman.ge/uploads/other/0/86.pdf> [last visited on 13 March 2016].

Under the State Program of Mental Health<sup>573</sup> (program code 35 03 03 01), hospitalization in mental health institutions for minors and adults covers hospitalization of patients with mental disorders, particularly when conditions are acute. This includes treating acute psychotic conditions or behavioral or affective symptoms that threaten life and health of patients or others; long-term treatment of patients with chronic mental disorders that suffer from serious impairments of psychosocial functioning and/or prolonged psychotic symptoms (including continued treatment of patients that were previously hospitalized due to acute conditions); securing medical treatment and additional services (protection and safety) for patients with respect to which a judicial decision about hospitalization for provision of forcible psychiatric care was made, in accordance with Article 191 of the Code of Criminal Procedure of Georgia. Additional services include supply of food, products of personal hygiene and urgent surgical and therapeutic dental services as well as psychosocial rehabilitation in cases of long-term hospitalization.

The mentioned program also envisages shelters for persons with mental disorders. This includes three meals a day, one of which is a three-course dinner, introducing and implementing programs of care and individual rehabilitation for beneficiaries, teaching life skills, providing adequate medical aid and psychological services, securing participation of beneficiaries in cultural events, depending on their abilities, including outside specialized institutions.

### 7.9.1. TREATMENT

#### 7.9.1.1. Duration of treatment and the Problem of Re-hospitalization

When examining the standards of treatment of persons with mental disorders, the Special Prevention Group established that in most institutions, managers as well as personnel reduce ‘treatment’ to pharmacological therapy. This is inconsistent with the principles of modern healthcare that is based on biopsychosocial approach and on evidence.

The management of mental disorders in mental health institutions is still based on pharmacotherapy, notwithstanding the recommendations of the National Preventive Mechanism,<sup>574</sup> those of the European Committee for the Prevention of Torture<sup>575</sup> as well as the Guidelines for the Effective Management of Mental Disorders. There is no therapeutic environment in the buildings and care for recovery of patients. The medical model is pathology-oriented.

573 Decree no 308 of 30 June 2015 of the Government of Georgia about the Approval of State Programs on Health for 2015.

574 Public Defender’s Report for the Parliament (2012) available at <http://www.ombudsman.ge/uploads/other/0/86.pdf> [last visited on 17 March 2016].

575 Report of the European Committee for the Prevention of Torture, based on the visit of 1-11 December 2014, para 144.

The intensive method of pharmacotherapy is probably related to the practice established in acute care units to discharge patients as soon as possible. According to a few doctors of such units, prompt discharge of patients is based less on medical conditions and more on financial resources allocated for managing such cases as well as the period of time optimal for spending these resources (value of each case – 840 GEL). The average time for stay in such units is between 10 and 21 days.

In the room of the Head of the Unit at the Centre for Mental Health and Prevention of Drug Dependence, the Monitoring Group found a board with names of patients, indicating the dates of admission and probable dates of discharge, with 10 days between the two dates. It is clear that within this period, in order to stabilize a patient's condition, medical personnel apply intensive medication-based treatment. However, it is questionable whether this 'pre-determined' timeframe is sufficient for managing acute phases. It is also unclear whether the treatment will be adequate after discharge from acute care units or transfer to the units for prolonged stay, since funds allocated for this type of treatment is almost two times less and amounts to 15 GEL a day per patient (450 GEL monthly).

At the **Centre for Mental Health and Prevention of Drug Dependence**, after undergoing a ten-day treatment at the acute care unit, patients are transferred to the unit of prolonged stay. Most patients interviewed at the unit for prolonged stay were still unstable and with acute conditions (rambling, auditory hallucinations, etc.). This allows questioning the appropriateness of limiting the stay of patients at the acute care unit to ten days. At the same time, the use of some psychotropic medications (e.g. Tisercin) does not substantially differ in acute care and prolonged stay units, showing that the scheme of medication-based treatment of patients does not substantially change with the transfer from one unit to the other.

Most patients interviewed at **Rustavi Mental Health Centre** declare that 'they will stay for 2 or 3 weeks and then be discharged'. This approach is probably also due to the funding scheme. This affects not only this institution, but also to all other institutions.

Based on the results of monitoring, the Special Prevention Group expresses concern about the practice of keeping patients with acute psychotic conditions in acute care units only for short terms. Quick discharge of patients from acute care units increases risks of re-hospitalization and negatively affects overall adequacy of psychiatric care. The risk of re-hospitalization exists because of low funding for long-term treatment (450 GEL a month) and deficit of adequate support services. According to the information provided by the Ministry of Labor, Health and Social Affairs of Georgia, there were 31 cases of readmission to hospitals in 2014<sup>576</sup> and 25 cases in 2015.<sup>577</sup>

576 This is used in a sense defined by the State Program on Mental Health.

577 Letter N01/1222 of 9 January 2016 of the Ministry of Labor, Health and Social Protection of Georgia

Re-hospitalization is generally recognized as an indicator of quality of services in a hospital sector.<sup>578</sup> For the purposes of mental health program, re-hospitalization can be defined as a placement of a patient in a hospital for the second time within seven days after discharge, with the diagnosis of the illness from the same nosologic category, except for the cases provided by Georgian Law on Psychiatric Care. This indicator of quality of service provided is calculated as follows: The total number of cases of re-hospitalization (during a. 7 days or b. 30 days) should be divided by the number of patients discharged from the hospital within the past 12 months.<sup>579</sup>

Readmission rate is an important indicator for assessing the system of integrated care in general. Research shows that better continuity of care is secured through good planning of discharge (with timely intervention of services outside hospitals), which significantly reduces readmission and improves subjectability to treatment after discharge.<sup>580</sup>

In fact, hospital readmission index shows whether treatment was adequate, whether problematic symptoms were eliminated and whether the state of the patient got stabilized so that he does not need to be hospitalized and also whether the patient is managed effectively after discharge.

According to the Special Prevention Group, time allocated for managing acute conditions of the patient (10-14 days average) is mostly insufficient to secure relatively stable improvement. Probably, conditions improved as a result of intensive treatment will quickly deteriorate, since stable remission is not achieved and after discharge, there is either no supervision at all or only low-intensity treatment, due to the lack of funds. Services outside the hospital setting are fragmented and under-developed and consequently, insufficient to maintain the improvement achieved. Consequently, there is a high risk of aggravation of conditions and of re-hospitalization.

The personnel of acute care units declares that the problem lies in inadequacy of services for persons discharged from hospitals, shortage of beds in units of prolonged stay and limited funds allocated for long-term services.

According to the Special Prevention Group, the funding methodology negatively influences treatment of patients placed in acute care units and prolonged stay units. This has bearing on the duration of treatment and its quality. Accordingly, the Ministry of Labor, Health and Social Affairs of Georgia should study the existing practice; strictly supervise

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578 Is the Readmission Rate a Valid Quality Indicator? A Review of the Evidence, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4224424/>

579 Hermann RC, Mattke S, Somekh D, Silfverhielm H, Goldner E, Glover G, Pirkis J, Mainz J, Chan JA. Quality indicators for international benchmarking of mental health care. *Int J Qual Health Care*. 2006;18(Suppl 1):31–38. doi: 10.1093/intqhc/mzl025.

580 Steffen S, Kusters M, Becker T, Puschner B. Discharge planning in mental health care: a systematic review of the recent literature. *Acta Psychiatr Scand*. 2009;120:1–9. doi: 10.1111/j.1600-0447.2009.01373.x.

the correlation between the length of stay and the degree of stabilization of acute conditions; increase funding for long-term treatment and revise models of financing, taking into account what kind of treatment is a priority.

### **7.9.1.2. Treatment with Medications**

Monitoring reveals that in almost all institutions, when prescribing treatment for patients placed in those institutions voluntarily and involuntarily, medical personnel prefers to apply older generation anti-psychotic medications through administering injections (rather than giving pills) in large amounts and over extended periods of time, following the same pattern in all cases, notwithstanding the clinical picture.<sup>581</sup> At the same time, it is worth noting that there is no problem in terms of supplying these institutions with basic psychotropic medications. The only exception is **A. Kajaia Surami Psychiatric Hospital**.

The Special Prevention Group got an impression that ‘pharmacological overload’ of patients constitutes the main means of managing them. Cases are managed without any complex therapeutic structure. Involvement of patients in meaningful activities is not secured.

In the **National Centre for Mental Health (Qutiri)**, the treatment is mostly medication-based, using old-generation neuroleptic medications (Haloperidol, **Tisercin**, etc). **Second or third generation antipsychotic medications and new generation antidepressants are rarely used, especially in cases of long-term treatment.**

**Absolute majority of newly hospitalized patients get “Tisercin” together “cordiamin” as a rule and sometimes in combination with “dimedrol,” through an injection. Medical records do not indicate reasons for administering medication by giving injections rather than by giving pills and for adding “cordiamin” and “dimedrol”.**

**Subsequently (for 10-20 days on average) neuroleptic medications are administered by giving injections. Patients get about 2-7 injections a day. They do not know what medication they get. They are not informed by doctors about basic and side effects of the medications administered. Despite this, they describe the side effects of medications as followed: ‘Medications were administered for 20 days and I was asleep all the time.’ ‘I could not stand up, sit or lay down, I could not sleep. I was like that.’ ‘You do not walk and you sleep and sleep’. ‘I was asleep all the time and could not refuse injections, as I was afraid that the personnel would do worse.’ ‘I sleep day and night, I ask**

581 Standards of the European Committee for the Prevention of Torture, para. 40 (Regular reviews of a patient’s state of health and of any medication prescribed is another basic requirement. This will inter alia enable informed decisions to be taken as regards a possible dehospitalisation or transfer to a less restrictive environment).

that they stop injections, but they do not do that.' The cases of medication overdose are frequent among the interviewed patients.

One of the patients (23 years old, Ds. F21) was given "tiserцин" and "cordiamin" injections twice a day (4 injections) in the first two days after being hospitalized. For the following 17 days, all medications were administered as injections in muscles, 6-7 injections a day overall ("Haloperidol" 1 ml twice, then three times, "Aminazin" 2 ml twice and "Cordiamin" 2 ml twice). At the same time, he was not given medication for side effects of "haloperidol" (e.g. "cyclodol")

Another patient (29 years old, Ds. F71) was given "Aminazin" injection in the very evening of hospitalization. For the following 20 days, "tiserцин" was administered through intramuscular injection (1 ml twice a day). He was simultaneously given average therapeutic dose of neuroleptic medication and corrector.

One of patients (41 years old, Ds. F20.0) was given "tiserцин" (2 ml, twice a day) when hospitalized and subsequently, 4 injections were administered a day, for 7 days overall. In addition, "speridol" ("haloperidol") was administered (1ml twice), "tiserцин" (1ml) and "cordiamin" (2ml).

One patient (36 years old, F20.0) got "haloperidol" injection (1 ml) three times a day, first together with "tiserцин" and "cordyamin" injections and then in combination with "zopin" ("Clozapine") 100 mg pills.

After "tiserцин-codyamin" injection, "haloperidol" was administered to a patient (28 years old, F 22.0) - 1 ml three times a day for ten days (together with corrector and 200 mg pills of "Zopin").

One patient (49 years old, F 20.0) was getting two neuroleptic medications, one of which is the first-generation neuroleptic ("psyzin", 30 mg a day) without corrector and 100 mg "clozapine" a day. There were side effects of medication-based treatment (extrapyramidal side effects, excessive sleepiness). The patient declared that these side effects were greatly disturbing, but doctors disregarded requests about changing the medications. No blood tests necessary for monitoring the side effects of "clozapine" (agranulocytosis) were carried out.

There have been isolated instances of combined treatment with 3-4 neuroleptic medications. The following are the examples:

One patient was given the pills of "Trifluoperazine" 30 mg, "Zopin" ("Clozapine") 300 mg, "thioridazine" 100 mg. In combination with these medications, 4, 0 ml "Aminazin" injections were administered for a month.



One patient (37 years old, Ds. F32.3) “tiserцин” and “cordiamin” were administered parenterally when hospitalized. In months that followed, four different psychotropic medications were administered a day, also two neuroleptics with different chemical structure (“haloperidol” 20-30 mg, “zopin” 200 mg or “tiserцин injection” 1 ml three times), tranquilizer (“diazepam” 20 mg), anticonvulsant (“neurolepsin” 600 mg), antidepressant (Amitriptyline, 50 mg) and antiparkinson medication (“benzhexol” 6 mg a day).

One of the patients (35 years old, F60.3) got the following injections in a muscle - “tiserцин” 1,0 ml, “cordiamin” 2,0 ml, “dimetrol” 1,0 ml and “haloperidol” 1,0 ml twice a day - when hospitalized. Subsequently, for 20 days, “haloperidol” 1 ml and “diazepam” 2,0 ml were administered in a muscle twice a day.

Such heavy combinations of medications were applied also at the **Centre for Mental Health and Prevention of Drug Dependence**. The medical personnel prescribed “haloperidol” liquid (twice a day), “haloperidol” pills (at 10 am and 8 pm), “azaleptin” (0,5 mg) and “tiserцин” (25 mg at 10 pm). Similar schemes are frequently applied in these institutions.

An acute shortage of medication has been observed at **Surami Psychiatric hospital**. There is a permanent deficit of medication recommended for managing mental disorders. This generates the problem of the lack of continuity of medication-based treatment and adequate management of psychiatric cases. The monitoring group found that majority of patients in an agitated state and revealed the symptoms of acute psychotic condition.

There was no supply of “cyclodol”, the medication necessary for managing side effects of old generation neuroleptics. Majority of patients were transferred to minimal therapeutic doses of new generation medications, but the hospital would still run out of supplies in 2-3 days. The same was the situation with anticonvulsants. No new generation antidepressants were available. Old generation antidepressants were prescribed rarely and in small doses. The medical personnel noted that they had no supply of medications. The director of the hospital explained this deficit with financial problems at the end of the month.

It is also worth noting that shortage of personnel may cause disruptions in the treatment regime. It is difficult for the personnel to control how patients take medications. Some of the interviewed patients admitted that due to the negative influence of the prescribed medications, they do not take these medications, hide them and throw them away later. If this gets revealed, the personnel use manual restraint and administer injections, instead of giving pills.

In **Kutaisi Mental Health Centre**, all services (inpatient and outpatient, crisis intervention) are unified and located in the vicinity of the general hospital. This secures con-

tinuity of psychiatric treatment, prevention of aggravation of conditions, intervention of general doctors, where necessary, diagnostics of comorbid somatic problems and multi-profile management of cases.

Beneficiaries of inpatient treatment are also the beneficiaries of ambulatory care unit at the same centre. They are treated by the same psychiatrist. This, in addition to community-based services and positive therapeutic environment, reduces stigma and increases trust towards medical personnel, helps formation of positive therapeutic relationships between doctors and patients.

Some patients are attracted to a comfortable environment and feeling of protection at this Centre, aside from medical conditions that warrant their stay. They themselves address the Centre with requests for hospitalization, wait for vacant beds and get placed repeatedly. This creates risks of dependency on the service and requires undertaking preventive measures by the service providers.

The Special Prevention Group points out that unfortunately, none of the mental health institutions have introduced the so called “case management method” under which doctors with various specializations plan the process of intervention together, adjusting it to the needs of beneficiaries. In the absence of such a method, the treatment is mainly focused on the excessive use of medications, in many instances, contrary to the will of patients.

The Special Prevention Group underlines that voluntary consent of the patient to hospitalization or involuntary placement in a psychiatric institution based on a judicial order should not be understood as precluding the patient to refuse treatment subsequently and also does not mean that there is no need for informed consent of the patient for specific medical interventions.

In this connection, the European Committee for the Prevention of Torture indicates that patients should be placed in a position to give free and informed consent to treatment. **The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.**<sup>582</sup>

In its report on the visit to Georgia from 1 to 11 December 2014, the European Committee for the Prevention of Torture pointed out in psychiatric hospitals they visited, consent to treatment was assimilated to consent to placement.<sup>583</sup>

582 Standards of the European Committee for the Prevention of Torture, para 41.

583 Para. 156.

According to Article 5 (1) (e) of Georgian Law on Psychiatric Care, a patient has the right to refuse treatment. This right is limited in cases provided by Articles 16 (methods of physical restraint), 18 (involuntary hospitalization for psychiatric care) and 22<sup>1</sup> (forced psychiatric treatment). If the patient is not yet 16 years old, the decision about treatment is made by his or her legal representative or if the latter is absent, by his or her relative. It is still essential to allow participation of patients in the process of decision-making, taking into account their age and mental health state.

According to Article 10 of Georgian Law on Psychiatric Care, the treatment is carried out with the informed consent of the patient or if the latter is not yet 16 years old, with the consent of his or her legal representative. The consent form with a signature is to be included in medical files. The refusal to be subjected to treatment is also recorded in medical files. Treatment with biological therapy (shocks, seizures, etc) is only permissible if warranted by medical conditions, with an informed consent of the patient or his or her legal representative, based on the decision of the Committee of Psychiatrists.

The Special Prevention Group believes that patients should regularly be informed about the treatment in an understandable language and this should be an integral part of the therapeutic process. Medical personnel of mental health institutions must respect the patient's refusal and obtain consent by providing detailed information about the function of treatment and results expected. This will allow respecting personal autonomy of patients.

The Special Preventive Group asserts that Article 5 (1) (e) of Georgian Law on Psychiatric Care contradicts the principle of personal autonomy as it allows restriction of the right of a patient to refuse treatment in cases provided by Articles 18 (involuntary hospitalization for psychiatric care) and 22<sup>1</sup> (forcible psychiatric treatment) of the same law. In order to reinforce legislative foundations for the system of mental healthcare that is based on human dignity and personal inviolability, this restriction should be removed from the mentioned provision. At the same time, the term "forcible psychiatric treatment"<sup>584</sup> should be changed with "forcible hospital-based psychiatric care"<sup>585</sup> as it is not limited to treatment and envisages complex set of measures.

At the end of review of the practice of medication-based treatment, the Special Prevention group underlines the importance of quality of medications. It has been estab-

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584 Article 4 (n) of Georgian Law on Psychiatric Care defines forcible psychiatric treatment as a special type of psychiatric care that envisages measures directed at reducing risk of damage, threat or violence inflicted by the person with a mental disorder upon himself or herself or upon other persons, securing their resocialization and improvement of mental health.

585 Under Article 4 (c) of Georgian Law on Psychiatric Care, 'psychiatric care' envisages a set of measures aimed at the examination of a person with mental disorder, treatment and prevention of acute phases, social adaptation and facilitation of reintegration into the society. It is clear that treatment is only one element of psychiatric care.

lished as a result of monitoring that insufficiency of funding as well as legal regulation of public procurement hinder purchase of high quality medications. In particular, mental health institutions purchase medications<sup>586</sup> through simplified electronic tendering.<sup>587</sup> Whoever offers the lowest price wins the tender. This negatively influences quality of medications purchased, since there are medications that contain similar substances, but are produced by different pharmaceutical companies and are of different quality. The price is directly connected with the quality. According to the Special Prevention Group, in order to secure effectiveness of treatment, it is reasonable to prepare the list of basic medications for mental health institutions, including new generation, high quality medications. Accessibility of these medications should be secured for all mental health institutions. At the same time, funding should be increased and a more convenient, favorable regime for purchasing medications should be introduced.

### 7.9.1.3. Side Effects of Medications and Lab Research

All antipsychotic medications have side-effects the signs and clinical significance of which are changing and depend on individual characteristics of medications and patients. The side effects may have the following clinical signs:

- Extrapyramidal syndrome (parkinsonism, acute dystonia, akathisia and tardive dyskinesia);
- Autonomous effects (reduced eyesight, increase in intraocular pressure, dry mouth and eyes, constipation and urinary retention);
- Increase in prolactin levels;
- Seizures;
- Sedation;
- Weight gain.

The signs of extrapyramidal complications are easily recognized, but difficult to predict. Since they are bases for troubling prognosis, psychiatrists try to avoid such complications. Tardive dyskinesia (involuntary face and body movements) is a subject of special concern, since it has a slow or belated onset and is resistant to treatment.

“Clozapine” (50-300 mg a day) is one of the elements of combined medication-based treatment in mental health institutions. When using this medication, there is no dynam-

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586 Article 3 (1) (q) of Georgian Law on Government Procurement.

587 Tender documentation of Rustavi Mental Health Centre Ltd is available at <https://tenders.procurement.gov.ge/public/lib/files.php?mode=app&file=1020606&code=1421248491> [last visited on 18 March 2016]

ic assessment of risks of changes in blood (**agranulocytosis**). **The blood is not controlled according to guidelines. Also, when administering second generation neuroleptic medications, no clinical lab tests of metabolic changes and risks of hyperglycemia are carried out.**<sup>588</sup>

In the **Centre for Mental Health and Prevention of Drug Dependence**, majority of patients have the so called extrapyramidal syndrome, which is one of the results of medication overdose. There is no control over leucocytes and granulocytes in blood, when “Azaleptin” (“Leponex”) is administered, since these tests are not free of charge and not all patients can afford the payment. Prescribing this medication without control of blood is dangerous for patients.

In **Surami Psychiatric Hospital**, no clinical laboratory and instrumental monitoring of the side effects of psychotropic medications (**agranulocytosis**, hyperglycemia, **arrhythmia**) is carried out. According to the director of the hospital, this is due to the lack of technical and professional resources.

#### **7.9.1.4. Medical Records**

Admission, allocation of beds, discharge, observation and organization of medical records must comply with the relevant legislation and normative acts of the Ministry of Labor, Health and Social Affairs.<sup>589</sup> For the purpose of clinical diagnostics, it is necessary to use the international classification of diseases ICD-10, prepared by the World Health Organization and recommended by the mentioned Ministry.<sup>590</sup>

Deficiencies in medical documents have been revealed as a result of monitoring. In some institutions, psychiatrists visit patients irregularly. The results of these visits are included in medical files irregularly as well. Medical cards did not include information about individual plans of treatment. Most entries were not legible due to doctors’ handwriting. In most institutions, entries about the conditions of patients (the so called cursuses) are irregular and mostly based on a template.

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588 Treatment and Management of Schizophrenia in Adult Patients (Guidelines), available at [http://www.moh.gov.ge/files/01\\_GEO/jann\\_sistema/gaidlaini/gaidlain-protokol/125.1.pdf](http://www.moh.gov.ge/files/01_GEO/jann_sistema/gaidlaini/gaidlain-protokol/125.1.pdf) [last visited on 6 March 2016] Treatment and Management of Depression in Adults, National Recommendations (Guidelines) for Clinical Practice, available at [http://www.moh.gov.ge/files/01\\_GEO/jann\\_sistema/gaidlaini/gaidlain-protokol/126.1.pdf](http://www.moh.gov.ge/files/01_GEO/jann_sistema/gaidlaini/gaidlain-protokol/126.1.pdf) [last visited on 6 March 2016].

589 Order no. 108/N of 19 March 2009 of the Minister of Labor, Health and Social Protection of Georgia about the Rules about Preparing Medical Documents in Medical Institutions

590 International Classification of Diseases of the World Health Organization ICD-10 (1994). <http://www.who.int/classifications/icd/en/> [last visited on 18 March 2016]

### 7.9.1.5. Treatment of Somatic Diseases

Persons with mental disorders frequently suffer from physical/somatic complications as well. Even though a connection between metabolic problems and antipsychotic medications is not entirely clear, everyone agrees that patients getting antipsychotic medications for a long time must do regular health checkups.<sup>591</sup>

National Guidelines for Managing Schizophrenia<sup>592</sup> emphasize the importance of monitoring the use of antipsychotic medications for the purpose of early detection of somatic problems, assessment of gravity and choice of a correct strategy of antipsychotic treatment. It also contains suggested table for frequency of examination of physical and biochemical parameters of patients.

It has been established through interviews and examination of individual medical cards that **at Surami Psychiatric Hospital**, while psychiatric state is assessed, somatic health state is not evaluated, either at the time of admission or during treatment. If the situation is critical, the nurse checks pressure and pulse and if hypertension and bradycardia<sup>593</sup> are revealed, an injection of “caffeine” or “cordiamin” is administered or the problem is solved with “Valerian” or “Validol” pills. In case of urgency, emergency medical services are engaged. The institution does not have a therapist and a dentist. As regards clinical analyses, only blood and urine tests are done, once a year.

One patient that was diagnosed with lung tuberculosis and underwent anti-tuberculosis treatment while hospitalized at the National Mental Health Centre (Qutiri) has been placed in Surami Psychiatric Hospital since 4 March 2011. His somatic health state has not been assessed and no monitoring has been done to prevent recurrence of tuberculosis.

At the time of admission at **the National Centre of Mental Health (Qutiri)**, a list of necessary lab tests and medical consultations is drawn up: blood and urine tests, Wassermann reaction, blood sugar test, electrocardiography (EKG), consultations with a psychologist, therapist and neurologist, and if needed, dermatovenerologist, dentist, gynecologist and phthisiatrist, roentgenologic examination, sputum test. If tuberculosis is diagnosed, the patients undergo treatment.

Despite the above said, the majority of interviewed patients complained about somatic problems and adequacy of medical treatment. A few patients declared that they had Hepatitis C virus and gastrointestinal problems, but no tests were administered. They did not have a possibility to consult a doctor.

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591 Barnes et al., 2007; Newcomer, 2007; Suvisaari et al., 2007.

592 Treatment and Management of Schizophrenia in Adult Patients, National Recommendations (Guidelines) for Clinical Practice, Chapter 4.7.

593 Low arterial pressure and slow heart rate.

For example, a metal implant in the knee of the patient subjected to involuntary treatment (50 years old, Ds. F20.0) restricts his movement. He needs another surgery. His psychiatrist is aware of this condition. The patient did not get consulted by a surgeon or a traumatologist. Additional tests were not administered and the operation was not planned. This patient also displays side effects of treatment with neuroleptic medications (extrapyramidal symptoms, tremor), aggravating his state and further restricting his movement.

Dental care is limited to teeth extractions. Therapeutic treatment is not available. This problem together with orthopedic problems especially affects the beneficiaries of shelters for persons with mental disorders of the National Centre of Mental Health.

Monitoring revealed some problems with accessibility of medications. Particularly, the Monitoring group found expired medications (“paracetamol”, “papaverine”, “dimedrol”, “digoxin”) at the **Clinical Psychoneurological Hospital in Khelvachauri**. Expired medications were also found at **Senaki Psychoneurological Dispensary** (“triptazine”<sup>594</sup>, “tiscer-cin”, “dexdun”, “clopheline”, B1 and B6 vitamins). There was a shortage of medications at **Surami Psychiatric Hospital**.

The personnel of **Bediani Psychiatric Hospital** report insufficiency of funds for examining and treating somatic diseases. They acknowledge that the beneficiaries of the institution have acute somatic needs. The location of the hospital, considerable distance to the nearest medical institution and damaged roads also pose problems. The personnel indicate that there has not been a single transfer of patients to medical institutions for treating somatic diseases in 2015.

The Monitoring Group examined medical cards of patients and came to the conclusion that many patients require somatic health checkup and treatment. There are references to recommendations about consultations and checkups by various doctors, but there is no information about measures taken in response to these recommendations. For example, one patient was complaining about pain in lower back for three months. Medical documentation indicates a preliminary diagnosis: nephritis. There is one more entry according to which the patient has kidney failure and requires a nephrologist. “Ibuprofen” was prescribed. Nothing confirms that this patient was consulted by a nephrologist. The medical card also includes entry by a surgeon that patient had chronic nephritis, “nitroxolin” was prescribed for three days and ultrasound of urinary tract was recommended. There is no document in the medical card confirming that ultrasound was actually done.

By the time of monitoring, throughout 2015 deaths of five patients were registered at Bediani Psychiatric Hospital, 7 at Surami Psychiatric Hospital, 1 at Kutaisi Mental Health Centre, 11 at the National Centre of Mental Health, 4 at Tbilisi Mental Health Centre and

<sup>594</sup> Triptazine was actively used in this establishment.

1 at Senaki Inter-District Psychoneurological Dispensary. The Prevention and Monitoring Department of the Public Defender's Office requested the Ministry of Labor, Health and Social Affairs to provide information about deaths of patients in mental health institutions in 2014-2015.<sup>595</sup> Unfortunately, the information was not received in due time to be included in this Report.

Having examined medical cards of the deceased patients, the Special Prevention Group indicates that these cards do not provide information as to whether these patients benefited from medical care. A few examples may be listed:

### **Case of Ts. A.**

This patient was placed in the Naneishvili National Centre of Mental Health on 15 May 2015. According to the medical files, at the time of admission the patient was cachexic. He also had pressure ulcers (bedsores). The entry of 28 May 2015 in medical records made by the doctor on duty indicates that the patient was not responsive. He was in a state of coma. Khoni emergency medical unit transferred that patient to O. Chkhobadze Treatment and Rehabilitation Centre for the Elderly and the Disabled in Kutaisi. The patient died on 29 May 2015 at that Centre.

Medical history of this patient indicates that the cause of death is cardiac arrest (I46); somnolence, stupor and coma (R40), stroke not specified as hemorrhage or infarction (I64), bronchopneumonia (J18.0). Medical card indicates that the patient got cardiography once, blood and urine tests. It does not indicate how pneumonia was treated in this case.

Conducting additional consultations and checkups in connection with somatic diseases is a problem at Surami Mental Health Institution.

### **The Case of N.Kh.**

The patient (born on 18 February 1960) was placed in Surami Psychiatric Hospital on 9 June 2014 with a diagnosis of paranoid schizophrenia (F20.0). The patient suffered from enlarged veins and chronic venous insufficiency. He was admitted to the hospital, following the left hip endoprosthesis surgery, due to the fracture of the left femur neck (S72.0).

According to medical records, due to the bed rest, the patient had bedsores that were treated with hydrogen peroxide and Turmanidze ointment. According to the entry of 10 March 2015, the patient died at 10 a.m., when doctors were making hospital rounds.

<sup>595</sup> Letter no. 03-1/9906 of the Head of the Department of Prevention and Monitoring of the Public Defender's Office of Georgia dated 4 December 2015.



Medical records do not indicate cause of death or reanimation measures undertaken, if any. The entries made by medical personnel show that despite the patient's general weakness throughout the week preceding his death, no additional tests were carried out and no treatment was applied. Only blood and urine test results were found in the medical card of the patient.

#### The Case of A.M.

The patient (born on 12 January 1941) was placed in Surami Psychiatric Hospital on 19 June 2015 with the diagnosis of paranoid schizophrenia (F20.0). He also suffered from heart failure, cerebral hemorrhage and also hypertonia. Notwithstanding hypertonia, it is not entirely clear from the medical card whether arterial hypertension was regularly controlled and whether the patient was treated for somatic diseases. The patient stayed in bed. He was irresponsive the day before death. His face was swollen and heavy breathing was noticeable. On 14 October 2015, the patient died.

The Special Prevention Group reached the conclusion that there are serious problems in mental health institutions in terms of treating somatic diseases. The situation is better in psychiatric departments/units of general hospitals (e.g. psychiatric department of the Ghudushauri National Medical Centre). Such psychiatric departments have access to services in other departments of the same hospital. The problem of diagnostics and treatment of somatic diseases arises especially acutely in the state-established limited liability companies, such as Surami Psychiatric Hospital, Senaki Psychoneurological Dispensary, Clinical Psychoneurological Hospital, Bediani Psychiatric Hospital, Naneishvili Mental Health Centre.<sup>596</sup> The Special Prevention Group advises taking substantial steps to allocate more beds for psychiatric patients in general hospitals and gradually move to the model of providing psychiatric care within general hospitals.<sup>597</sup>

According to the Special Prevention Group, it is necessary to review funding methodology and increase the amount of funds allocated for psychiatric care, so that every patient in mental health institutions has access to timely and adequate medical service.

596 On 22 October 2015, 95 % of shares of the State owned Ltd. Naneishvili National Centre of Mental Health was sold to B & N Ltd. No. 2248 Decree of the Government of Georgia of 22 October 2015, available at <https://matsne.gov.ge/ka/document/view/3034586> [last visited on 18 March 2016].

597 According to the World Health Organization, it is desirable to provide psychiatric care to patients in general hospitals. Nevertheless, many countries predominantly rely on psychiatric hospitals. In Georgia, in 2014 the number of beds allocated to psychiatric patients in general hospitals was 2, 31 for every 100 000 residents. The number of beds in psychiatric hospitals was 32, 32 for every 100 000 residents. The number of beds in psychiatric hospitals for 100 000 residents is above the world average (which is 17, 5 for 100 000 residents). However, it is three times less than the number in Latvia (105, 09). It is worth noting that the number of beds for psychiatric patients in general hospitals is 20 times less than the number in Estonia (47,05). Estonia moved to the model of providing psychiatric care in general hospitals. Consequently, the number of beds in psychiatric hospitals for 100 000 residents is only 7,71.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE GOVERNMENT OF GEORGIA

- Review funding methodology and increase funds allocated for psychiatric care, so that each patient has access to timely and adequate checkup and treatment for somatic diseases.
- Review funding models, keeping in mind the priority of the quality of treatment, so as to increase the amount of funds allocated for long-term treatment.
- Review funding methodology for psychiatric care to secure purchasing high quality medications.
- Introduce the most convenient, favorable regime for purchasing medications, keeping in mind quality of medications as a priority.

### RECOMMENDATIONS TO THE MINISTER OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Take all the necessary measures to gather statistical data accurately, in order to ensure adequate psychiatric care in hospitals, better describe rehospitalization indicator and define standards for treatment outcomes.
- Strictly supervise correspondence of the length of stay with the degree of stabilization of acute conditions; revise models of funding, so as to increase the amount of funds allocated for long-term treatment.
- Take all the necessary measures to introduce a multidisciplinary approach in psychiatric institutions, expand the use of therapeutic methods and means and introduce a method of individual management of cases.
- Prepare additional guidelines and supervise doctors as regards doses of prescribed medications in order to reduce cases of overdose and unreasonable use of chemical restraint.
- Draw up a list of basic medications that will include new generation, high quality medications; secure accessibility of these medications in all psychiatric institutions.
- Exercise strict supervision in mental health institutions to ensure that somatic diseases are detected in a timely manner and adequately treated.
- Take measures to allocate more beds to psychiatric patients in general hospi-

tals and gradually move to the model of providing psychiatric care in general hospitals.

#### RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Work out individualized plans for treatment, specifying its goals, therapeutic means used and personnel responsible for treatment; engage patients in planning the treatment and in assessing dynamics of mental health conditions.
- Take all the necessary measures to introduce a multidisciplinary approach, expand a range of therapeutic means and methods and introduce the method of individual management of cases.
- Take all the necessary measures to regularly provide information about treatment to patients in an understandable language and regard this as part of therapeutic process; ensure that medical personnel respect the patient's refusal to be treated and seek to obtain consent to treatment by providing detailed information to the patient about the role of treatment and its consequences.
- In order to manage side effects of medications, ensure conducting tests to assess the risks of agranulocytosis, metabolic changes and especially hyperglycemia and to control leukocytes.
- Include full information in medical records.
- Take all the necessary measures to ensure timely diagnostics and adequate treatment of somatic diseases.
- Secure timely and adequate dental care for patients.
- Ensure constant control of expiration dates of medications, remove expired medications as required and prevent their use.

#### PROPOSALS TO THE PARLIAMENT OF GEORGIA

- In order to reinforce legislative foundations for the system of mental health-care that is based on human dignity and personal inviolability, amend Article 5 (1) (e) of the Georgian Law on Psychiatric Care and remove the phrase: "This right can be restricted in cases envisaged by Articles 18 and 22<sup>1</sup> of this law."
- Change the term "forcible psychiatric treatment" with the term "forcible hospital-based psychiatric care" in the Georgian Law on Psychiatric care.

## 7.9.2. PSYCHOSOCIAL REHABILITATION, PSYCHOLOGICAL AND SOCIAL SERVICES.

Under Georgian Law on Psychiatric Care, a set of measures aimed at improving mental health includes medical and psychosocial interventions. The purpose of measures planned as part of psychosocial intervention is to help patients maintain social and work contacts and develop skills for their independent existence in a society.<sup>598</sup>

The Decree of the Government of 2014, adopted based on the mentioned law, introduced standards of psychosocial rehabilitation.<sup>599</sup> According to these standards, psychosocial rehabilitation is to be carried out in special centres for psychosocial rehabilitation as well as multi-profile psychiatric institutions, institutions of long-term psychiatric care (shelters), psychoneurological dispensaries.

According to the Decree of the Government of Georgia of 2015 Approving State Programs of Healthcare,<sup>600</sup> psychosocial rehabilitation covers teaching of basic skills to patients to make sure that they adapt socially, get integrated into the society and are able to live independently. This includes identifying the needs of patients, drawing up individualized and specific rehabilitation plans, applying methods of psychosocial rehabilitation, in accordance with the established standards.

Monitoring of mental health institutions showed that the scope of psychosocial rehabilitation is limited at all these institutions. This is due to the shortage of means, equipment, materials and specially trained personnel. Most institutions have psychologists, but they rarely resort to therapeutic interventions for individuals and groups, as required by regulations. Work therapy is weakly developed. Most patients do cleaning and provide some other services, but this cannot be considered as work therapy.

There is a social rehabilitation unit at **the Centre for Mental Health and Prevention of Drug Dependence**. It employs social workers (including the head of the unit), a psychologist, a peer recovery support specialist and an ergotherapist. There is an art therapy group. The functions of an art therapist are performed by a social worker. Psychologists use methods of individual and group therapy. The groups integrate patients that undergo acute and long-term treatment. Social workers assist patients in sports activities, walking, implementing various rights. Each patient engages in various activities only if permitted by a psychiatrist. The patients are not aware of the criteria used by the psychiatrist in making decisions. The interviews showed that such decisions are often biased.

The patients point out that there is a basketball court, but engagement in sports activi-

598 Georgian Law on Psychiatric Care, Article 21, available at <https://matsne.gov.ge/ka/document/view/24178> [last visited on 21 March 2016].

599 Decree No. 68 of 15 January 2014 of the Government of Georgia, Technical Regulations – Standards of Psychosocial Rehabilitation, available at <https://matsne.gov.ge/ka/document/view/2198173> [last visited 21 March 2016].

600 Decree no. 308 of 30 June 2015 of the Government of Georgia about Approval of State Programs of Healthcare for 2015, available at <https://matsne.gov.ge/ka/document/view/2891068> [last visited on 21 March 2016].

ties is selective, based on subjective considerations and not the health state of patients. One patient asserted that he wanted to participate in sports activities, but was not given such a possibility.

Plans of treatment of patients do not include psychosocial rehabilitation. They do not mention what kind of therapeutic activities are necessary for patients. This is due to the lack of engagement of social workers in preparing these plans. Social workers assess each patient individually. Short evaluation forms are filled in for patients from acute care units, but these forms remain with social workers and are not included in medical cards. According to social workers, after consultations, only some patients used to undergo full evaluation. Recently, based on the court request, full evaluation of all patients has been introduced. The forms are included in medical cards of patients only after they are discharged, because according to the personnel, it is a dynamic process and these forms need to be updated periodically. This cannot be viewed as a valid defense, since the concluding part of the evaluation given by the social worker refers to the needs of the patient and the areas in which care and supervision is needed. Such information should be included in medical cards. Otherwise, it will be impossible to find and identify information about the measures taken to address the needs of the patient. Besides, this practice contradicts development of a complex, unified approach and facilitates separation and fragmentation of medical and social spheres.

The monitoring shows that it is difficult for social workers to identify the needs of persons undergoing short-term treatment. They have been able to obtain more exhaustive information about the patients undergoing long-term treatment. The Social Rehabilitation Unit does not have statistical data about the patients that get a social assistance package. The Monitoring Group was unable to obtain this information. One of the social workers told the Monitoring Group that in 2015 October, 10 persons received social assistance at the Centre for Mental Health and Prevention of Drug Dependence.

The information about the measures taken to assist patients is included in the questionnaires. There is no special registry for such information. According to the files, social workers are mainly engaged in solving the questions of social assistance, helping patients to contact their relatives and getting identification cards. They engage patients in rehabilitation programs and provide information about such programs. They also assist patients in withdrawing money with bank cards and buying the items they need.

According to the information provided by social workers, for the period of monitoring, three patients of the unit for long-term care were declared incompetent and had guardians appointed. As for the referrals to competent organs to have persons recognized as recipients of support, seven applications were filed to the court between July and October. One of the patients had been declared incompetent up to 1 April 2015. Judicial

decisions were not made in any of these cases by the time of completion of monitoring (October 2015).

There were cases of long-term stay at the institution because of social problems. One of the patients was registered in order to be placed at the shelter. The patient L.A. needed to be recognized as a beneficiary of support and have a supporter designated to assist him in implementing his rights. Social services already addressed the court concerning this patient. The Head of the Social Rehabilitation Unit of this institution expressed willingness to be appointed as a supporter.

The patient A.A needed to have a supporter appointed and the social worker filed the respective request to the court. It was explained that the problem related to residence would be solved afterwards.

In case of the patient D.S. the local organs of self-governance were informed. The social worker of the institution contacted the social worker of the territorial unit of the Agency, but no written application to the Agency or Trafficking Fund was filed.

The monitoring revealed cases of neglect of the patients' rights and interests by their family members. In one case, the Monitoring group found that family members did not spend targeted social assistance allocated to the beneficiary to meet his/her needs.

There was one patient with movement restrictions that did not have a wheelchair. It was established through interviews that wheelchairs are only available at psychoneurological dispensary and social workers did not address the Agency of Social Services to secure the device for the patient.

**At Bediani Psychiatric Hospital**, most patients undergo long-term treatment. The institution does not have a psychologist, a specialist responsible for rehabilitation, a qualified social worker. There is no multidisciplinary team that works out individualized plans of development of beneficiaries and secures its implementation. Individual consultations with a psychologist and rehabilitative services are not accessible to the beneficiaries.

30 patients undergo rehabilitation at the unit of the art therapy at the institution. The unit is led by the person with musical education. The beneficiaries paint, sculpt, knit and embroider. Their work is on display in the rehabilitation unit.

The unit is not equipped with furniture. There is a library, but availability of books is limited. The institution has facilities for labor/physical activities, but there is no competent staff to facilitate rehabilitation. The hospital does not have a qualified social worker to solve problems for patients, to provide assistance to the elderly patients in obtaining pensions from the state or getting the status of a disabled person, to explain the procedures for getting a social assistance package, to facilitate communications with legal

representatives. In many instances, social benefits to which the patients are entitled are used by their family members and/or guardians and the patients themselves have no say in managing their funds. In such cases, they need competent legal advice.

In the course of interviews at Bediani Psychiatric hospital, two patients touched upon the problem of the failure of guardians to discharge their responsibilities adequately. Specifically, these persons cannot use their social assistance packages because their plastic cards expired, but guardians do not help them solve this problem. Besides, as a result of a two-year treatment their health state considerably improved and they should no longer stay at the hospital, as concluded by their doctors. However, the guardians do not want to take them home, do not visit them. They are not interested with conditions of persons under their guardianship.

At **Kutaisi Mental Health Centre**, a psychosocial rehabilitation service is provided. It works as required by the program of psychiatric care, ensures engagement of patients to the maximum extent. The creations of patients are on display in the recreational areas of the unit.

### **The role of Psychologists in Mental Health Institutions**

Some deficiencies have been observed in the activities of psychologists at **the Centre for Mental Health and Prevention of Drug Dependence**. Majority of patients point out that despite their willingness, their communication with a psychologist is rare.

The rights and responsibilities of the psychologist in the unit of long-term psychiatric care include choosing a rehabilitation activity for the patient (social therapy, ergotherapy, art therapy, cinema therapy) and engagement of patients in individual or group psychotherapy. At the same time, a psychologist is obliged to enter the information about his/her activities in a special journal and also in medical cards, as required. No such information could be found in the medical documentation of patients.

At the acute care unit of **Tbilisi Referral Hospital (“Unimed Khakheti” Ltd)**, the role of a psychologist is limited to making a diagnosis. He/she does not have to work with beneficiaries and their family members. According to formal instructions for this position, in some instances, a psychologist may make a diagnosis for persons with mental disorders and/or engage patients in psychotherapy and should include the information in the medical documentation, as required by internal regulations of the hospital. These questions were not covered by the internal regulations provided to the members of the Monitoring Group. The beneficiaries also did not confirm engagement in activities/therapeutic measures. The list of the employees does not include a psychotherapist

and an art therapist. Accordingly, patients do not have the possibility to benefit from therapeutic and rehabilitative services. Even though the function of this institution is to provide care in acute cases and not long-term treatment, further interventions need to be planned. This is especially warranted taking into account that in some instances, patients remain at the institution for over a month. According to a psychologist, they are forwarded to various centres afterwards, for the purpose of psychosocial rehabilitation.

It is worth noting that only some patients confirmed participation in rehabilitation programs. None of the medical cards specify rehabilitation as part of the treatment scheme and integrate it in the process of therapy.

**Rustavi Mental Health Centre** has a few psychologists (including an art-therapist) that provide services to patients three times a week. Unfortunately, plans for treatment of individual patients do not contain information about services provided by psychologists or art therapists. Such services are not integrated in the scheme of care. It is worth noting that results of psychological examination are not included in all medical cards, but the medical personnel asserts that all patients are examined to confirm diagnoses and this information is saved by psychologists.

At **Kajaia Surami Psychiatric Hospital**, medical documentation for all patients includes an entry by the psychologist that is identical in form and substance. However, none of the patients has been able to recall having a conversation with the psychologist. At the time of monitoring, the psychologist was not at the hospital. In general, activities directed at securing psychosocial rehabilitation have not been introduced at Surami Psychiatric Hospital. There is no adequate infrastructure and trained personnel.

Surami Psychiatric Hospital provides no social services to assist patients in solving a range of problems. Many of the patients do not have a status of a disabled person and therefore, cannot benefit from a social assistance package. They do not know whom to address to solve these problems. Some patients are not informed about the reasons for not getting a social assistance package. Family members and legal representatives often neglect the needs of these persons.

**Naneishvili National Centre for Mental Health (Qutiri)** allocates space for psychosocial rehabilitation, but the administration of the Centre claims that they do not have sufficient funds and personnel to provide adequate services to patients fulfilling the standards of the sub-program of psychiatric care at hospitals. Only a limited number of patients declared about participation in psychosocial activities.

According to the information received through monitoring, patients get a psychological evaluation once a year. When interviewed, a psychologist pointed out that he is actively engaged in the process of psychosocial rehabilitation and carries out psychological interventions. However, medical cards of patients do not contain any reference



to such services. According to the psychologist, he saves relevant information, but this information is confidential. It is worth noting that norms of professional ethics require non-disclosure of information obtained through sessions of psychotherapy. However, this should not exclude giving access to the members of the Monitoring Group to some basic, non-sensitive information for the purpose of assessing the process of psychosocial rehabilitation. Social services of the institution are actively involved in solving social problems of patients. They take measures to prepare patients to be discharged and help restore family relations. There is also positive dynamics in terms of initiating medical-social expertise, determining the status of a person with a disability and granting the benefits. Despite these efforts, it was revealed through interviews that these questions remain unresolved and require urgent action.

In the psychosocial rehabilitation unit **at Khelvachauri Clinical Psychoneurological Hospital**, rehabilitation activities are carried out in the first half of the day for the patients from all three units. They have an art therapist and a work therapist. The art instructor is responsible for musical therapy which is carried out in a specially furnished room in the unit for long-term stay for women. The patients have the possibility to watch movies, listen to the music and dance. A few patients from acute care unit were attending this therapy at the time of monitoring.

Group rehabilitation exercises are carried out by a psychologist twice a week, but there are individual sessions as well. In the rehabilitation unit, the Monitoring Group members reviewed tests and questionnaires filled in by patients as well as assessments of art therapists and others. The psychologist that works with a certain patient looks into these materials and writes a conclusion about the treatment. According to him, these conclusions are included in the patient's history upon his/her discharge, but until then, they remain with the psychologist.

The program of psychosocial rehabilitation envisages taking patients on excursions. Different groups of patients were taken four times to visit the Gonio Fortress, Batumi Boulevard and the Zoo. Patients take walks in the yard of the establishment, but as reported by some of them, this is impossible when it rains since they do not have adequate clothing and shoes.

When visiting mental health institutions and interviewing personnel and patients, the members of the Monitoring Group paid attention to the legislative changes carried out within the framework of reform related to legal capacity. It has been established that majority of the interviewees is not informed about new legislative regulations. At the time of monitoring (9 October – 6 November 2015), not a single person placed in these institutions was recognized as a recipient of support.

The conversations with patients revealed the need for legal consultation and assistance

in resolving legal disputes. Some of them have property disputes with family members or relatives. A few patients placed in Surami Psychiatric Hospital pointed out their property remained without supervision and as a consequence, they suffered damage. One patient of the same institution underlined the problem of communication with her underage son. As she pointed out, her son was with a caretaker, she had not seen him for a few years and did not know whom to address to solve this problem. The same problem was raised by a patient of **the National Centre of Mental Health (Qutiri)**. She asserted that her son was also probably with a caretaker but she did not have exact information.

According to the information provided by the lawyer of **Kutaisi Mental Health Centre**, a **few** patients of this institution needed to have disputes related to immovable property solved.

It may be concluded that despite efforts of personnel of mental health institutions to help beneficiaries in solving social problems, services of psychosocial assistance, rehabilitation and reintegration are weakly developed at hospitals. In some instances, they exist only on paper and can be regarded as merely a daily activity.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Review funding methodology in order to secure the implementation of psychosocial rehabilitation programs at psychiatric institutions, taking into account biopsychosocial aspects of recovery; to secure regular monitoring of implementation of various programs for rehabilitation of patients at such institutions.

### RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Take into account biopsychosocial aspects of recovery and develop psychosocial interventions, secure intervention of specialists in the schemes of treatment.
- Pay special attention to the development of psychosocial rehabilitation services, to secure compliance with existing standards; to secure improvement of abilities of patients and development of skills to live independently.
- Hire qualified personnel to provide psychosocial rehabilitation services, to train personnel.

- Offer a broad range of recreational activities to patients, let them spend considerable time outdoors, to secure accessibility of books, journals and newspapers.
- Inform/train personnel about legislative changes introduced within the framework of the legal reform on legal capacity.
- Secure timely performance of obligations imposed upon them within the framework of the legal reform on legal capacity; to accelerate relevant procedures.
- Secure closer and more coordinated cooperation with the Agency of Social Services, in order to solve social problems of patients.
- Cooperate with relevant services in order to protect parental rights of patients.

## 7.10. PERSONNEL

The existing human resources must be adequate in terms of numbers, categories (psychiatrist, therapist, nurse, psychologist, occupational therapist, social worker, etc) and their professional experience and training.<sup>601</sup> Modern services of mental health unify healthcare managers, psychiatrists, psychologists, psychotherapists, social workers, nurses, occupational therapists and all other specialists that are necessary to provide necessary care effectively (for example, a neurologist or pediatrician, special needs education specialist or speech therapist, etc).<sup>602</sup>

Multidisciplinarity constitutes the basis for modern approach.<sup>603</sup> Unfortunately, in psychiatric institutions, multidisciplinary approach is lacking, in relation to competence of personnel and more importantly, in relation to management of mental disorders. There is a shortage of psychiatrists and other personnel (social workers, psychotherapists, nurses, etc). For example, at **the National Centre of Mental Health**, only one doctor is on duty at night (with over 650 patients). During the daytime, the monitors also communicated with one and the same doctor in the majority of units to verify the information.

**Surami Psychiatric Hospital** employs only three psychiatrists. They have to be on duty frequently, but have very low salaries. This causes occupational burnouts and develop-

601 Standards of the European Committee for the Prevention of Torture, para. 42.

602 Miller G. Mental, health in developing countries. The unseen: mental illness's global toll. *Science* 2006 January 27;311(5760):458-61.

603 Raine R, Wallace I, Nic a' Bháird C, Xanthopoulou P, Lanceley A, Clarke A, et al. Improving the effectiveness of multidisciplinary team meetings for patients with chronic diseases: a prospective observational study. *Health Serv Deliv Res* 2014;2(37).

ment of a nihilistic attitude towards treatment of patients. Only one nurse is on duty in each unit and due to the workload, managing mental disorders and filling in the documentation correctly becomes impossible. The Director General of Surami Psychiatric Hospital told the members of the Monitoring Group that salaries and living conditions are not attractive for specialists.

As regards working schedule and conditions, Article 27 (1) of the Georgian Law on Psychiatric Care envisages the following benefits for those employed in the field of psychiatry, taking into account specificity of their work environment: a) reduced, 30-hour work week; B) increased 42-day holiday time. The monitoring revealed that these benefits are rarely used. The personnel have to work under difficult conditions. This has a negative impact on the quality of psychiatric care, attitude towards patients, supervision, prevention of violence and incidents between patients, etc.

According to the Special Prevention Group, the problem lies also in the absence of occupational therapists in mental health institutions and the fact that the management of such institutions does not understand the function of this specialist and the importance of his/her activities.

It has been established as a result of monitoring that apart from insufficiency of personnel, there is a problem of continuous professional education. The topics covered by the trainings as well as their frequency and actual engagement of personnel are unsatisfactory. Majority of personnel has not been trained for many years.

According to the information provided by the Ministry of Labour, Health and Social Affairs, the Council of Europe will provide funds to conduct 6 cycles of trainings throughout Georgia for doctors, nurses and social workers of institutions of psychiatric care in the area of human rights, ethics and patient care. The initiative to conduct such trainings is worth welcoming, but the Special Prevention Group considers that in-depth training is needed at least in the following areas: management of agitated patients,<sup>604</sup> methods of physical restraint, multidisciplinary focus, prevention of violence and incidents among patients, de-escalation techniques, the Convention on the Rights of Persons with Disabilities and modern psychiatry. The trainings about various important questions of modern psychiatry should regularly be conducted. Special attention needs to be paid to the understanding by the personnel of importance of biopsychosocial model of psychiatric care and development of skills for implementing this model in practice.

According to the Special Prevention Group, it is important to develop a strategy for supplying the system of psychiatric care with competent personnel. It is also necessary to provide adequate salaries and create additional guarantees for social protection.

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604 Trainings on this topic were conducted in 2011.

## RECOMMENDATIONS

### RECOMMENDATION TO THE GOVERNMENT

- Review the methodology of financing the system of psychiatric care in order to allocate sufficient funds to secure personnel and adequate payment for the work done by the personnel.

### RECOMMENDATIONS TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Develop the strategy for supplying the system of psychiatric care with competent personnel.
- Introduce additional guarantees for social protection of personnel of psychiatric institutions.
- Determine minimum number of personnel per a certain number of patients.
- Take all the necessary measures to train the personnel of mental health institutions in at least the following areas: management of agitated patients, methods of physical restraint, multidisciplinary focus, prevention of violence and incidents among patients, de-escalation techniques, the Convention on the Rights of Persons with Disabilities and modern psychiatry; to regularly conduct trainings about various important questions of modern psychiatry; to pay special attention to the understanding by the personnel of importance of biopsychosocial model of psychiatric care and development of skills for implementing this model in practice.

### RECOMMENDATIONS TO THE DIRECTORS OF MENTAL HEALTH INSTITUTIONS

- Notwithstanding the limited funding, reconsider and try to increase salaries of personnel.
- Secure institutions with sufficient qualified personnel.
- Take all the necessary measures to train personnel of mental health institutions in at least the following areas: management of agitated patients, methods of physical restraint, multidisciplinary focus, prevention of violence and incidents among patients, de-escalation techniques, the Convention on the Rights of Persons with Disabilities and modern psychiatry; to regularly conduct trainings about various important questions of modern psychiatry; to pay special attention to the understanding by the personnel of importance of

biopsychosocial model of psychiatric care and development of skills for implementing this model in practice.

#### PROPOSAL TO THE PARLIAMENT OF GEORGIA

- Amend the Law on Psychiatric Care to introduce additional guarantees of social protection for the personnel of psychiatric institutions.

#### 7.11. SPECIFICITY OF PSYCHIATRIC UNIT FOR CHILDREN

10 patients can be placed in the Children's Unit of Tbilisi 5<sup>th</sup> Clinical Hospital. At the time of monitoring there were 8 patients, between 1 and 16 years old. They were mainly referred from orphanages of family type. There are four doctors (child psychiatrists), psychologist, psychotherapist, 4 nurses and 4 assistant nurses in the unit.

The monitoring revealed cases of delayed discharge of children from the hospital. The Special Prevention Group suggests that this is due to the failure of social workers to perform their functions effectively. According to the personnel, some patients have to stay at the hospital even for a month and a half because social workers from the Agency of Social Services rarely visit beneficiaries and take them away from the hospital.

It is worth noting that due to their stay at the hospital, the children fail to attend school. The establishment has no invited teachers. As regards communication with parents, the doctor decides when the patients can make phone calls. Children do not have phone conversations with their parents as frequently as they want to.

Treatment of patients is not multidisciplinary. Plans of individual development do not envisage working on psychological and behavioral problems, in addition to pharmacological treatment of mental disorders. There are no individual plans for each beneficiary so that the person responsible for their implementation followed the dynamics and made sure that the patient gets a full package of services.

The examination of documents and the interviews with a 16 year old patient revealed that her views were not taken into account when making decisions about treatment. Particularly, she refused to be hospitalized. Her informed consent form is signed by a social worker. She managed to escape the hospital on the third day of hospitalization. It turned out that she wanted to attend the meeting at which the question of changing her place of residence was discussed and which the social worker did not allow her to attend. After police intervention, she was returned to the hospital and was placed in the unit for adults. The patient said that she did not feel safe with adults. Besides, her communications with outside world were limited. Her mobile phone was taken away when

she was hospitalized and was kept in the safe at the reception. She was also not allowed to make calls from the hospital phone. The Monitoring group had the impression that these measures were taken to punish her. This is clearly unacceptable. It constitutes the violation of Article 12 of the Convention on the Right of the Child, according to which state parties shall assure to the child that is capable of forming his or her own views the right to freely express those views in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity. For this purpose, the child is to be given the possibility to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. It is unacceptable to neglect the views of the child in deciding questions and making decisions that influence the life of the child. Taking into account this right, it is advisable to introduce practice of getting an informed consent from the child. This respect and recognition could help prevent escape of children from the unit (there were 2 cases in 2015).

The unit has a procedure for the temporary discharge of the child from the hospital. The person that accompanies the child files an application to the Head of the Department, indicating the time of taking away the child and the time of bringing the child back. If the Head of the Department agrees, this information is inserted into the medical card of the patient. The time of taking away the child, the reason and the time of bringing the child back is included in the special journal for temporary discharges of patients.

According to the staff of the Unit for Children, there has not been a single case of applying physical restraint. There have not been cases of suicide and self-injury. The doctor inserts information about the conditions of each of the patients in their medical cards every day.

It is a recognized approach in area of psychiatric care that children need stability and continuity of care. Apart from pharmacotherapy, the unit is unable to provide patients with other type of care, even though the absence of psychosocial interventions, correction and habilitation-rehabilitation prolongs and complicates the process of recovery and increases the risks of long-term stay.

The room allocated for rehabilitation (called a play room) does not fulfill the requirements of habilitation-correction-rehabilitation. There are no tables and chairs in the room. There are a plastic slide, a small house, a foldout couch and round poofs, only appropriate for children of pre-school age. There is no library in the unit. There are no conditions for simple physical activities. There is no infrastructure for watching movies. There are no corrective programs and treatment is limited to pharmacotherapy. Examination of medical cards of beneficiaries at the unit for children showed that none of these medical cards included information about consultations with a psychologist.

The Special Prevention Group concludes that therapeutic processes at the Unit for Children do not correspond to modern standards and international guidelines for intervention.<sup>605</sup> The strategies for intervention and competences of the personnel need to be improved. The Special Prevention Group is concerned about placement of a minor in the unit for adults and urges the personnel of the hospital not to allow such practice in the future.

## RECOMMENDATIONS

### RECOMMENDATIONS TO THE DIRECTOR OF N5 CLINICAL HOSPITAL

- Take all the necessary measures to give the child the possibility to freely express views and be carefully listened to about a range of questions, including those related to hospitalization and psychiatric care, at the time of admission and at any stage of psychiatric care, with due regard to the age and maturity of the child.
- Reinforce the strategy of multidisciplinarity, so that the patient benefits from an adequate, full package of services.
- Introduce the practice of evaluating the process of treatment; for example, to guarantee at least two consultations with a psychologist; the first one at the time of admission to check psychical functions and emotional state of beneficiaries and the second one at the time of discharge from hospital to assess the dynamics after pharmacological, psychological and other interventions that will reveal the effectiveness of treatment.
- Avoid keeping patients hospitalized beyond what is necessary for treatment and for that purpose reinforce communication with social workers, guardians and educational institutions.
- Secure psychological interventions to facilitate development; to develop programs that teach the child anger management, strategies for correcting anti-social behavior, improve social competences and functioning of children and positively influence their self-esteem.
- Develop infrastructure in order to create therapeutic environment.

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605 See e.g. <https://www.nice.org.uk/guidance/cg158> [last visited on 20 March 2016].



## TO THE MINISTER OF LABOR, HEALTHCARE AND SOCIAL AFFAIRS OF GEORGIA

- Take all the necessary measures to create small units of psychiatric care for adolescents (16-18 year olds) in general hospitals, taking into account geographic accessibility, in order to manage mental disorders of adolescents effectively.
- Take all the necessary measures so that social workers pay more attention to minor patients and communicate with them more frequently, to secure protection of their best interests.

### 7.12. SPECIFICITY OF THE FORENSIC PSYCHIATRIC UNIT OF B. NANEISHVILI NATIONAL CENTRE OF MENTAL HEALTH

Forensic psychiatric care at hospitals includes treatment and management of mental disorders and assessment of risks of committing crimes by the patient. The risk of violence is assessed by a recognized instrument, such as HCR-20 - The Historical Clinical Risk Management-20, Version 3 (Douglas, Hart, Webster, & Belfrage, 2013)<sup>606</sup>.

On 26 July 2014, the Parliament of Georgia adopted the amendment<sup>607</sup> to the Georgian Law on Psychiatric Care which differentiated 'involuntary psychiatric care' from 'forcible psychiatric treatment.'<sup>608</sup>

Forensic Psychiatric Care Unit of the National Centre for Mental Health accommodates patients undergoing forcible psychiatric treatment, based on a court order<sup>609</sup> and also patients transferred from penitentiary institutions for involuntary psychiatric care.<sup>610</sup>

Under Article 22<sup>1</sup> (2) of Georgian Law on Psychiatric Care, the person may be placed in a hospital for forcible psychiatric treatment only if special protection is guaranteed and measures are taken to reduce risks, secure resocialization and improvement of mental health, in accordance with the order of the Minister of Labor, Health and Social Affairs of Georgia.<sup>611</sup>

606 The Historical Clinical Risk Management-20, Version 3. Available at <http://hcr-20.com> [last visited on 20 March 2016].

607 Amendments to the Law on Psychiatric Care, 26 July 2014, available at <https://matsne.gov.ge/ka/document/view/2434712> [last visited on 20 March 2016].

608 Article 4 (n) of Georgian Law on Psychiatric Care defines forcible psychiatric treatment as a special type of psychiatric care that envisages measures directed at reducing risk of damage, threat or violence inflicted by the person with a mental disorder upon himself or herself or upon other persons, securing their resocialization and improvement of mental health.

609 Based on Article 22<sup>1</sup> of Georgian Law on Psychiatric Care.

610 Based on Article 22<sup>1</sup> of Georgian Law on Psychiatric Care.

611 Order No. 01-70/N of 1 October 2014 of the Minister of Labor, Health and Social Protection of

The results of monitoring showed that conditions at the forensic medical unit are inadequate. Therapeutic environment is not secured. During the day, patients are locked up in the rooms resembling prison cells, without any privacy, with bad sanitary conditions and ventilation. They are taken for a walk in the yard that looks like a cage.<sup>612</sup> The Special Prevention Group concluded that the conditions in this unit and the care provided do not correspond to the goals of hospitalization. The unit is in fact merely a facility for isolation of patients with mental disorders.

A patient placed in the unit for forcible psychiatric treatment is visited by a psychologist a day after admission. The psychologist fills in the questionnaire for risk assessment and develops a plan for individual development, which is signed by a psychiatrist, psychotherapist, social worker and psychologist. The plan is initially developed for six months and is later reconsidered. If the patient has been sentenced to forcible psychiatric treatment for less than a year, then a three-month plan is prepared, but these plans are only on paper. None of the interviewed patients undergoing forcible psychiatric treatment knew about the plan or engagement in the process of resocialization. A few patients remembered the conversation with a psychologist. The Monitoring Group had the impression that no psychosocial rehabilitation of patients takes place. The involvement of the psychologist is limited. No meaningful activities are planned and each day is similar. The conflicts among patients are frequent.

The patients undergoing forcible psychiatric treatment, based on a court order and patients transferred from penitentiary institutions for involuntary psychiatric care are under similar, strict conditions. There is no differentiated treatment. Contacts between patients are restricted. In case of both categories of patients, psychiatric care is limited to pharmacotherapy. Patients do not participate in rehabilitation-resocialization programs, sports and other activities.

There is no individualized approach to treatment. Individual needs of patients are not figured out, so that they could be fulfilled through multidisciplinary team work.<sup>613</sup> Patients are not engaged in the process of treatment, do not know terms of treatment and 'what to expect in the future'. They are not informed about the complaint procedures established by law. Foreign-language speaking patients are not explained their rights in an understandable language.

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Georgia approving standards for assessing risks for patients undergoing forcible psychiatric treatment and list of measures aimed at reducing risks, securing resocialization and improving mental health, necessary for carrying out forcible psychiatric treatment in a psychiatric institution, available at <https://matsne.gov.ge/ka/document/view/2515573#DOCUMENT:1>; [last visited on 20 March 2016]

612 Problems including those related to the conditions of stay, treatment of somatic diseases etc. are examined in chapters above.

613 For example, special needs of patients with cognitive disabilities are not taken into account.

Aggression is managed through frightening patients or through injections. The procedure for assessing risks does not correspond to international standards. It is unclear how trustworthy this instrument can be and how the level of risk is integrated in the scheme of treatment, since all the patients are treated following the same standard scheme.

The personnel of the institution told the members of the Monitoring Group that only 15 GEL is allocated for the treatment of patients with acute conditions as well as long-term patients. This does not correspond to the needs of patients and creates a heavy financial burden for the institution. According to the representatives of administration of this institution, another problem lies in the engagement of invited specialists in the activities of the special commission<sup>614</sup> created to assess mental health state of patients undergoing forcible psychiatric treatment. They explained that the institution cannot attract qualified personnel due to geographic inaccessibility and limited funds. Under such conditions, it is impossible to provide full and high quality services to patients.

## RECOMMENDATIONS

### RECOMMENDATION TO THE GOVERNMENT OF GEORGIA

- Revisit the methodology of financing cases of forcible psychiatric treatment and involuntary psychiatric care under Article 22 of the Georgian Law on Psychiatric Care; study the existing needs in terms of managing such cases; secure allocation of adequate funds.

### RECOMMENDATIONS TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Introduce the system (relevant instruments) for assessing risks that is workable and based on international experience.
- Develop and approve psychosocial rehabilitation standards facilitating resocialization and reintegration.
- Consider appropriateness of introducing differentiated regimes of psychiatric care at the Unit of Forensic Psychiatric Care at the National Centre of Mental

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614 Order N01-69/N of the Minister of Labor, Health and Social Protection of Georgia, dated 1 October 2014 about composition and activities of the Special Committee created in mental health institutions to assess mental health state of patients subjected to forcible psychiatric treatment states that according to Article 22<sup>1</sup> of Georgian Law on Psychiatric Care, administration of an institution responsible for forcible psychiatric treatment creates the Special Commission that is chaired by the clinical manager of that institution and consists of at least 5 members. If necessary, the administration of the institution may be expanded by inviting other specialists. This rule is available at <https://matsne.gov.ge/ka/document/view/2515601> [last visited on 20 March 2016].

Health based on the best international practices.

#### RECOMMENDATIONS TO THE NATIONAL CENTRE FOR MENTAL HEALTH

- Improve conditions of stay at the Forensic Psychiatric Unit, create a therapeutic environment, organize a walking area, ensure that patients spend considerable time outdoors and are engaged in the activities that are interesting and valuable for them.
- Develop the program for psychosocial rehabilitation to facilitate resocialization-reintegration.
- Adjust individual development plans with the real needs of patients and secure actual implementation of these plans.
- Take all the necessary measures to actually engage patients in the process of providing psychiatric care, give them sufficient information about ongoing and planned interventions as well as about the rights of patients, including the right to file complaints.
- Ensure that personnel work in multidisciplinary teams.

## 8. THE STATE OF RIGHTS OF ELDERLY PERSONS

### 8.1. INTRODUCTION

The present document is a special report on the results of the monitoring conducted by the Public Defender's Office, within the framework of National Preventive Mechanism, to study the situation of the rights of older persons.

The work conducted within the scope of the monitoring involved analyzing international and national acts regulating the rights situation of older persons; requesting information from state entities; also, during the period from 1 to 5 April 2015, inspecting residential institutions for older persons by members of the special preventive group and representatives of the Department of the Rights of People with Disabilities of Public Defender's Office<sup>615</sup> to study the degree of protection of the rights of beneficiaries placed in those institutions, the conformity of those institutions with the standards defined in international documents and national legislation.

To assess the rights situation of older persons in specialized residential institutions and the conditions therein, the monitoring group paid visits to two subsidiaries of the legal entity in public law, the State Fund for Protection of and Assistance to Victims of Trafficking in Persons, and five institutions providing the service within the framework of community organizations subprogram of the 2014 State Program of Social Rehabilitation and Child Care.

The information regarding the specialized residential institutions for older persons operating in the country was requested from the Ministry of Labor, Health and Social Affairs of Georgia. According to received correspondence,<sup>616</sup> as of the moment of monitoring, some six community organizations operated in the country, including the non-profit (non-commercial) legal entity, Social Assistance Center (address: 1 Vakhtang Gorgasali Street, the village of Digomi, Tbilisi). However, the special preventive group was not able to monitor the mentioned institution as it could not find out the exact location of the institution. Having arrived at the indicated address, the representatives of the Public Defender discovered that the institution was not located there. Nor were the monitors able to reach a contact person, named by the Ministry, by a telephone. To deal with the situation, the Public Defender's Office sent a letter<sup>617</sup> to the Ministry which responded<sup>618</sup> that

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615 The authority to inspect human rights situation in the institutions of restricted freedom is granted to the representatives of the Public defender of Georgia or/and members of special preventive group under Articles 18, 19 and 19<sup>1</sup> of the Organic Law of Georgia on Public Defender of Georgia.

616 A letter N01/8200 of the Ministry of Labor, Health and Social Affairs, dated 9 February 2015.

617 Letter N09-3/2737 of 8 April 2015.

618 Correspondence N01/32836-11.05.2015

the non-profit (non-commercial) legal entity, Social Assistance Center, was registered as a provider of service under the community organizations subprogram on 2 October 2014; however, because of the change in the service, it reregistered on 1 March 2015. The non-profit (non-commercial) legal entity, Social Assistance Center, has not actually started delivering the service yet.

The monitoring revealed a number of violations in institutional arrangement, flawed regulations and harmful practice. The Public Defender believes that the rights of older persons being under the state care are not properly realized; the level of their living is inadequate; on certain occasions they become victims of improper treatment. The state does not fulfil the obligations specified in international documents, including in The Madrid International Plan of Action on Ageing and the Political Declaration. National legislative acts regulating the field need further elaboration. Moreover, a poor mechanism of enforcement and supervision of existing norms represents a significant problem.

## 8.2. MONITORING METHODOLOGY

In March 2015, the Office of Public Defender developed “The Methodology of Protecting the Rights of Older Persons in State Care and Other Residential Institutions.” This document is focused on the inspection of the following standards:

1. Information about the delivery of service (Standard №1)
2. Beneficiary-friendly environment (Standard №2)
3. Safety and sanitary conditions (Standard №3)
4. Observing confidentiality (Standard №4)
5. Individual approach in service delivery (Standard №5)
6. Catering (Standard №6)
7. Promoting social activity (Standard №7)
8. Health protection (Standard №8)
9. Feedback and complaint procedures (Standard №9)
10. Protection against violence and discrimination (Standard №10)
11. Requirements to personnel (Standard №11)

The inspection involved the collection of both quantitative and qualitative data. The documentation reflecting institution's administrative management and delivered care was requested from the administrations of residential institutions for older persons. The information was collected through interviews with beneficiaries and employees of these institutions as well as inspections of living conditions therein. The living conditions were assessed and the working process of service providers observed.

The method of semi-structured interview was applied in interviews with beneficiaries of residential institutions for older persons. A qualitative interview was conducted with the help of a questionnaire designed in advance enabling to assess the issues related to factual and legal state of these persons.

Interviews were conducted upon the informed consent of beneficiaries, individually, mainly in private and in a quiet atmosphere with the right of interviewees to stop them at any stage and the confidentiality guaranteed. While strictly observing confidentiality, the information received from individual interviews of older persons were double-checked with other persons and service providers. To double-check particular information, brief informal interviews, by using indirect questions, were conducted with various employees of institutions.

The monitoring group comprised members of special preventive group,<sup>619</sup> employees of the Department of Prevention and Monitoring,<sup>620</sup> and the Department of the Rights of People with Disabilities<sup>621</sup> of the Public Defender's Office.

The monitoring was conducted in the following specialized residential institutions:

***Territorial units (branches) of the legal entity in public law, the State Fund for Protection of and Assistance to Victims of Trafficking in Persons:***

- **Tbilisi Boarding House for Older People<sup>622</sup>** (address: 2<sup>nd</sup> block of residential buildings, 11<sup>th</sup> micro region, Temka settlement, Tbilisi)

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619 Ketevan Gelashvili, teimuraz Rekhviashvili, Irina Putkaradze, Zurab Putkaradze, Irma Manjavidze, Olga kalian, Natia gogolashvili, Sofia nemsitsveridze.

620 Daniel Mgelishvili, Levan Begiashvili.

621 Irine Oboladze, Rusudan Kokhodze, Lika Batsikidze, Luka Chochua.

622 The institution counts 79 beneficiaries at this stage. By the moment of monitoring, 78 older persons were actually receiving service. None of older persons are recognized as having psycho-social needs. One person has the status of a person with disability. One of the institution's beneficiaries, L. K., arbitrarily left the institution on 7 May 2014 and disappeared. According to the administration, this fact was reported to the law enforcement bodies and the investigation is underway. To find out more information, the Public defender sent a letter (N09-1/4388) to the Gldani-Nadzaladevi District Department of the Interior Ministry which, in its response (N1284781), informed that despite active operative-investigative measures, it has yet failed to detect the whereabouts of the missing beneficiary.

- **Kutaisi Boarding House for Older People**<sup>623</sup> (address: 6, dead end 4, Solomon II Street, Kutaisi)

*Private institutions providing residential service to older persons and delivering service within a relevant state program (community organizations subprogram of the state program of social rehabilitation):*

- **Nonprofit (noncommercial) legal entity, Young Teachers' Union**<sup>624</sup> (address: the village of Anaseuli, Ozurgeti municipality);
- **Nonprofit (noncommercial) legal entity, the boarding house for older persons and persons with disability, My Family**<sup>625</sup> (address: territory of 2<sup>nd</sup> area in Gldani, Tbilisi);
- **Nonprofit (noncommercial) legal entity, Diodora**<sup>626</sup> (address, 1a, Ushakov Street, Tbilisi);
- **Nonprofit (noncommercial) legal entity, Untroubled Old Age**<sup>627</sup> (address: the village of Bodbiskhevi, Sighnaghi municipality);
- **Nonprofit (noncommercial) legal entity, Beteli**<sup>628</sup> (address: 65 Aghmashenebeli Street, town of Tsnori).

The monitoring group visited these institutions for one day each.

To specify and complement the information obtained through monitoring, additional information was requested from the Ministry of Labor, Health and Social Affairs of Georgia, the legal entity in public law, the State Fund for Protection of and Assistance to Victims of Trafficking in Persons, Tbilisi City Hall, the Gldani-Nadzaladevi Unit of Tbilisi Main Division of the Ministry of Internal Affairs of Georgia.

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623 The institution counts 86 beneficiaries at this stage, including nine beneficiaries in wheelchairs and 19 bedridden. None of older persons are recognized as having psycho-social needs. None of them has a supporter.

624 At the moment of monitoring the institution counted 20 beneficiaries (14 female and six male). Four of them have limited mobility.

625 At the time of monitoring the institution counted six beneficiaries, all of them female. During the monitoring only five beneficiaries were on site. None of older persons are bedridden, in wheelchair or recognized as having psycho-social needs. None of them has a supporter.

626 At the moment of monitoring the institution counted 16 beneficiaries (12 females and four males). One of them has the status of disability. Two beneficiaries are bedridden.

627 At the moment of monitoring the institution counted 10 beneficiaries, including six females and four males. Five older persons are bedridden including two blind.

628 At the moment of monitoring the institution counted 16 beneficiaries, including three bedridden and five incapable of self-attending. None of beneficiaries are confined to wheelchair.



### 8.3. MAIN FINDINGS OF MONITORING

The monitoring revealed a whole set of systemic problems thereby providing the ground to conclude that the majority of special residential institutions for older people either improperly fulfill or fail to fulfill the requirements set out in international and national regulations, including the minimal standards approved by the Decree №1-50n of the Minister of Labor, Health and Social Affairs, dated 23 July 2014. In their conversations with members of the monitoring group, heads of several institutions admitted that they had heard about the standards but never read them themselves (the boarding house for older persons and persons with disability, My Family; the boarding house for older people, Untroubled Old Age) or they were aware of the standards but considered meeting them in the conditions of existing funding unrealistic (the boarding house for older people, Diodora).

Despite existing internal legislative regulations, the state lacks a well-running, systematized mechanism of overseeing their enforcement. The Ministry of Labor, Health and Social Affairs does not conduct a systemic monitoring of the compliance of specialized institutions for older persons with the minimal standards and consequently, does not adequately react to existing violations, which translates into a poor service delivery to older persons and often discriminatory and degrading treatment thereof.

Out of seven inspected specialized institutions, the conditions in one of them, namely, **Young Teachers' Union**, deserves praise, where despite the dearth of information about the needs of older persons received from the regional social services, a low level of involvement of the guardianship and custody body in the process of service delivery to older persons, and the lack of supervision, the service is delivered to older persons in accordance with international and national standards and in view of older persons' rights.

The level of care about the safety of beneficiaries, their emotional, psychological well-being and mental health in other residential institutions for older persons as well as the level of knowledge of legal regulations on violence and standards of service providers is extremely low. Beneficiaries are not informed about their rights. Heads of the institutions do not regard the mentioned issues as important standards of care and according to their explanations, they do not have financial means to ensure them either.

The monitoring revealed that the scarce financing of institutions for older persons is one of main factors leading to existing problems. This problem was emphasized by every service provider. Article 4 of the Ordinance of the Government of Georgia №22, dated 27 January 2010, on the "Approval of the Rule and Terms of Financing (Co-financing) of Placement of a Person in a Specialized Institution"<sup>629</sup> details the rule and terms of financing various target groups. The financing of service rendered in a state boarding house for

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629 See <https://matsne.gov.ge/ka/document/view/4780>];

older persons comprises 16 GEL a day.

The monitoring revealed the following major problems:

- Instances of inadequate treatment of beneficiaries
- Absence of the mechanism for overseeing the compliance with the standards
- Shortcomings in maintaining documentation
- Lack and low qualification of personnel
- Poor feedback mechanism and low awareness of beneficiaries
- Non-adapted physical environment and poor infrastructure
- Social passivity of beneficiaries and threat of being isolated from society
- Problems with the access to timely and adequate medical service
- Problems with the access to medications

#### 8.4. GENERAL OVERVIEW OF LEGAL REGULATIONS

A special international document regulating the issues of the rights of older persons was adopted under the aegis of the UN adopted at the Second World Assembly on Ageing in Madrid, in April 2002 and it is called The Madrid International Plan of Action on Ageing and the Political Declaration. It requires from the states to ensure older persons with adequate living conditions, social protection and health care; to reduce and prevent poverty and to develop a relevant strategy and programs;<sup>630</sup> to ensure adequate pensions, social security and health insurance;<sup>631</sup> to organize various social protection systems to ensure minimum income for older persons who are especially vulnerable; at the same time, to reform pension and insurance systems for the improvement of the living standards.<sup>632</sup>

The national legislation pertaining to the rights of older persons include: the Constitution of Georgia; the Law of Georgia on State Pensions;<sup>633</sup> Minimal Standards of Service to Persons with Disability and Older Persons in Specialized Residential Institutions approved by the Decree №1-50n of the Minister of Labor, Health and Social Affairs, dated 23 July 2014;<sup>634</sup> the Decree №52/n of the Minister of Labor, Health and Social Affairs, dated 26 February 2010, On the Approval of the Rule and Terms of Admittance of Per-

630 Ibid, Paragraph 48;

631 Ibid, Paragraph 52;

632 Ibid, Paragraph 53;

633 <https://matsne.gov.ge/ka/document/view/27946>

634 <https://matsne.gov.ge/ka/document/view/2391345>

sons to and Discharge from Specialized Residential Institutions<sup>635</sup> and other normative acts.

The main direction of state care policy of older persons in Georgia is the delivery of service in boarding houses. Such a service is provided in larger residential state institutions and within the framework of community organizations subprogram of the State Program of Social Rehabilitation.

**Residential state institutions** are subordinated to the State Fund for Protection of and Assistance to Victims of Trafficking in Persons (hereinafter referred to as the Fund). As of now, two state boarding houses for older persons exist in Tbilisi and Kutaisi. According to the charter of the Fund, one of its aims is to create dignified living conditions for older persons,<sup>636</sup> whilst its functions include: creating for older persons such conditions that are approximated to family environment, ensuring round-the-clock care, catering, primary health care, providing/organizing treatment-rehabilitation procedures.<sup>637</sup> The Fund performs its tasks through central office and territorial units (branches). The structure, powers and the rule of activity of a branch are defined in the charter which is endorsed by the director. Heads of territorial units are appointed and dismissed by the director.<sup>638</sup>

**The community organizations subprogram** (hereinafter referred to as the Subprogram) is designed for older persons (women above 60 years of age and men above 65 years of age).<sup>639</sup> The budget of the Subprogram was set at 836,000 GEL for 2014 and at 1,044,300 GEL for 2015.<sup>640</sup> The objectives of the Subprogram are to create the conditions approximated to the family environment, to facilitate independent living and social integration. To this end, beneficiaries must be provided with housing, daily service, and catering three times a day; when needed, must receive primary health care, have outpatient and inpatient health service organized; must be provided with individual service programs developed and implemented for them to raise the level of their independence; must get professional skills developed (choosing a craft, facilitating the education and practical application thereof taking into account a beneficiary's individual capacities and desire); must be provided with clothes matching their age, sex and season and items of personal hygiene; other measures facilitating their integration into society.<sup>641</sup>

635 <https://matsne.gov.ge/ka/document/view/1008810>

636 Decree of the Government of Georgia N146, dated 13 February 2014, on Approval of Charter of LEPL the State Fund for Protection of and Assistance to Victims of Trafficking in Persons; Article 2(d). See, <http://www.atipfund.gov.ge/index.php/ka/about-us/regulations>

637 Ibid, Article 3(g)

638 Ibid, Paragraphs 2, 4 and 5 of Article 4.

639 Decree of the Government of Georgia N291, dated 14 April 2014, On the Approval of the 2015 State Program of Social Rehabilitation and Child Care; Annex 1.12, Subparagraph b) of Paragraph 1 of Article 2; see <https://matsne.gov.ge/ka/document/view/2791238>

640 Ibid, Annex 1.12, Paragraph 1 of Article 4.

641 Ibid, Annex 1.12, Article 2.

The Subprogram is implemented by the legal entity in public law, Social Service Agency.<sup>642</sup> A provider of service envisaged under the Subprogram may be any entity registered at the Ministry of Labor, Health and Social Affairs in accordance with the rule established by the law.<sup>643</sup> To get registered as a service provider, an applicant must submit an application and information about offered service to a registering body (the Ministry)<sup>644</sup> which considers the submitted application and information and takes a decision on registering an entity as a provider of service envisaged by the Subprogram.<sup>645</sup> Should the provider fails to properly fulfill the requirements, the registering body is entitled to cancel the registration.<sup>646</sup>

A condition precedent for financing the service provided within the Subprogram may be the requirement to submit information concerning the service delivered by the provider in the form as demanded by the Agency.<sup>647</sup>

The admission of older persons to boarding houses is coordinated by the legal person in public law, the Social Service Agency which accepts applications, establishes the needs and takes a decision on the admission of older persons to a concrete institution. This issue is regulated by the Decree №52/n of the Minister of Labor, Health and Social Affairs, dated 26 February 2010, On the Approval of the Rule and Terms of Admittance of Persons to and Discharge from Specialized Residential Institutions.<sup>648</sup>

Those eligible to be admitted to boarding houses for older persons and community organizations are elderly and persons with disability aged 60 and over, except for persons with mental disorders. The list of documents required for the placement of these persons in an institution is defined in the above mentioned decree.<sup>649</sup>

Within one month after the Agency receives an application, with enclosed documents, for the admission to a specialized institutions, a social worker draws up a conclusion about the suitability of placing a person into a specialized institution.<sup>650</sup>

A decision on the placement of a person in a specialized institution financed from the state budget is taken by a regional council.<sup>651</sup> The regional council considers the issue of placement of applicants and persons with disability in boarding houses for older persons

642 Ibid, Annex 1.12, Article 6.

643 Ibid, Annex 1.12, Article 5.

644 Ibid, Annex 1, Paragraph 3 of Article 3.

645 Ibid, Annex 1, Subparagraph b) of Paragraph 3 of Article 3.

646 Ibid, Annex 1, Subparagraph e) of Paragraph 3 of Article 3.

647 Ibid, Annex 1.12, Paragraph 4 of Article 4.

648 <https://matsne.gov.ge/ka/document/view/1008810>

649 Decree №52/n of the Minister of Labor, Health and Social Affairs, dated 26 February 2010, On the Approval of the Rule and Terms of Admittance of Persons to and Discharge from Specialized Residential Institutions; Annex №1, Paragraph 1 of Article 3; <https://matsne.gov.ge/ka/document/view/1008810>

650 Ibid, Annex №1, Paragraph 7 of Article 4.

651 Annex №1, Paragraph 2 of Article 2.

in that sequence as provided in the register.<sup>652</sup> Alongside the decision of the placement of a person in a specialized institution, the regional council decides on the issue to fully finance, co-finance or not finance the placement at all.<sup>653</sup> A person may leave a boarding house upon his/her desire or a desire of his/her legal representative, also in case of appointing a guardian/custodian or transfer to another specialized residential institution.<sup>654</sup>

The issues regarding the delivery of service in specialized residential institutions is regulated by the standards approved under the Decree №1-54/n of the Minister of Labor, Health and Social Affairs, dated 23 July 2014.<sup>655</sup> This regulation is binding on all providers registered within the scope of the state program, which render round-the-clock service to older persons or/and persons with disabilities as well as on branches of the State Fund for Protection of and Assistance to Victims of Trafficking in Persons except for several paragraphs which mainly refer to ensuring beneficiaries with living spaces, bathrooms and caregivers.

The standard regulates almost all spheres of life of older persons in specialized residential institutions, in particular: supplying information about the service, observing confidentiality, creating beneficiary-friendly environment, safety and sanitary conditions, individual approach to service delivery, catering, facilitating social activity, health care, protecting against violence and discrimination, feedback and complaint procedures, requirements to personnel. The enforcement of listed standards in practice is detailed in the chapters below.

## 8.5. ABSENCE OF MECHANISM FOR SUPERVISION OF COMPLIANCE WITH STANDARDS

As responsible state entities do not supervise the compliance with the standards of service to older people, the quality of living of older people in inspected community organizations is low. We requested information<sup>656</sup> regarding the monitoring/inspection of the institutions from the Ministry of Labor, Health and Social Affairs. According to the response<sup>657</sup> from the Ministry: “In 2014, the program monitoring unit of the Department of Social Affairs of the Ministry conducted the monitoring of one community service organization for older persons (non-profit (non-commercial) legal entity Adams) upon the

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652 Annex №1, Paragraph 4 of Article 9.

653 Annex №1, Paragraph 4 of Article 10.

654 Annex №1, Paragraph 3 of Article 8.

655 <https://matsne.gov.ge/ka/document/view/2391345>

656 Letter N09-3/2858 of 8 April 2015.

657 Letter N01/2699 of the head of social protection of department of the Ministry of Labor, Health and Social Affairs, dated 20 April 2015.

notification from the legal entity in public law, the Social Service Agency.” It is worth noting that the mentioned organization is no longer a service provider. The response from the Ministry says nothing about the monitoring of other institutions. It only underlines that a certain deadline was set for the community service organization to fulfill specific articles of the Minimal Standards of Service to Persons with Disability and Older Persons in Specialized Residential Institutions.<sup>658</sup> Consequently, we assume that the Ministry does not supervise the compliance with the standards established by it.

One should note that according to the Ordinance №138 of the government of Georgia, dated 3 March 2014, On the Approval of the 2014 State Program of Social Rehabilitation and Child Care, in order to get registered as a provider of service of “community organizations subprograms,” an applicant shall submit the application and information about offered service to the registering body (the Ministry)<sup>659</sup> which, for its part, considers the application and information and takes a decision on the registration of a person as a provider of service envisaged by the subprogram. The registering body is entitled to cancel the registration of provider in case of the failure of the latter to properly fulfill the conditions.<sup>660</sup> Moreover, a necessary additional requirement for financing the service provided within the scope of Subprogram may be the submission of information concerning the service delivered by the provider to the Agency in the form as requested by the Agency.<sup>661</sup>

The Office of the Public Defender applied to the Ministry<sup>662</sup> for the documentation required for registration of the organizations that had been registered as service providers to all (five) residential institution’s for older persons; also in case of automatic extension of registration, the information on service rendered before that extension, which these organizations submitted to the Agency.

The Ministry of Labor, Health and Social Affairs informed us that already registered service providers get automatic extension of their registration upon the approval of a new program and they are not obliged to submit additional information to the Agency.<sup>663</sup> Nor are community organizations required, under the effective procedures, to provide information about their activities to the Social Service Agency.<sup>664</sup> Consequently, we as-

658 It means Article 3 of the Decree №01-54n of the Minister of Labor, Health and Social Affairs, dated 23 July 2014, according to which certain paragraphs of “beneficiary-friendly environment” and “requirements to personnel” become, before the enactment of the decree, binding on service providers registered within the state program, which fall short of the standards, from 1 September 2015.

659 Decree of the Government of Georgia N291, dated 14 April 2014, On the Approval of the 2014 State Program of Social Rehabilitation and Child Care, Annex 1, Paragraph 3 of Article 3.

660 Ibid, Annex 1, Subparagraphs b) and e) of Paragraph 3 of Article 3.

661 Ibid, Annex 1, Paragraph 4 of Article 9.

662 Letter N09-3/2858 of 8 April 2015.

663 Letter N01/2699 of the head of social protection of department of the Ministry of Labor, Health and Social Affairs, dated 20 April 2015.

664 Letter N01/32836 of the head of social protection of department of the Ministry of Labor, Health and Social Affairs, dated 11 May 2015.

sume that when registering organizations as service providers and allocating funding to them, the Ministry does not require the information, as envisaged by the law, on services rendered, which would allow to judge about the quality and adequacy of the service offered by them.

A substantial shortcoming in the relationship between a service provider and the state is also the fact that the cooperation of community organizations with the guardianship and custody body is limited to materializing the voucher. Once an older person is enrolled in the service, the involvement of the social service in the service to older person, the supervision and control of the service process stops altogether.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Ensure regular monitoring of service delivery to older persons by specialized residential institutions for older persons and react adequately to violations if detected;
- Demand that an organization submit complete information before getting registered as a service provider, therewith enabling preliminary assessment of the quality and adequacy of offered service;
- Before automatic extension of registration as a service provider, demand that the service provider submit exhaustive information about the services render before that.

### TO THE LEGAL PERSON IN PUBLIC LAW, THE SOCIAL SERVICE AGENCY:

- Ensure the adequate involvement of the social service in the service of specialized institution and the supervision of the service within the scope of its own competence.

## 8.6. INFORMATION ABOUT SERVICE DELIVERY (STANDARD №1)

*Beneficiaries (including potential beneficiaries) and/or their legal representatives must be informed about the service offered by specialized residential institutions. A service provider shall have the following papers available for any interested person: an information leaflet; a service program describing the content of the service and a daily schedule; internal regulations of an institution and a document certifying the registration for a corresponding state program.*

*The administration shall have available the following papers for the guardianship and custody body, the Public Defender's Office of Georgia and the entity responsible for supervision: personal files of beneficiaries; a registry of admission and discharge of beneficiaries to/from an institution; a registry of temporary discharge of beneficiaries from an institution; documentation certifying the qualification of personnel and contracts signed with them; consents of beneficiaries/their legal representative on the issuance of confidential information (if applicable); a written account of measures undertaken in response to a complaint; a written account of measures undertaken in response to facts of violence; a registry of accidents; an agreement signed by and between a beneficiary and service provider with rights and obligations explained therein.*

In the majority of inspected institutions, the documentation is kept in a non-systematized way and the search of needed material is a time-consuming exercise. Boarding houses, as a rule, have internal regulations developed (save few exceptions) which regulate issues that are important for operation; however, the familiarization with the situation on site gives rise to a reasonable doubt that the internal regulation have been developed for the sake of formality and the provisions therein are not much honored. Personal files of beneficiaries and other documentation required by the law (registries, service programs, agreements with beneficiaries and the personnel, medical documentation, et cetera) are not maintained properly.

The exception in this regard is the community service rendered by the **nonprofit (non-commercial) legal entity, Young Teachers' Union**. This institution observes requirements established by the standard. Interested persons have access to the information leaflet, service program and the document certifying the registration for a state program. The internal regulation of the institution fully meets the standard. The rule of maintaining beneficiaries' files is a well-functioning one. Agreements between beneficiaries and the service provider are also in place, clearly explaining the rights and obligations of the parties. It may be said that the written account of measures undertaken in response to facts of violence and in general, actions undertaken to manage incidents are exemplary. The institution maintains the so-called "protocols of incidents." In case of violence which mainly occurs among beneficiaries, a patrol police or a district inspector is called



for. Upon the application of the nonprofit (noncommercial) legal entity, Young Teachers' Union, a conference is held on an incident in a local branch of the Social Service Agency, at which a fact of violence is considered in the presence of the parties and a corresponding decision is taken.

Labor contracts with the employees are entered into in accordance with the Georgian legislation. The maintenance of personnel files meets the standard. Personal files of the personnel contain the documentation certifying the qualification as well as other information (including the medical certificate on the health of an employee).

The service provider maintains the registries required under the normative act.

The situation in the **nonprofit (noncommercial) legal entity, Untroubled Old Age**, within the framework of the standard, falls short of requirements of the law.

The internal regulation of the institution does not contain necessary information. The service program and the document of registration as a service provider for a state program were not found. The rule of maintaining documents and keeping them securely is grossly violated.

Personal files of beneficiaries are not maintained properly either. They do not contain necessary documentation, including a decision on enrolling them in service, medical documentation as well as a program of individual development and a document certifying the status. Agreements between beneficiaries and the service provider do not explicitly explain the rights and obligations of the parties.

The institution renders service to a blind person (Q. M.) who, according to the administration, has a legal representative; however, the personal file does not contain a document certifying this fact.

**The nonprofit (noncommercial) legal entity, the boarding house for older persons and persons with disability, My Family**, fails to meet almost every requirement listed in the standard. The institution lacks an information leaflet, a service program and a document of registration as a service provider of a state program. Nor does the boarding house have an internal regulation.

Personal files of beneficiaries and agreements signed with them are in a relatively better shape. Out of registries required by the law, the manager of the institution maintains only one – the registry of temporary discharge; however, the form of a document does not meet the established standard<sup>665</sup> as it shows only the identity, the date of discharge and the signature of a beneficiary. It does not contain any information about the ground

<sup>665</sup> The standard is provided in the Decree №52/n of the Minister of Labor, Health and Social Affairs, dated 26 February 2010, On the Approval of the Rule and Terms of Admittance of Persons to and Discharge from Specialized Residential Institutions, Annex 3 part 2; see <https://matsne.gov.ge/ka/document/view/1008810>.

of temporary discharge, the length of discharge, the identity of a person temporarily taking beneficiary out/bringing him/her back and the date of return; also it lacks the signature of an authorized person of the specialized institution.

The administration of the **nonprofit (noncommercial) legal entity Diodora** maintains some documentation though, in reality, only the registry on the admission and discharge as well as temporary discharge of beneficiaries to/from the institution is filled in whereas other registries (on incidents, on the death of beneficiaries, on shift handover among nurses) are empty. There is neither the information leaflet nor the service program available in the institution.

Out of six employees of Diodora only two have employment contracts though they are not enclosed with the documentation certifying the qualification of employees. According to the head of the institution, employment contracts were not entered into with the remaining employees because of hiring them for a trial period.

The majority of beneficiaries of the service provider also lack agreements. During the monitoring, the director presented agreements signed only with five beneficiaries, saying that he failed to complete this process due to a very busy schedule.

Diodora has the internal regulation governing all issues that are important for operation; however, having observed the situation on site we may conclude that provisions of the internal regulation are often violated in practice. For example: according to the internal regulation, beneficiaries and their relatives are ensured the right to express their opinion/dissatisfaction in writing and place it in a sealed box; however, such a box (the so-called complaints box) does not exist in the institution. Also, under the internal regulation, certain functions shall be performed by a service manager and a social worker, but such personnel are absent in Diodora. Moreover, the internal regulation requires that an agreement between a beneficiary and the administration be signed within one week of admitting the beneficiary to the service, however, agreements have yet to be signed with the majority of beneficiaries.

The administration of the **nonprofit (noncommercial) legal entity Beteli** maintains the documentation on the enrollment of beneficiaries and their stay in the institution. It also has a registry on a temporary discharge of beneficiaries although it is not duly maintained with a number of instances not indicating the date of return of such beneficiaries.

After obtaining the information and documentation from the administration a number of violations were revealed. In particular, the community organization lacks an information leaflet that must be available for any interested party.<sup>666</sup> An authorized representative of the administration is not aware of this document. Besides, the service provider

<sup>666</sup> Minimal Standards of Service to Persons with Disability and Older Persons in Specialized Residential Institutions approved by the Decree №1-54/n of the Minister of Labor, Health and Social Affairs, Annex.

does not have a separately available service program which would describe the content and schedule of service. Such information can only be obtained from personal files of beneficiaries and through familiarizing oneself with agreements signed with them – something which not every interested person is entitled to under the legislation.

Other documents are also incomplete and with shortcomings. The internal regulation of Beteli does not cover the list of issues envisaged by the standard, including: the rules and methods of dealing with socially unacceptable behavior of beneficiaries; feedback and complaints procedures; rules for the prevention of infectious diseases; issues of confidentiality; the rules and procedures for ensuring the care. The administration of the institution does not maintain a written account of measures undertaken in response to complaints and facts of violence. Nor does it maintain a registry of incidents.

Personal files of beneficiaries do not contain a program of individual development, a document certifying a status (if applicable) as well as contact information of relatives.

**Kutaisi boarding house for older persons** has the internal regulation which covers issues envisaged by the standard. The internal regulation sets forth procedures for a temporary discharge of beneficiaries; the rights and obligations of legal representatives and relatives of beneficiaries; issues of protection of beneficiaries against violence, discrimination and neglect; requirements for observing sanitary and hygiene rules; and crisis management.

As regards personal files of beneficiaries, they are maintained improperly. Personal files rarely contain medical documentation (medical documentation №IV-100/a – a certificate of health) and they often reflect incomplete data. The conversation with the authorized representative of the institution showed that the administration lacks information about the need to keep medical documentation in personal files of beneficiaries.

Kutaisi boarding house for older persons maintains the registry on the admission of beneficiaries, also a registry on temporary discharge of beneficiaries from the institution. Since 2014, it also maintains a registry on incidents, a registry on facts of violence and a written account on measures undertaken in response to complaints. The boarding house has a special feedback registry as well. Moreover, agreements between beneficiaries and the service provider, explaining rights and obligations of the parties, are also kept.

A several-hour exit of beneficiary from the boarding house is allowed upon oral agreement and such fact is registered by an employee in charge of security of the institution.

**Tbilisi boarding house for older persons** has the information leaflet posted on a conspicuous place. The decree about the service program of the Tbilisi boarding house for

older persons was also posted on the wall as well as the internal regulation of territorial units of the Fund.

Personal files of beneficiaries do not contain a program of individual development. According to the psychologist of the boarding house, the development of a comprehensive individual action plan is impeded by the fact that the institution does not have a social worker among its staff.

Although the service provider is obliged to have the documentation certifying the qualification of personnel and employment contracts available for the guardianship and custody body, the Public Defender's Office and an entity responsible for the supervision, the institution does not keep this documentation. According to the administration (the deputy head), the competition and selection of employees is conducted by the State Fund for Protection of and Assistance to Victims of Trafficking in Persons and consequently, the documentation certifying the qualification of personnel and employment contracts are kept at the Fund.

The administration does not maintain registries on measures undertaken in response to complaints and incidents. As a representative of the administration explained there have not been any instance of issuing confidential information or accident in the institution, hence no such registries are available. The monitoring group believes that the institution, pursuant to the standard, must anyway maintain such registry.

## RECOMMENDATIONS

### TO THE ADMINISTRATION OF SPECIALIZED RESIDENTIAL INSTITUTIONS FOR OLDER PERSONS:

- Ensure the compliance with the requirements concerning the maintenance of documentation in accordance with the rule established under the Minimal Standards of Service to Persons with Disability and Older Persons in Specialized Residential Institutions;
- Ensure availability of data envisaged by the mentioned standard for any interested person;
- Develop the internal regulation of the institution in full conformity with the requirements of the law;

- Ensure the observance of the provisions of internal regulation by every person in the institution;
- Maintain personal files of beneficiaries in accordance with the requirements of the standard;
- Clearly spell out the rights and obligations of the parties in an agreement entered into by and between a beneficiary and the institution;
- In signing employment contracts with personnel, observe the rule established by the Georgian legislation.

## 8.7. BENEFICIARY-FRIENDLY ENVIRONMENT (STANDARD №2), SAFETY AND SANITARY CONDITIONS (STANDARD №3)

*Administrations of specialized residential institutions are required to render service in such a geographic area in which beneficiaries can access health care and other services existing in the community (store, drugstore, et cetera). At the same time, the physical environment must be approximated to family conditions and ensure free movement of beneficiaries. A living space and equipment must match the number and needs of beneficiaries.*

The monitoring revealed serious problems of infrastructure and sanitary-hygienic conditions of physical environment in a number of boarding houses. The lack of access to services was observed in some of them; in particular, the boarding house for older persons and persons with disability, My Family, is located in a settlement of rural type,<sup>667</sup> on an elevated place with the water supply system repair works underway on the access road to it. It is virtually impossible to move by a motor car in a rainy day and as a result, the population of the boarding house is isolated from the outer world. Moreover, it becomes complicated to provide a timely and adequate health service when it is needed. In this regard, the Public Defender's Office approached<sup>668</sup> the municipal improvements service of the Tbilisi City Hall, which informed<sup>669</sup> us that "the rehabilitation of water supply network in the Giorgitsminda settlement is carried out by Georgian Water and Power Ltd which must restore the road damaged because of performed works to its original condition." Later, the Tbilisi City Hall forwarded the letter of Georgian Water and

667 Giorgitsminda settlement, Gladni, Tbilisi.

668 Letter N09-3/2918, 15 April 2015.

669 Letter N06/15107425-18 of the head of city service of municipal improvements of Tbilisi municipality, 27 April 2015.

Power Ltd<sup>670</sup> to the Public Defender's Office, which said that Georgian Water and Power Ltd completed the construction works of power supply networks and corresponding infrastructure and the roads were restored to their original condition. However, **“given that the mentioned settlement either lacks the sewerage systems or has it only fragmentary, that the waste waters flowing on roads damages and/or will damage roads, the road reinstatement works are of temporary nature and the condition of roads may deteriorate any time.”**

According to the administration of the boarding house My Family, the institution does not have sufficient number of walking sticks, crutches and wheelchairs and therefore, are not able to provide assistive devices to all people needing them.

Some problems have been observed in terms of arrangement and security of the yard. In particular, a larger part of the yard is used for storing construction materials and waste. The adjacent territory is not smooth (it is sloped).

#### THE BOARDING HOUSE MY FAMILY



Unpleasant smell and humidity was observed in buildings of several boarding houses; they lack central heating and instead, use electric heaters (Diodora, Untroubled Old Age, Tbilisi boarding house for older persons, Kutaisi boarding house for older persons).

Living conditions and yards of boarding houses (with the exception of Young Teachers' Union) are not adapted to older persons with disabilities, thereby putting them in unequal conditions as compared to other beneficiaries,

670 Letter N6504/09, 14 July 2015.



### The boarding house Untroubled Old Age

All boarding houses that were visited are located in settlements. Nevertheless, beneficiaries of the Untroubled Old Age<sup>671</sup> have no access to a drugstore because the closest drugstore is located in a neighboring village. The Kutaisi boarding house for older persons is located on the outskirts of the city.

The institutions are fit with dining rooms and kitchens; beneficiaries are provided with individual beds, pieces of furniture to keep personal items and sufficient living spaces.

A central heating system is fully available in the following boarding houses: My Family, Diodora, Beteli and Young Teachers' Union. Tbilisi boarding house for older persons lacks central heating and uses electric heaters instead.



### Tbilisi boarding house for older persons

671 Village of Bodbiskhevi, Sighnaghi municipality.

Bathrooms, living rooms and balconies in Tbilisi boarding house for older persons require improvement. The items in rooms are outdated, insufficient and not uniform.

The larger part of the building of the boarding house Untroubled Old Age, apart from having a room for taking rest, is fit with the central heating whilst Kutaisi boarding house for older persons has central heating only in one building<sup>672</sup> whereas another building is heated with electric stoves.

Kutaisi boarding house for older persons, boarding houses Beteli and Untroubled Old Age, have scheduled water supply and therefore they need to store water in reservoirs.

External stairs to the central doorway of Kutaisi boarding house for older persons are damaged and require repair. A large segment of beneficiaries use one bathroom because living rooms of the boarding house either lacks individual bathrooms or they are broken. The rooms are not fit with air conditioners and artificial ventilation system.



**Kutaisi boarding house for older persons**



**Nonprofit (noncommercial) legal entity, Young Teachers' Union**

672 The boarding house is located in two separate buildings.



According to the Madrid International Plan of Action on Ageing, when ensuring older persons with housing and surrounding conditions, especially important is to take into account such factors as: accessibility and physical and psychological security. It is recognized that good housing can promote good health and well-being.<sup>673</sup>

The living environment and conditions in institutions (except for Young Teachers' Union) inspected by the monitoring group of Public Defender's Office cannot be evaluated as positive and affect health, emotional state and wellbeing of older persons residing in these institutions.



### **Nonprofit (noncommercial) legal entity, Young Teachers' Union**

## **RECOMMENDATIONS**

### **TO ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS:**

- Ensure secure environment for free orientation and movement of beneficiaries;
- Ensure the temperature corresponding to a season of year in the buildings;
- Strictly observe norms of sanitation in any part of buildings, including in bathrooms;
- Provide specific items (if need be) to persons with disability as well as older persons;
- Support the creation of the environment adapted to beneficiaries with disabilities;

<sup>673</sup> The Madrid International Plan of Action on Ageing and the Political Declaration; the Second World Assembly on Ageing, 2002; Paragraph 95.

- Ensure the equipment of rooms with the items specified in the standard.

TO TBILISI CITY HALL:

- Ensure the improvement of the access road to the nonprofit (noncommercial) legal entity, the boarding house for older persons and persons with disability, My Family, so that older persons can move within the community and in case of need, are provided with emergency medical aid.

## 8.8. OBSERVING CONFIDENTIALITY (STANDARD №4)

*The legislations provides for the right to keep personal information of older persons placed in specialized residential institutions confidential. According to the standard, beneficiaries and their representatives shall be informed about this right, also, about the instances when the confidentiality of personal information might be violated. A service provider shall have a proper environment (a room or specially allocated place) for individual consultations to ensure confidentiality of conversations with beneficiaries; keep personal files of beneficiaries in an inaccessible place; not discuss beneficiaries' personal information publicly; before disclosing confidential information seek written consent from beneficiary/beneficiary's legal representative. An institution may disclose personal information without a consent of beneficiary/beneficiary's legal representative only in exceptional cases, in accordance with the rule established under the law, when it is necessary for ensuring state security or public safety.*

The administration of **nonprofit (noncommercial) legal entity, Untroubled Old Age**, is not at all aware of this standard and the need to observe it.

The administration and personnel of **nonprofit (noncommercial) legal entity, Young Teachers' Union**, possess proper knowledge regarding the protection of confidentiality of information about beneficiaries. Requirements established by the standard are set forth in the internal regulation of the institution as well as in contracts signed with beneficiaries and with employees. The rule of storing personal files of older persons is fully observed.

The administrations of **nonprofit (noncommercial) legal entity, the boarding house for older persons and persons with disability, My Family**, and **nonprofit (noncommercial) legal entity, Diodora**, explain that conversations on personal topics with beneficiaries are conducted in private. According to them, the right to confidentiality of personal information of beneficiaries is protected and there has not been a need of disclosing it yet; consequently, the institutions do not have documents certifying consent of beneficiary/beneficiary's legal representative on the disclosure.

**The nonprofit (noncommercial) legal entity, Beteli**, does not have a space allocated for individual consultations, which would ensure confidentiality of conversations with beneficiaries as well as representatives of state entities. Moreover, employees are not aware of the rules of keeping the information on beneficiaries after stopping the provision of service to them.

The standard of keeping personal files of beneficiaries is not observed. The documentation is not kept either in a strongbox or any such place that would ensure its protection.

Beneficiaries of **Kutaisi boarding house for older persons** are not aware of the requirement to keep the information obtained in the course of service delivery confidential as well as of instances when confidentiality may be violated. They/their legal representatives give oral consent instead of obligatory written one.

A positive development is that the institution has a space for individual consultations, ensuring the confidentiality of conversations. Newly admitted beneficiaries are made familiar with the service program in this room.

The interview with the administration of the institution revealed that an authorized person is not aware of and does not observe the requirements regarding the storage of documentation about a beneficiary in the event a service delivery to beneficiary has been terminated.

An interview with representatives of administration of **Tbilisi boarding house for older persons** revealed the following circumstances: a room for individual conversations with beneficiaries is allocated, but the majority of conversations is conducted in the library; beneficiary/beneficiary's legal representative is informed verbally about the confidentiality of the information obtained in the course of service delivery as well as about instances when confidentiality may be violated.

According to the psychologist of the institution, before releasing photos of beneficiaries, a mutual agreement on the release is signed with them.

In case of terminating service delivery to a beneficiary, the documentation about them is stored in archive. The supervision on the archive is carried out by the Fund.

The majority of beneficiaries claim that they were not informed about the confidentiality of their personal files and documentation em, or instances when confidentiality may be violated.

## RECOMMENDATIONS

### TO THE STATE FUND FOR PROTECTION OF AND ASSISTANCE TO VICTIMS OF TRAFFICKING IN PERSONS:

- Ensure that the awareness of representatives of administrations of institutions is raised, requirements of confidentiality are observed; introduce the practice of seeking consent of beneficiary/beneficiary's legal representative before the disclosure of relevant information.

### TO ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS FOR OLDER PERSONS:

- Inform beneficiaries/their legal representative about the confidentiality of information obtained in the course of service delivery as well as on instances when the confidentiality may be violated;
- Ensure corresponding place (a room or allocated place) for individual consultations, thereby ensuring confidentiality of conversations with beneficiaries;
- Strictly observe the rule of storing personal files of beneficiaries.

## 8.9. INDIVIDUAL APPROACH IN SERVICE DELIVERY (STANDARD №5)

The service received by beneficiaries must be tailored to their special needs so that an individual approach in the service delivery works towards encouraging beneficiaries to participate in the planning of the service.

An individual plan of service must be developed within 30 days after the enrollment of a person in the institution, on the basis of assessment conducted by a social worker in view of beneficiary's needs and direct participation of the latter. Moreover, the plan must contain a clear description of the nature of service (support), the schedule of its implementation, expected results of service, identities of persons responsible for the fulfillment of the plan and their obligations.

A copy of individual plan, upon request, must be handed over to the beneficiary. It must be periodically revised/evaluated, at least once six months.

A service provider is also obliged to maintain personal files which must contain plans, notes on their implementation and achievements, information on a beneficiary's health and emotional state, socialization and other issues.

The assessment of documentation of residential institutions for older persons and in-

interviews with service providers conducted by the monitoring group revealed that the requirements of the standard concerning an individual service approach are not fulfilled in the majority of boarding houses.

**Low standards of service to older persons probably results from shortcomings in legal regulations too.** In particular, according to the decree №52/n of the Minister of Health, when enrolling a beneficiary, a person responsible for service delivery in a relevant institution is handed over, alongside the decision of the regional council (excerpt from a protocol) on the placement of an older person, copies of personal documents, including a copy of medical certificate on the health of the beneficiary and a copy of conclusion of comprehensive assessment made by a social worker. In contrast to a copy of comprehensive assessment filled in by a social worker when placing a child in an institution, a service provider of older persons, (Article 6.1.d) when admitting the latter, is handed over only a copy of a social worker's conclusion (Article 6.1.e) thereby disabling the service provider to have information about biological, psychological and social needs of an aged beneficiary. The same **decree does not envisage the development of an individual development plan by a social service. Yet another significant shortcoming is that after an older person has been enrolled in a service, the involvement of representatives of the guardianship and custodian body, the Social Service Agency, in the service delivery to older persons as well as the supervision and control thereon stops altogether.**

Personal files of beneficiaries do not contain the information on individual needs of older persons. Nor do they contain a complete set of documentation required under the standard. The personal files lack conclusions of social assessment of beneficiaries and individual service plans.

In often cases, a conclusion of a social worker is not drawn up (the boarding house My Family) whereas ones that exist are not informative. It does not reflect basic needs of older persons, aims of service and the information about the results (the boarding houses Untroubled Old Age and Diodora).

Beneficiaries are not involved in drawing up the plans.

Service providers complain that they lack sufficient knowledge for drawing up individual plans. They do not know whom to approach to get assistance in dealing with this issue. Medical certificates (Form NIV-100/a), kept in personal files of beneficiaries, do not fully reflect psycho-somatic health condition of beneficiaries. Moreover, personal documentation lacks accounts about psycho-physical health, emotional state or socialization of beneficiaries or activities undertaken by service providers during the period of service.

Although a psychologist of the **Kutaisi boarding house for older persons** intensively maintains relevant documentation, individual plans of service to beneficiaries are not/ cannot be drawn up and implemented.

Within a month of admitting a beneficiary, the psychologist evaluated psycho-emotional state of the older person and repeats this exercise periodically (once six months); however, it is not followed by the development of an individual plan or any changes to the specifics of the service.

Individual service plans are not drawn up at the **nonprofit (noncommercial) legal entity Beteli and Tbilisi Boarding House for Older Persons**. The Tbilisi boarding house has a psychologist who has the qualification of a social worker too. Upon her own initiative, the psychologist drew up a form of individual service delivery plan, but the boarding house has so far failed to introduce and use it. The delivered service is uniform for all older persons and not tailored to individual needs of beneficiaries. Beneficiaries are not involved in the service planning process. They are not provided with copies of such plans either. According to beneficiaries, they rarely meet with the psychologist of the institution (approximately, once a month). Several beneficiaries said that they had not seen the psychologists for two months. This might be explained by the fact that the psychologist, apart from her direct professional duties, virtually performs the functions of a social worker, a librarian and a cultural worker too.

The **nonprofit (noncommercial) legal entity Young Teachers' Union** draws up six-month individual service plans, as required under the standard, after the first assessment of an older person. At the same time, it is tailored to individual psycho-physical and social needs of an older person. Set goals are achieved by a multidisciplinary team and the quality of its performance is evaluated by relevant indicators.

Until 30 June 2014, the multidisciplinary service to older persons involved, in addition to a nurse, a psychologist, a social worker and an occupational therapist and the financing of this team was ensured within the scope of an additional project of the Young Teachers' Union. As of now, the service involves nurses alone. The institution periodically invites various specialists depending on the level of qualification of the staff and in accordance with the standard.

The needs arising in the course of service to beneficiaries and corresponding activities undertaken by specialists is reflected in special registries which are kept together with personal files.

Employees of the boarding house has undertaken trainings in the issues of gerontology, psychiatry, violence, occupational therapy, art-therapy, the rights of older persons and multidisciplinary care after older persons.

## RECOMMENDATIONS

### TO THE ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS:

- Ensure the development of individual service plans on the basis of assessments of social workers and in view of needs of beneficiaries;
- Involve beneficiaries in the process of developing individual service plans and provide them with copies of such plans;
- Keep the information on the implementation of individual plans as well as accounts on achievements in personal files of beneficiaries;
- Ensure the planning of measures towards the improvement of personnel's qualification.

### 8.10. CATERING (STANDARD №6)

*Aged beneficiaries of specialized residential institutions must be ensured with high-quality, safe and adequate amount of food meeting their needs.*

*Administrations of residential institutions for older persons must provide at least three-time wholesome meals to beneficiaries; in providing meals, the administrations must take into account desire, health conditions and peculiarities of religious belief of beneficiaries. Beneficiaries must be supplied with safe potable water in a sufficient amount whilst the beneficiaries with special needs must be assisted while eating.*

**The community organization Beteli in the town of Tsnori** does not observe safety rules of catering and sanitary-hygienic norms; the administration does not monitor the quality of food products; rules of food storing are violated; various types of food products (meat, fish and dairy products) are kept in one refrigerator; there is a shortage of items for preparing food (pans, cutting boards, knives, tables).

The institutions does not have a dietary menu. Personnel says that the dietary meals are prepared when needed.

**Kutaisi boarding house for older persons** observes sanitary-hygienic norms in the dining room. The kitchen has tables for different products and items are new and in a sufficient number. Products are kept according to sanitary-hygienic norms; the dining room has special washing rooms where food products and dishware are washed. Food product storages are also tidy with food products placed on special shelves. The condition of the dining room ensures safety and quality of catering.

Employees of a catering bloc are equipped with aprons and headwear.

The dining space of **Tbilisi boarding house for older persons** consists of several rooms – a kitchen, a dishwashing room and a storage for food products. A dishwashing machine is broken. Kitchen utensils and food products are washed in one sink. Sanitary-hygienic state of the dining room is unsatisfactory. All food products are prepared on one table as well as various sorts of food products (meat and dairy products) are kept in one fridge alone, therewith violating the food safety component. Kitchen inventory is outdated.

**The non-profit (non-commercial) legal entity My Family** purchases food products (flour, cereals, eggs, bread, confectionary, toasts, fat) in supermarkets whereas meat and meat products, vegetables, fish, fruit and dairy products from private persons.

The institution has a supply of certain products, however the rules of storage thereof are violated. Perishable goods – meat, fish, dairy products – are kept alongside ready-made products.

Menu is not drawn up in the institution. It lacks a cook and meals are prepared by the head of organization. Beneficiaries of the institution eat three times a day.

The kitchen of the boarding house **Untroubled Old Age** is a small room without a range hood and with the walls wet. Washed dishware is placed on an old, wet table. The items for preparation of food is not sufficient.



### **Boarding house Untroubled Old Age**

The dining room is not a separate room as the majority of beneficiaries are bedridden older persons. Five beneficiaries require assistance when eating. For those who can move freely, there is a table in a sitting room. One of the beneficiaries suffers from diabetes mellitus because, as the personnel says, he does not observe diet and ignores

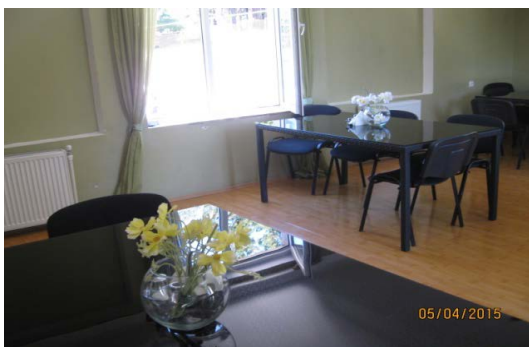


recommendations of a doctor; dietary meals are not cooked for him. Menu is not posted on a conspicuous place in the institution.

**The non-profit (non-commercial) legal entity Diodora** purchases food products several times a month. Cereals and vegetables are kept in a storage. According to the director of the institution, he and the cook are personally responsible for the operation of a catering bloc and drawing up menus. Menu is not posted on a conspicuous place but is kept in the director's office. According to the director, the menu often undergoes changes in accordance with desires of beneficiaries.

**The non-profit (non-commercial) legal entity Young Teachers' Union** keeps the catering bloc and the dining room in good shape. The kitchen and the dining room are clean and quite large. Out of 20 beneficiaries of the institution only one is bedridden and requires assistance when taking meals. The institution has a cook and an assistant to the cook.

Beneficiaries are provided with meals three times a day. Beneficiaries have beef twice a week whilst poultry and fish once a week each. There are two beneficiaries suffering from diabetes mellitus and there is no dietary menu drawn up for them. Nevertheless, according to the cook, they take dietary food.



The registry on the receipt and consumption of food products, drawn up by the Young Teachers' Union, was available during the monitoring period, listing the products given to beneficiaries by names and amounts.

The kitchen is fit with ventilation system and the institution has a sufficient amount of kitchen items.

Once a week, beneficiaries, through the cook or the assistant to the cook, may purchase, on their account, the products they want.

## RECOMMENDATIONS

TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Ensure the development of a minimum standard of catering for above mentioned institutions and approval of that standard with a corresponding normative act.

TO ADMINISTRATION OF SPECIALIZED RESIDENTIAL INSTITUTION:

- Take into consideration desire of beneficiaries when providing catering;
- Draw up a dietary menu on the basis of recommendations of a corresponding specialist, taking into account the health condition of a beneficiary;
- Ensure the compliance of a catering bloc (kitchen, dining room) with the sanitary-hygienic norms.

### 8.11. PROMOTING SOCIAL ACTIVITY (STANDARD №7)

*Beneficiaries in specialized residential institutions must participate in cultural, entertainment and other events, helping them maintain physical, social, intellectual and creative activity. To this end, the physical environment shall be equipped with resources suiting beneficiaries' interests and needs (for example, books, intellectual games, sport inventory, et cetera); TV set, computer and other appliances must be available; the establishment of close relations of beneficiaries with other members of the community must be encouraged.*

*A service provider shall offer beneficiaries various targeted events both within the service and outside it, taking into account their interests and capabilities, and facilitate their involvement in various labor activities.*

The majority of institutions does not facilitate social activity of beneficiaries, does not organize targeted events and labor activities. Equipping institutions with resources and items needed for physical, social, intellectual and creative activities is a problem as well as the lack of personnel responsible for organizing such events.

Instances were revealed of beneficiaries lacking assistive devices, forcing the majority of older persons to spend most of the time in beds with the care after them limited to meeting their physiological needs.

During the monitoring our attention was drawn to a fact that institutions do not consider physiological changes characteristic for geriatric age such as vision and hearing im-

pairments, dental problems as something that must be improved, that their treatment and the provision of assistive devices is a necessary condition for beneficiaries to adapt to daily life. Even more, according to administrations of several institutions (Diodora, My Family), beneficiaries do not express desire to use assistive devices and to undertake dental procedures. It is necessary to cover special needs of older persons and lengthy treatment with an insurance voucher.

**A high frequency of impairment/loss of vision and hearing among beneficiaries, the shortage of proper medical service and assistive devices are factors impeding communication with one another and decrease opportunities for beneficiaries to receive information and cause sensory deprivation. The latter leads to isolation from environment.**

Beneficiaries of **My Family** risk being isolated from the community due to extremely poor access road. This factor completely restricts them from movement within the community. The lack of guests and rare visits of family members are explained with poor roads by beneficiaries. Beneficiaries are not involved in cultural events organized in the community and poor roads are used as an excuse for the refusal to take them to church or medical services, in case they want to.

Based on the information obtained at **Tbilisi boarding house for older persons** it may be concluded that the involvement of the majority of beneficiaries in various activities is limited to the role of passive viewers. Targeted events are not held. According to the administration, there are instances when beneficiaries are invited to cultural events. On such occasions tickets are redistributed according to their interests, though beneficiaries were not able to recall such facts. Interviewed beneficiaries confirm that the institution is often visited by guests and various events are held (for example, on public holidays) in which several older persons take part. The remaining beneficiaries mainly act as viewers. The majority of those confined to wheelchairs cannot attend such events due to obstacles in movement.

According to the charter of Tbilisi boarding house for older persons, the service includes: the development of creative skills; the education of healthy living style and development of daily skills; the development of skills for independent living; the involvement in cultural and sport events.<sup>674</sup>

The institution does not have a concrete employee or employees in charge of the mentioned area. Consequently, beneficiaries are not encouraged to get involved in sport and labor activities. Equipping the institution with resources and items needed for physical,

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674 Charter of Tbilisi Boarding House for Older Persons, a territorial unit (branch) of the LEPL the State Fund for Protection of and Assistance to Victims of Trafficking in Persons; Paragraph 3 of Article 4; [http://www.atipfund.gov.ge/images/stories/pdf/filialebi/tbilisi\\_xandazmulta\\_pansionati.pdf](http://www.atipfund.gov.ge/images/stories/pdf/filialebi/tbilisi_xandazmulta_pansionati.pdf)

social, intellectual and creative activities is a problem. A room allocated for sport activities is on the third floor. According to an employee, it has been two years now that the room was not cleaned due to lack of interest towards it. The institution does not have a sport instructor and a labor therapy pedagogue.

The institution has a library but the position of a librarian was abolished several years ago and this function is performed by a psychologist who has put up her office in the library. By combining the duty of librarian the psychologist spends her time in an untargeted manner. The absence of librarian leads to inefficient distribution of books and newly delivered newspapers and magazines as well as impediments in systematic delivery and reading of newspapers and magazines to beneficiaries with difficulties in movement and with vision and hearing impairments. Beneficiaries sent a written request to the Ministry to reinstate the position of a librarian, however, according to the response, the addition of an employee within the existing salary fund proved impossible. There are no TV sets for every beneficiary. Print press is provided to beneficiaries in an insufficient amount. From one to five copies of each of 10 newspapers are delivered to the institution, which is not enough for 78 beneficiaries. During the monitoring one of the beneficiaries complained about not receiving print press for three months.

Entertaining, cultural and other targeted events are not conducted in **Beteli** either. The only pleasant recollection which beneficiaries hold is the visit of employees of Tbilisi City Hall on the New Year Day. According to the administration, beneficiaries do not want to participate in the events, although the interview with beneficiaries revealed the opposite. They are involved in labor activities.

Neither the library nor the sport hall operates in the institution. Beneficiaries cannot receive press. There is virtually one TV set available for them which is watched by all beneficiaries together and their individual desires in selecting TV programs are, therefore, neglected.

The situation concerning the social activity of older people in **Young teachers' Union** should be assessed positively. The institution has a small-size library and a film library; weekly press is delivered; beneficiaries have opportunities to look after a rose garden, vine yard, fruit orchard and apiary; art-therapy method is applied which means creating such conditions for older persons where they may model items, decorate them with applications and natural materials; exhibitions of these items are held periodically; various entertainment evenings are organized with the involvement of young volunteers. Tea Evening is held every Saturday during which topics selected in advance are discussed or poems are read.



### The rose garden of Young teachers' Union

Older people may participate in cultural and entertainment events at any time, upon the agreement with the administration; to independently go out of the boarding house and attend religious services (in accordance with their religious denomination), movies or theatre performances in the city of Ozurgeti. Relatives of beneficiaries visit them at the institution. Upon a request of older persons, the boarding house ensures their communication with their biological families.

The participation of beneficiaries of boarding houses **My Family** and **Diodora** in entertainment events is of fragmentary nature. The involvement of beneficiaries in targeted events outside the institutions is not supported. The institutions do not have libraries and sport halls.

As regards the means of information, My Family has only one TV set and a radio receiver (privately owned).

During the visit to Diodora, TV sets were seen in all sleeping rooms. According to the administration, printed press is delivered every week, however, the magazines seen by monitors dated 2014 only. Since the institution lacks a library, beneficiaries basically use books brought from their homes.

The dissatisfaction among the beneficiaries of **Kutaisi boarding house for older persons** in the area of social activity is caused by the limit established on temporary exits from the institution (20 days a year). According to the director of the institution, beneficiaries want the limit of 20 days, which is established under the law, to be increased<sup>675</sup> because

675 Under the Decree №01-26/n of the Minister of Labor, Health and Social Affairs, dated 2014, as a result of amending the Decree №52/n of the Minister of Labor, Health and Social Affairs, dated 26 February 2010, On the Approval of the Rule and Terms of Admittance of Persons to and Discharge from Specialized Residential Institutions, the regulations in Article 7 was changed – the rule of temporary exit of beneficiary from specialized residential institutions and according to Paragraph c.d) of Paragraph 1 of this Article, a beneficiary may be temporarily taken from the institution no longer than 10 consecutive days a year and the total of 20 days during a year. In the event this limit

this regulation becomes an impediment to the process of their socialization. Moreover, in the event this limit has been used up, the existing procedures for a consent on such a leave protracts the process of satisfying their requests (for example, when an older person wants to go to a funeral). All the above said prevents older persons from staying with their families as long as they desire or going to villages to attend important events. Thus the need of improving the existing mechanism and increasing an annual limit is obvious.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Ensure the increase of the limit of temporary exit (20 days) of beneficiaries of specialized residential institutions; improve the mechanism of obtaining consent on a temporary exit of the institution for additional days when the established limit has been used up;
- Consider an addition of a position for an employee in charge of developing of beneficiaries' skills, organizing cultural, sport and labor activities.

### TO LEPL SOCIAL SERVICE AGENCY:

- Ensure the establishment of active participation, supervision and control of social services in the process of care.

### ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS FOR OLDER PERSONS:

- Ensure the employment of relevant professionals in institutions, who are responsible for the development of beneficiaries' skills, organizing cultural, sport and labor activities;
- Ensure the availability of TV sets for all beneficiaries;
- Ensure the availability of a reasonable amount of new editions of newspapers and magazines;
- Organize group activities of beneficiaries for the aim of developing and sustaining their social and other skills;
- Develop a plan of cultural, entertainment and other targeted events;

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has been used up, a written consent of the local guardianship and custody body is required for additional days, which is issued only in case of substantiated necessity.

- Regularly hold cultural and entertainment events (discussion of films, books, outings) with the active involvement of beneficiaries;
- Ensure the operation of a library at a location easily accessible for beneficiaries;
- Develop a catalogue of books and print press to enable beneficiaries with mobility problems to choose books and magazines;
- Organize labor activity.

## 8.12. HEALTH PROTECTION (STANDARD №8)

All beneficiaries must live in an environment in which healthy way of life is encouraged and a proper attention is paid to their health condition.<sup>676</sup>

Administrations of specialized residential institutions for older persons shall, in case of need, have the delivery of medical health to beneficiaries organized, provide advice about personal hygiene and infectious diseases as well as expected consequences of use of alcohol, drugs, tobacco and other harmful substances and about healthy way of living. Medical personnel of institutions shall carry out control on infectious diseases by applying measures recommended by a doctor, also, to register incidents in a special registry, which resulted from physical injury of beneficiaries.

Service providers shall ensure contact with family/district doctors, if any.

Apart from the rule established under this standard, the decree №226/n, dated 23 July 2007, of the Minister of Labor, Health and Social Affairs of Georgia approved The Forms of Medical Documentation in Specialized Residential Institutions for Adults and the Rule of Maintaining and Completing Them. This rule is binding on all types of those specialized residential institutions for adults existing in the country regardless of their ownership and organizational or legal form, which provide primary health service to beneficiaries of these institutions.<sup>677</sup>

According to the state program for social rehabilitation and child care, one of measures of the community organizations subprogram is to deliver primary medical aid and to organize outpatient and inpatient service, depending on the needs of a target group.

676 Minimal Standards of Service to Persons with Disability and Older Persons in Specialized Residential Institutions approved by the Decree №1-54/n of the Minister of Labor, Health and Social Affairs, dated 23 July 2014.

677 <https://matsne.gov.ge/ka/document/view/71998>; The decree №226/n of the Minister of Labor, Health and Social Affairs of Georgia dated 23 July 2007. Paragraph 1, Article 1. Last retreated on 24.08.2015.

Consequently, boarding houses for older persons shall maintain medical documentation in accordance with the above mentioned rule. In particular, institutions shall maintain the following forms: a) a medical card of beneficiary (Form №1); b) registry of beneficiaries (Form №2); the rule of filling in these forms is approved under the minister's decree.

Problems with regard to the fulfillment of requirements established under the health protection standard and the decree of the Minister of Labor, Health and Social Affairs of Georgia were observed in almost all institutions.

The majority of boarding houses do not actually maintain medical documentation. Medical cards of beneficiaries are disorderly; they do not show the dynamic of treatment, lack Form №IV-100/a. Beneficiaries are not provided with advice on the issues of personal hygiene, infectious diseases, abuse of alcohol, drugs, tobacco and other harmful substances.

Due to absence of medical documentation, it is often impossible to find out whether the primary medical service is delivered to beneficiaries or, in case of need, outpatient and inpatient medical service is organized.

The problem of availability of medications necessary for beneficiaries was observed in every institution. Medications are in short supply and therefore, beneficiaries have to buy them with their money.

An important challenge is the sufficient number of medical personnel (doctors, nurses) in the boarding houses. The majority of institutions is not served by doctors and nurses round-the-clock.

The community organization **Beteli** does not virtually maintain the medical documentation. The absence of such documentation makes it impossible to find out whether the primary medical service is actually delivered to beneficiaries or, in case of need, outpatient and inpatient medical service organized. The personnel of the boarding house includes one doctor and six caregivers. It does not include a position of nurse. According to the head of the institution, a doctor arrives at the institution in the morning and in the second half of the day. He also said that the transfer of beneficiaries to hospital and continuity of medical service is ensured, when need be. The doctor of the institution said that beneficiaries receive needed medical service within the scope of state program of universal health insurance at the Arkimede Clinic LLC.

**Kutaisi boarding house for older persons** have the total of 86 beneficiaries of which 12 persons are registered in psycho-neurological clinic, seven are confined to wheelchairs, 20 persons are bedridden and 15 beneficiaries require hygienic diapers.

The medical personnel of the institution counts one doctor and four nurses.



The institution has a medical office fit with medical items: a medical sofa, a cupboard for medications, blood pressure monitor.

Medical cards of beneficiaries, various medical registries as well as an iron cupboard for medications under a special control are all kept in the office of chief doctor.

A storeroom for medications is set aside in the institution, in which medications are kept in cupboards and refrigerator.

Kutaisi boarding house for older persons maintains registries on a daily basis. This institution observes the Forms of Medical Documentation in Specialized Residential Institutions for Adults and the Rule of Maintaining and Completing Them.

The problem of shortage in medications was observed in the boarding house. Beneficiaries (G. P.; D. E.; Ts. K.; F. M.) purchase medication with their money.

The medical personnel of **Tbilisi boarding house for older persons** comprises a doctor and six nurses.

Medical cards of beneficiaries are disorderly; they do not show the dynamic of treatment, lack Form №IV-100/a. According to medical personnel, the institution had no doctor over the period from August to December 2014. During the monitoring it was found out that the new doctor was appointed a month before and was making efforts to put the medical cards to rights. However, according to the doctor the process is so labor consuming that it is impossible for only one person to tackle this problem.

Primary medical service is not delivered in the boarding house **My Family**. The medical personnel does not serve the institution on a regular basis. In emergency cases the institution calls in a district doctor or ambulance. There is no one with medical background in the boarding house; beneficiaries are nor advised on personal hygiene, infectious diseases, abuse of alcohol, drugs, tobacco and other harmful substances.

The monitoring of the boarding house **Untroubled Old Age** in Bodbe revealed that medical documentation is not maintained in accordance with the established rule. The medical personnel of the institution has no information about the type of documentation it is supposed to maintain. The existing medical documentation contains scarce information. In some cases recommendations of Form №IV-100/a concerning the intake of medications or further dynamic monitoring were not taken into account. When studying the condition of beneficiaries, attention was drawn to a fact that diagnosed chronic diseases such as glaucoma, cataract, post-stroke condition, require constant medical supervision and care. The need of palliative care is also obvious in some cases.

Almost all beneficiaries buy medications themselves (Mezim Forte, Senadexin, sedative and other symptomatic medication).

Medical documentation in **non-profit (non-commercial) legal entity Diodora** does not reflect the health condition of beneficiaries and they are not maintained in accordance with the rule established under the law.

The head of the institution said that beneficiaries receive primary health care from a family doctor.

The process of medication intake by beneficiaries is not properly organized. Moreover, beneficiaries have to buy medications themselves.

**Young teachers' Union** maintains register of personal files of beneficiaries. The institution has an invited doctor; there is a doctor's office where all necessary registries and medications are kept. The institution employs a family doctors who makes notes according to the need dan complaints of beneficiaries. A registry reflecting the spending of medications is also maintained. An incident registry of the institution registers facts of death.

When needed, the delivery of medical service to beneficiaries is ensured.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Establish the number of medical personnel (doctor, nurse) needed in institutions, under the standard; describe their rights and obligations;
- Ensure the study of health condition of beneficiaries in boarding houses for older persons and objectively identify needs of medical service both upon the admittance and thereafter, stage by stage;
- Ensure the conformity of medical services within the framework of state program of universal health insurance with the needs of older persons and availability of medication treatment.

### ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS FOR OLDER PERSONS:

- Ensure the observance of the rule of medical documentation forms, their maintenance and filling in;
- Ensure timely delivery of primary medical care to beneficiaries;
- When need be, have medical service (outpatient/inpatient) to beneficiaries organized.

### 8.13. FEEDBACK AND COMPLAINT PROCEDURES (STANDARD №9)

According to the standard, beneficiaries of community organizations and their legal representatives must have the right to complain about the quality and form of service delivery and to provide feedback. Administrations shall: establish a simple and clear feedback and complaint procedure which must be defined in the internal regulation and made known to beneficiaries as well as any person engaged in the service delivery; create conditions for confidential feedback from beneficiaries about the structure and content of service; regularly discuss comments of beneficiaries at least once a month; take into account opinions and attitudes of beneficiaries when discussing issues related to them and ensure their involvement in a decision making process; register all reasonable instances of complaint/feedback.

Standards of feedback and complain procedures are not observed in the majority of institutions. A feedback and complain procedure defined in an internal regulation is not detailed and easily comprehensible. Older persons are not sure about the confidentiality of feedback and are not aware of who has access to materials placed into the “complaints box,” who discusses them and takes relevant decisions on them. Consequently, the feedback and complain procedures established under the standard are not efficient in practice.

Based on interviews with beneficiaries one may say that they do not have information about their rights, the forms and content of offered service and therefore, they feel nihilistic and think that they have no other option but to be content with minimal living conditions and food. The majority of them did not even been struck by the idea to express their opinion or demand, even more, they avoid thinking about that. In case of certain disagreement arises, it is solved on a personal level and not in accordance with corresponding procedures. A “complaints box” does not exist in several institutions (Diodora, My Family, Beteli).

According to the director of the nonprofit (noncommercial) legal entity, the boarding house for older persons and persons with disability, My Family, beneficiaries have never complained about the form and content of the service. They only express dissatisfaction with one another about everyday issues. On such occasions, the director conducts individual consultations with them and settles the relations.

Interviews with beneficiaries showed that they are not aware of their rights, the form and content of offered service. The institution does not have the internal regulation which would spell out a feedback and complaint procedures.

The internal regulation of the **nonprofit (noncommercial) legal entity Diodora** regulates both written and oral feedback and complaint procedures, however, a “special sealed box placed on a conspicuous and easily accessible place” mentioned in the procedures

can be seen nowhere in the institution. The internal regulation details the opening procedure of the abovementioned box and the rules and terms of considering them by an “authorized group;” however, it is not clear who is implied under this “authorized group.” The director of the institution explains that no fact of expressing an opinion, dissatisfaction or feedback by beneficiaries have occurred and hence, no need of registry of such incidents.

All the above said provides a ground to conclude that that feedback and complaint procedures set forth in the internal regulation are not applied in practice, beneficiaries are unaware of such procedures and have no opportunity to express their opinions or dissatisfaction.

The administration of the **nonprofit (noncommercial) legal entity Beteli** does not have a simple and clear complaint and feedback procedure developed, which would be reflected in the internal regulation in accordance with the requirements of the standard. Moreover, the interviews with two beneficiaries of the institution made it clear that they are ignorant of this issue; certain disagreements are tackled on a personal level rather than in accordance with certain procedures. Beneficiaries do not have an opportunity to express their position on the structure and content of the service either.

Beteli lacks a complaints box; nor is the confidential feedback possible. Consequently, no discussion of beneficiaries’ comments takes place as required (at least once a month) and no registration of all reasonable instances is made.

In compliance with the internal regulation, **Kutaisi boarding house for older persons** has two boxes for remarks and recommendations. Beneficiaries are aware of them, but interviews with representatives of the institution and its beneficiaries revealed that the latter rarely use this mechanism and instead, directly approach relevant persons with their demands. One of factors which may nudge them towards such a behavior is the locations of these boxes – they are placed in a territory which is never empty (for example, in the dining room) and hence, cannot ensure the confidentiality.

Beneficiaries do not trust in anonymity of feedback and are not aware of who has access to that material, who considers them and takes corresponding measures. In several beneficiaries’ opinion, the administration reads those letters itself and they do not want to strain relations with it. Representatives of administration explain that the special boxes are opened in accordance with the requirements of the internal regulation and that they do not read the information contained therein.

The inspection of the special feedback registry showed only positive information written in it (praise of employees). At the same time, those notes are, in most cases, made by same beneficiaries; comments of employees of the boarding house toward the head of

the institution are written in one handwriting with various names and surnames indicated under the texts. These circumstances cannot ensure the application of the registry as intended and give rise to doubts about the objectivity of data therein as well as about the implementation of the procedure in response to a complaint in accordance with the requirements of the standard.

If a beneficiary is unhappy about the quality of service or any other issue, Kutaisi boarding house for older persons sets up a commission comprising a corresponding specialist (doctor, psychologist), a representative of the administration, a beneficiary of the institution. The decision making process involves the beneficiary in question.

When receiving information about an alleged facts of violence, the administration immediately undertakes corresponding measures. It maintains a round-the-clock contact with the Fund; in case of need it contacts local self-government bodies, patrol police, a duty department of criminal police. It must be noted, however, that the registry of violent facts is empty in this institution.

Article 6 of the internal regulation<sup>678</sup> of **Tbilisi boarding house for older persons** envisages three feedback/complaint procedures: verbal, written and anonymous. The internal regulation provides for the availability of complaints box and the rule of applying it.

The deputy director of the institution stated that the administration has not instructed the beneficiaries about the application of feedback procedures and the information about that was spread by beneficiaries themselves.

Open comments of beneficiaries are discussed once a month at a common meeting of beneficiaries. Opinions of beneficiaries as to whether the administration takes into account decisions on the common meeting are controversial. Protocols of decisions of common meeting are not available as well as the documentation reflecting measures implemented in response. As regards the comments/complaints in the anonymous box, they are studied only by the monitoring and coordination department of the Fund and they are not available to the administration of the institution.

At the initiative of beneficiaries, a consultative body of older persons of Tbilisi boarding house for older persons has been set up in the institution. The main function of this body is to study living, leisure and health conditions of beneficiaries, the content of problems existing among them, personal or other problems between the beneficiaries and employees of administration, the quality of rendered service, the course of psycho-social rehabilitation of beneficiaries, and quality and number of measures undertaken by the administration for the labor activity, leisure and entertainment of benefi-

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678 Internal regulation of territorial units (branches) of LELP the State Fund for Protection of and Assistance to Victims of Trafficking in Person.

ciaries. The complaints box is installed in the accessible place for the beneficiaries, the so-called telephone room from where one may contact the Office of Public Defender of Georgia or supervisory body; however the beneficiaries with mobility problems are not able to use the box without an assistance from the administration.

The majority of beneficiaries communicate their complaints directly to the administration; they virtually do not use the feedback registry and complaints box. Since May 2014, there has been only one note made in the feedback registry.

The majority of interviewed beneficiaries have some information about the feedback and complaints procedures, however they are not aware what specifically the mentioned rules imply. All of them declare that they were not informed about the feedback/complaints procedures.

The **nonprofit (noncommercial) legal entity Young Teachers' Union** observes the requirements of the standard. Beneficiaries, their legal representatives and persons engaged in providing service are aware of the feedback and complaints procedures which are detailed in the internal regulation of the institution. According to this document, various forms of feedback and complaints are established: verbal, written and anonymous.

The boarding house has the so-called complaints box, maintains the registration of complaints, opinions, and comments and discusses them. However, beneficiaries show little activity during the exercise of the rights granted to them within the scope of this standard.

The administration and personnel as well as beneficiaries of the **nonprofit (noncommercial) legal entity Untroubled Old Age** do not possess information about the feedback and complaints procedures. The internal regulation does not contain this information. Although the complaints box exists it is not used. The service provider does not maintain the register of feedback and complaints cases.

## RECOMMENDATIONS

### TO THE STATE FUND FOR PROTECTION OF AND ASSISTANCE TO VICTIMS OF TRAFFICKING IN PERSONS:

- Ensure smooth operation of feedback and complaints mechanism in the branches of the Fund and an opportunity of anonymous feedback.

### TO ADMINISTRATION OF SPECIALIZED RESIDENTIAL INSTITUTIONS

- Ensure the observance of feedback and complaints procedures, including an

opportunity for anonymous feedback and increase the level of awareness of this issue among beneficiaries;

- Maintain the registration of all reasonable instances of feedback and complaints.

#### 8.14. PROTECTION AGAINST VIOLENCE AND DISCRIMINATION (STANDARD №10)

Every beneficiary shall be protected against any form of violence (physical, psychological, sexual economic) and coercion. They shall be provided with equal opportunity to enjoy service.

Service providers must be aware of and guided by effective legislation (Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims). Moreover, beneficiaries must be provided with the service tailored to their individual needs and capacities in the delivery of which any beneficiary must be protected against any discrimination as well as biased or negative attitude or action which may occur on the part of service provider, other beneficiary or person.

Administrations of residential institutions of older persons shall ensure the implementation of adequate measures to support the psycho-social rehabilitation of beneficiaries. Every fact or statement of violence as well as measures undertaken to counter it shall be registered in a special registry.

The monitoring revealed incidents of mutual violence and discrimination among beneficiaries. The facts were observed that may be qualified as improper treatment of older persons. On certain occasions beneficiaries lacked proper care, were in degrading conditions.

In **Tbilisi boarding house for older persons** the problem of communication of caregivers with beneficiaries was seen, which was expressed in addressing beneficiaries in a rude way and loud voice. This fact is evidenced in a letter of the psychologist to the director of the boarding house, dated 17 October 2014, asking for a consent from the director to conduct a special training in communication for caregivers to tackle the mentioned problem.

Beneficiaries note the lack of generous treatment and attention on the part of administration and service personnel.

Despite the claim of administration that for the sake of informing the beneficiaries, the

information on procedural issues in case of facts of violence is put up in the entrance to the institution, we were not able to find such a visual material in the building.

The administration of the institution maintains a special registry of facts of violence, though no fact of violence is registered there.

The administration failed to present a registry reflecting the facts of violence and the measures undertaken in response. Moreover, no measure is undertaken for facilitating the psycho-social rehabilitation of beneficiaries.

Several beneficiaries of the Tbilisi boarding house, who are confined to wheelchairs, say that they cannot participate in collective outings for years as the microbus owned by the boarding house is not adapted to the needs of handicapped people; this may be qualified as discrimination on the ground of disability.

None of older persons confirm any fact of physical, psychological, sexual or economic abuse on the part of administration or other beneficiaries.

Nor do beneficiaries of **Kutaisi boarding house for older persons** confirm any fact of physical, psychological or sexual abuse on the part of administration, though some of them complain about rudeness of service personnel. Beneficiaries recall facts of lending money to service personnel but never an incident of their money being misappropriated.

The level of care about security, emotional, psychological wellbeing and mental health of beneficiaries as well as of knowledge of legal regulations against violence and standards among service providers in boarding houses **My Family**, **Untroubled Old Age** and **Diodora** is extremely low. Beneficiaries are not informed about their rights.

The head of the boarding houses **My Family** admits that he is ignorant of regulations and standards. Moreover, the director does not maintain written account of measures undertaken in response to facts of violence and excludes both the violence on the part of beneficiaries and among beneficiaries; however, the subsequent interviews with the director and the beneficiaries reveal that in recent past, after the involvement of LEPL Social Service Agency, a (male) beneficiary of the boarding house was transferred to another boarding house because “he systematically violated the regime, leaving the boarding house and staying nights elsewhere or returning inebriated and starting to fight,” threatening and offending female beneficiaries. However, the head/caregiver of the institution did not qualify this particular case as violence and did not recount it in writing.

Even though the director of the boarding house **Diodora** is aware of legal regulations and has a registry for “written description of measures undertaken in response to facts



of violence,” he denies facts of violence in the boarding house and no such fact is registered in the registry.

The head of the boarding house for older persons, **Untroubled Old Age**, claims that he knows legal regulations but does not have a “written account of measured undertaken in response to facts of violence;” a brief handwritten description of violence among beneficiaries written on a sheet of paper, often without names and dates indicated, takes on the form of a written pledge of a beneficiary to behave him/herself, or an application written by a beneficiary or the director of the boarding house to the head of police, or a protocol drawn up by a caregiver which do not comply with the standards established by the state.

Beneficiaries of **Young Teachers’ Union** express their satisfaction and gratitude towards service providers and exclude psychological or physical violence on their part.

The prevention of violence in the institution complies with the standards, registering non-standard situations (for example, quibble among beneficiaries, and emotional reaction of older persons to the transfer to a hospital or the need to change the room) as well as measures undertaken by caregivers in a special registry.

### Improper Treatment

Each state shall prevent acts of other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.<sup>679</sup> The national preventive mechanisms, within its power, examines the treatment of the persons deprived of their liberty for their protection against torture and other cruel, inhuman or degrading treatment or punishment.<sup>680</sup>

Within the framework of the monitoring, the national preventive mechanism identified several facts which may be qualified as inhumane or degrading treatment of older persons.

### Case 1.

One of beneficiaries (bedridden) of non-profit (non-commercial) legal entity Diodora cannot use crouches due to the amputation of left lower limb below the knee. An effort to use prosthesis by the person, before being admitted to the boarding house, proved unsuccessful and since then the specialist neither assessed the condition of the bene-

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679 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; paragraph 1, article 15.

680 Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 17.

fiary nor provided any corresponding assistance. To use bathroom for hygienic purposes, the beneficiary has to crawl on his knees whilst due to difficulties in movement, he has meals in his bed. The issue of buying a wheelchair for him has not been raised; nor has the beneficiary asked for it because he is sure that he will not be able to use the wheelchair because the environment is not adapted to the needs of a person using wheelchair.

### **Case 2.**

A blind beneficiary of non-profit (non-commercial) legal entity Untroubled Old Age lives in a 6,5 square meter room with two beds; he cannot leave the room and lies on a dirty mattress without bed linen. A toilet is arranged in the room, representing a seat with a plastic bucket underneath. The older person satisfies his physiological needs right in the room. The room lacks a piece of furniture to keep his personal items and given that there are two beds in the room, there is actually no free space left to move around. The room does not have an outward window which would have allowed natural ventilation and light. The room does not have an artificial ventilation either. There is a very unpleasant smell in the room and no sanitation. According to a beneficiary female living in the neighboring room, the handicapped beneficiary often falls down to the floor, cannot get up independently and asks for help shouting; the shout wakes the lady up and she often has to help the neighbor without anyone else's help. It is noteworthy that the handicapped beneficiary was transferred to the boarding house from a mental clinic. Even though pursuant to Form №100 it was recommended to continue outpatient psychiatric treatment, the beneficiary has not received adequate psychiatric assistance; he is not under a dynamic supervision of psychiatrist and his treatment is limited to taking antidepressant drug before sleep. The service provider found the solution to the problem by discriminating the beneficiary with grave, psycho-somatic health disorder and placing him in isolated, degraded conditions, explaining this by the desire of the beneficiary.

### **Case 3.**

The monitoring revealed that beneficiaries of the non-profit (non-commercial) legal entity Diodora take a bath with the assistance of female caregivers (there are no male caregivers in the institution). The head of the institution does not deem it necessary to take into account gender issue, thereby putting both beneficiaries and caregivers in degrading conditions.

#### Case 4.

Three beneficiaries of boarding house Diodora have symptoms of serious mental disease associated with grave somatic disorder; however, no comprehensive psychiatric assessment has been conducted on them; nor have they received any relevant assistance; this led to such aggravation of the mental health of one of these beneficiaries that he showed behavioral disturbance – was aggressive against other beneficiaries; as a result he was put in a mental hospital for 12 days. The director of the institution did not receive the Forms №100 describing the undertaken treatment and is not aware of either the diagnosis or the need to continue psychiatric help. The beneficiary has been in the boarding house for the second day and has revealed signs and symptoms of psychosis, felt fear; his treatment is limited to taking a drug Donormylm<sup>681</sup> “administered” by the director of the boarding house, before going to sleep and the beneficiary does not receive adequate psychiatric care that aggravates the condition of not only the beneficiary but other beneficiaries too.

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits inhumane and degrading treatment. Degrading treatment is that which is said to arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them. This has also been described as involving treatment such would lead to breaking down the physical or moral resistance of the victim.”<sup>682</sup>

In the case of *Price v. The United Kingdom*, the European Court of Human Rights held that the restriction of freedom (in this particular case in the specialized residential institution) of a disabled person in conditions where he is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3 of the Convention.<sup>683</sup>

In the case of *Vincent v. France* the judge held that even in the absence of direct intention of the administration, the restriction of freedom of a person with disability (in wheelchair) in conditions where he is unable to move independently constitutes degrading treatment.<sup>684</sup>

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681 Donormyl - Doxylamine (Doxylamine succinate) antihistamine (anti-allergy) drug of systemic use over-the-counter drug).

682 The prohibition of torture - A guide to the implementation of Article 3 of the European Convention on Human Rights; Aisling Reidy; Human rights handbooks, No. 6; [<http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-06%282003%29.pdf>]; *Ireland v. the United Kingdom*, p. 66, §167. [[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57506#{"itemid":\["001-57506"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57506#{)]

683 *Case of Price v. The United Kingdom*, app. No. 33394/96, 10 July 2001, par. 30; [[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59565#{"itemid":\["001-59565"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59565#{)]

684 *Case of Vincent v. France*, app no. 6253/03, 24/10/2006;

The state shall protect the health of persons whose freedom is restricted. Consequently, in the case of *Keenan v. The United Kingdom*, the European Court of Human Rights also qualified inadequate reaction to the deterioration of mental health of a detained person as inhumane and degrading treatment.<sup>685</sup>

The monitoring group believes that keeping the above older persons in such conditions constitutes inhumane and degrading treatment and requires immediate reaction on the part of the responsible entities.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Ensure identification of and adequate reaction to the facts of inhuman and degrading treatment of beneficiaries in specialized residential institutions for older persons;
- Ensure the communication of information about legal regulations against improper treatment, violence and discrimination to specialized residential institutions for older persons and the establishment of effective system of supervision on their protection;
- Assess risk factors of violence and improper treatment in the institutions to prevent similar facts.

### TO ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS FOR OLDER PERSONS:

- Ensure the delivery of service tailored to individual needs and capacities of beneficiaries;
- When delivering service ensure the protection of beneficiaries against discrimination as well as biased or negative treatment or action;
- Ensure the implementation of appropriate measures to support psycho-social assistance to beneficiaries;
- To register in writing all facts of violence and measures undertaken in response thereof in a special registry.

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685 *Case of Keenan v. The United Kingdom*, App. no. 27229/95, 3 April 2001, par. 111 [<http://hudoc.echr.coe.int/eng?i=001-59365>]

## 8.15. REQUIREMENTS TO PERSONNEL (STANDARD №11)

*The service in specialized residential institutions must be rendered by a sufficient number of employees with adequate qualification. At least one caregiver shall take care of seven beneficiaries incapable of self-attending themselves and 15 beneficiaries of capable beneficiaries. This requirement shall be binding on Tbilisi and Kutaisi boarding houses for older persons starting on 1 January 2017, whilst it is binding on community organization from 1 September 2015.*

*Administration of institution shall ensure regular supervision of employees and opportunities for their professional development.*

The assessment of documentation of residential institutions for older persons as well as interviews with service providers and beneficiaries reveal that boarding houses for older persons (save Young teachers' Union) does not have sufficient number of employees with adequate qualification. Although a certain number of the requirements to personnel envisaged in Article 3 of the Decree №01-54/n of the Minister of Labor, Health and Social Affairs, dated 23 July 2014, become binding on service providers registered within the state program, who fall short of the standards, from 1 September 2015 and for Tbilisi and Kutaisi boarding houses for older persons starting on 1 January 2017, the monitoring group believes that the number of personnel must be proportionate to the needs of beneficiaries. The shortage of employees leads to improper service to older persons and this issue requires immediate resolution.

It should also be noted that the standard does not apply a uniform approach to regulating the obligation of hiring the personnel of concrete profession. Internal regulations of the branches of State Fund for Protection of and Assistance to Victims of Trafficking in Persons (Tbilisi and Kutaisi boarding houses) established that the institutions must have: head of a branch; deputy head of a branch; administrator; accountant; doctor; senior nurse; psychologist; caregiver; housekeeper; cook; Assistant to cook; cleaner; guard; driver. However, there are instances when in community organizations one person combines functions of several employees (for example, in My Family, Diodora, Tbilisi boarding house for older persons, Untroubled Old Age, et cetera) which makes us think that one person responsible for radically different functions cannot ensure proper fulfillment of his/her duties. Even more, some institutions do not have even a single employee with medical background and a psychologist; this gives rise to problems in the process of serving older persons.

Heads of institutions and other employees have not undertaken a professional training in care and human rights. Entrusting the care of older persons to community organizations by the state is not conditional on professional training whilst the guardianship and custody body has not demanded from service providers that they undertake professional training in the issues of older people and has not taken care to organize their training

either. Social workers rarely visit houses for older persons. Consequently, they do not participate in assessing individual needs of beneficiaries, drawing up plans of individual development of older persons and individual psycho-social rehabilitation programs. They do not participate in the supervision of the service either.

According to the information of the Ministry of Labor, Health and Social Affairs,<sup>686</sup> measures designed for the retraining and upgrade of qualifications of personnel employed in community organizations are implemented by service providers themselves under the supervision of the Ministry. However the personnel of the institutions do not confirm any fact of them being provided with training of any type (the exception is non-profit (non-commercial) legal entity Young Teacher's Union), though almost all of them are willing to engage in such activity and request assistance in organizing it. For example, according to heads of Diodora and Untroubled Old Age, the professional development of employees of the institutions are impeded due to lack of corresponding information. They request training from relevant bodies, at which detailed information about obligations of community organizations will be communicated.

According to the official staff quota, Tbilisi boarding houses for older persons must have 20 caregivers though in reality there are only 16 caregivers working in four shifts. Based on the information collected during the monitoring we may assume that the remaining four employees actually perform other functions (laundry, assistant in hygiene, nurse and hairdresser). According to the administration, five caregivers have the qualification of nurse and the schedule envisages the presence of one of them at night.

The institution has a psychologist who is responsible also for the functions of librarian, which makes us conclude that a person responsible for radically different functions cannot ensure proper fulfillment of none of his/her duties.

The majority of interviewed beneficiaries are happy with the staff, however the exception is people with disabilities who require additional care. For their part, caregivers are dissatisfied with difficult working conditions and inadequate labor reimbursement.

The activity of the personnel is supervised by the director of the institution; at the same time, according to the administration, a commission (from the Fund) carries out a planned inspection of the performance of the institution once a three months and also unplanned ones. It is worth mentioning that the personnel of the institution does not have information about such inspections. Training for the professional development of employees is not conducted.

**Beteli** has one doctor who works part time and six caregivers who are nurses by profession and at the same time, perform the function of cleaners too. The institution counts

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686 A letter N01/26994 of the head of social protection department of the Ministry of Labor, Health and Social Affairs, dated 20 April 2015.

16 beneficiaries. According to the manager, six of them require special care. Two caregivers work in shifts as required by the standard. It should be however taken into account that caregivers perform functions of nurse and cleaner and when need be, of hairdresser too. Training for the professional development of employees is not conducted.

**Untroubled Old Age** has eight employees including the managing director, cook, doctor, driver and three caregivers, which is not sufficient taking into account beneficiaries' incapability to take care of themselves. Personnel is not qualified and they are not engaged in activities oriented on the upgrade of qualification (training, working meetings) which would ensure the improvement of the quality of service to beneficiaries.

Five beneficiaries in the institution are mainly bedridden with a caregiver assisting them in taking meals. Bedridden beneficiaries of Untroubled Old Age require additional service staff and the shortage of the latter is especially obvious where palliative care is necessary. Consultation of specialists is absolutely unavailable for bedridden beneficiaries.

The boarding house Diodora has six employees (director, accountant, guard, three caregivers). According to the administration, the professional development of employees is impeded by the lack of relevant information. They request that relevant bodies organize training and provide training participants with concrete information about obligations of such type of organizations. The administration regularly conducts the supervision of the personnel. Employees cannot recall a fact when a remark was followed by the improvement of situation.

It is noteworthy that the father of the director of Diodora lives in the institution (is bedridden) although he is not a beneficiary. This is because Diodora operates in a building owned by him. The monitoring group observed the instances when caregivers of the institution attended him just like the beneficiaries of the institution although caregivers were not obliged to do so. Therefore, we believe that in the conditions of shortage of staff, caregivers spend their working hours on something which is not their official duty thereby depriving beneficiaries of community organization of a portion of care.

The boarding house for older person, **My Family**, employs only one person who is the head of the institution and at the same time, performs the functions of a caregiver, cook, nurse and other needed personnel without a relevant qualification. Given that at the time of monitoring this institution counted six beneficiaries, timely delivery of relevant service was associated with certain difficulties. According to the administration, the boarding house is served by a psychologist who does not have an official labor contract.

**Young Teachers' Union** is served with a multidisciplinary team comprising a social worker, a psychologist, an occupational therapist and a doctor. The service of multidisciplinary team envisages the assessment of needs of older persons and their families and

consultations to them. Caregivers are always present in the institution (six caregivers; two caregivers work in shifts from 8:30 a.m. to 11:00 p.m.) and they are responsible for working with older persons in accordance with individual plans drawn up by a team of specialists and the improvement of their social environment.

The majority of employees of the institution are nurses by qualification. The personnel undertakes systematic trainings to improve their qualifications and participates in working meetings which are conducted by invited psychologists and therapists.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Ensure the compliance of degree of training of professional personnel with international human rights standards and requirements of standards defined by the state legislation;
- Ensure the regular planning and conduct of events for the improvement of qualification of the personnel of residential institutions for older persons;
- Ensure the development of educational-methodological training programs for the service personnel of institutions for older persons in the issues of human rights, maintenance of documentation, delivery of service and monitoring of health as well as protection against violence and discrimination;
- Support the increase in the number of personnel, including the availability of the service of doctor, psychiatrist, social worker, psychologist in every institution.

### TO ADMINISTRATIONS OF SPECIALIZED RESIDENTIAL INSTITUTIONS:

- Ensure the employment of sufficient number of staff (doctor, psychologist, person responsible for organizing cultural, sport and labor activities, et cetera) necessary for the delivery of quality service;
- Ensure the compliance of the number of caregivers with the standard.



## 9. CHILDREN’S RIGHTS MONITORING IN BOARDING HOUSES RUN BY THE GEORGIAN ORTHODOX CHURCH AND THE MUSLIM CONFESSION

### 9.1. INTRODUCTION

In the period between 23 February and 15 March 2015, the Special Preventive Group under the auspices of the Public Defender acting within the mandate of the National Preventive Mechanism, together with the Center of Children’s Rights at the Public Defender, monitored juveniles’ boarding houses run by the Patriarchate of the Georgian Orthodox Church and the Muslim Confession of Georgia.

The monitoring was carried out in the following institutions:

1. Not-for-profit (non-commercial) legal entity “St. Ilya the Right College Preparatory Boarding School in Stepantsminda”, the Patriarchate of the Georgian Orthodox Church;
2. Not-for-profit (non-commercial) legal entity “St. Nino Boarding House for Orphans, Waifs and Children in Need of Care”, the Patriarchate of the Georgian Orthodox Church;
3. Not-for-profit (non-commercial) legal entity “St. Apostle Matthias Foundation’s Boarding School in Village Feria”, the Patriarchate of the Georgian Orthodox Church;
4. Girls Boarding House in Village Feria, the Georgian Muslims’ Association;
5. Boys Boarding House in Village Feria, the Georgian Muslims’ Association;
6. Boys Boarding House in Kobuleti, the Georgian Muslims’ Association;
7. Rehabilitation Center for Children and Adolescents in Bediani, the Patriarchate of the Georgian Orthodox Church.

This is the Public Defender’s first endeavor of its kind within to inspect the human rights situation in the above-listed boarding facilities, identify challenges and develop recommendations to address the challenges. We note with satisfaction that the boarding schools and boarding houses run by the Patriarchate of the Georgian Orthodox Church and the Georgian Muslim Confession demonstrated their readiness to cooperate with the monitoring group in carrying out their mission the respective institutions. Since the mandate of the National Preventive Mechanism envisages carrying out monitoring in

both State and non-State institutions, it is important that the Mechanism be given the possibility to regularly monitor such institutions.

In conducting their activities under the Organic Law on the Public Defender, the Monitoring Group was guided by the Georgian Constitution, the United Nations Convention on the Rights of the Child and applicable normative acts.<sup>687</sup> The monitoring was conducted on the basis of a tool developed according to the standards enshrined in the UN Convention on the Rights of the Child, the relevant recommendations of the Committee on the Rights of the Child and the Council of Europe, and the State Childcare Standards.

Pursuant to Article 2(1) of the Convention on the Rights of the Child, States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind. According to Article 3(1) of the Convention, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

According to Article 20 of the Convention on the Rights of the Child, a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. Such a child must be provided by the State with alternative care, including foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. It follows from the spirit of the Convention on the Rights of the Child that the use of residential care should be limited to cases where such a setting is specifically appropriate, and in his/her best interests.<sup>688</sup> Facilities providing residential care should be small and be organized around the rights and needs of the child, in a setting as close as possible to a family or small.<sup>689</sup> In countries where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy. States should establish care standards to provide for individual care in small groups. States should evaluate large residential facilities (public or private) against childcare standards but decisions regarding the establishment of, or permission to establish, new residential care facilities, should take full account of this deinstitutionalization objective and strategy.<sup>690</sup>

In pursuance of these requirements, Georgia did make certain steps to facilitate to the deinstitutionalization process. By its Individual Order no. 762 dated 24 April 2013, the

687 Law on Social Assistance; Law on Child Adoption and Foster Care; Joint Order of the Minister of Labor, Health and Social Protection, the Minister of Interior, and the Minister of Education and Science no. 152/N-496-45/N dated 31 May 2010 approving Child Protection Referral Procedures; Order of the Minister of Labor, Health and Social Protection no. 52/N approving “Rules and Conditions of Admission to and Discharge from Specialized Institutions dated 26 February 2010

688 UN General Assembly resolution – “Guidelines for the Alternative Care of Children” (2010), para. 21

689 *Ibid.* para. 123

690 *Ibid.* para. 23

Government of Georgia approved a Child Welfare and Protection Action Plan for 2012 – 2015. The purpose of the Action Plan is to ensure that every child is protected from violence and neglect and has the opportunity of individual and positive psychosocial development in a family or a close-to-family setting. As part of the deinstitutionalization process, small family-type children’s homes were established. Despite these steps, large residential care facilities still exist in Georgia and the task of ensuring individual care to children in a small group setting remains unfulfilled. One of the measures to conclude the deinstitutionalization process and to expand the alternative care service is evaluation and optimization of children’s homes. Hence, it is important to timely evaluate compliance with licensing conditions and State Childcare Standards and to help encourage the licensing process.

The Public Defender wishes to emphasize that, in view of the economic hardship and the challenges existing in respect of children’s alternative care in Georgia, it is in the best interests of children that the State develop a consistent policy of deinstitutionalization and implementation of the Convention on the Rights of the Child.

States’ efforts directed at children’s welfare and harmonious development should include legislative and administrative measures, putting in place effective legal remedies, establishing a dialogue with all the stakeholders, development of a comprehensive national strategy, coordination with the interested parties of measures aimed at protection of children’s rights, facilitation to provision of services by private entities in observance of the requirements of the Convention on the Rights of the Child, setting up a mechanism to monitor the provision of services and training and capacity building of persons involved in the childcare process.<sup>691</sup>

Mindful of these requirements, our monitoring was aimed at, first, evaluating compliance with the State Childcare Standards at boarding schools and boarding houses run by the Patriarchate of the Georgian Orthodox Church and the Muslim Confession in Georgia and, secondly, evaluating the State’s efforts directed at promoting the fulfillment of these standards. Fulfillment of the recommendations suggested in this Report largely depends on whether the State manages to have consistent policies.

## 9.2. INTERNAL REGULATIONS AT THE FACILITIES

Article 3(3) of the Convention on the Rights of the Child stipulates that the institutions, services and facilities responsible for care and protection of children shall conform to the standards established by competent authorities.

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691 Committee on the Right of the Child, General Comment No. 5 (2003) “General measures of implementation of the Convention on the Rights of the Child”, CRC/GC/2003/5

According to the “Childcare Standards: Technical Regulations” (Standard 1), “Sharing of information by the service provider with interested persons facilitates to properly meeting the needs of beneficiaries and to making appropriate decisions.”<sup>692</sup>

The boarding facilities in Feria and Ninotsminda have provided easy-to-understand information about themselves as service providers, the facility’s address and the target groups. The schools also shared their teaching programs including methods of instruction and daily agenda.

**Licensing.** Under the Law on Licenses and Permits, educational activity is subject to licensing. The Law on Licensing Educational Activity further explains that the relevant licenses are issued by the relevant agency of the Ministry of Labor, Health and Social Protection.

The Law on General Education defines boarding schools as specialized education institutions where the teaching and upbringing process is regulated by an order of the Minister of Education and Science.

Of the institutions monitored, the boarding facilities in Feria and Stepantminda – both run by the Patriarchate of the Georgian Orthodox Church – provide both educational and boarding services. Other institutions are providing boarding only.

Of the boarding schools run by the Patriarchate, only the Orthodox Boarding School in Feria has a license to provide schooling.<sup>693</sup> The boarding schools in Bediani and Ninotsminda have explained that they have started proceedings to obtain the licenses.<sup>694</sup>

As regards Muslim boarding schools, we did not have the possibility to look into the documents of any of these schools. The representatives of these institutions were unable to provide the requested documents for various reasons.

**Internal Regulations** were made available to the monitoring group by the Patriarchate’s boarding schools.

Internal regulations of the Patriarchate-run Orthodox boarding facilities in Ninotsminda, Bediani and Feria<sup>695</sup> regulate issues such as staff recruitment, safety, confidentiality, behavior management, protection against violence, complaints and feedback, termination of services and work-related issues. The document also contains rules about beneficiaries’ nutrition, facilitation of formal and informal education, development of personal

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692 Resolution of the Government of Georgia no. 66 dated 15 January 2014 approving “Childcare Standards: Technical Regulations”, Standard no. 1

693 St. Apostle Matthias Foundation in Village Feria, the Patriarchate of the Georgian Orthodox Church

694 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care of the Patriarchate of the Georgian Orthodox Church; Rehabilitation Center for Children and Adolescents in Bediani

695 St. Apostle Matthias Foundation in Village Feria

independence, social contacts and skills, care and observation, disciplinary measures, purposeful use of leisure time, individualism, and protection of health and personal hygiene. The regulations of the Orthodox boarding school in Feria<sup>696</sup> additionally prescribes forms of cooperation with a social worker.

At the Stepantsminda boarding school,<sup>697</sup> the regulations are displayed in the entrance of the building. The boarding school operates in accordance with the Law on General Education and the school statute. According to the school regulations, the school activities include class instruction as envisaged by the National Curriculum, in-class and out-of-class events, pupils' thematic groups and sports groups, and participation in other programs. In addition, the regulations govern the operation of the faculty council and teaching departments, rights and obligations of teachers and pupils, list of documents to be included in a pupil's personal file, measures of encouragement and disciplinary punishment for the staff and rules of staff appointment and dismissal.

The Bediani Rehabilitation Center, in addition to internal regulations, has a teaching program, a statute and regulations of the "Rehabilitation Center under the auspices of the Giorgi Mtatsmindeli Monastery". According to the regulations, Bediani Rehabilitation Center is one of the territorial branches of the "Rehabilitation Center under the auspices of the Giorgi Mtatsmindeli Monastery". The regulations also prescribe sources of funding the Bediani Rehabilitation Center; in particular, according to the regulations, the Center can be financed from the funds allocated by the "Rehabilitation Center under the auspices of the Giorgi Mtatsmindeli Monastery", targeted loans and grants, and other revenues allowed by the Georgian law. The Center keeps short reports of activities carried out in the period of 2012 – 2014 with photos. The reports speak about training sessions, excursions, hiking events, meetings and sports events organized at the Center with participation by its beneficiaries.

The Orthodox Boarding School in Feria<sup>698</sup> has a separate document on the policy of managing beneficiaries' behavior. The document emphasizes staff empowerment measures such as training sessions and consultations with specialists, as necessary. The policy of managing beneficiaries behavior prescribes ways of empowering the beneficiaries' as well such as teaching them their rights and obligations and raising their awareness of how to manage emotions, behavior and conflicts. The document further describes behavior management techniques and procedures of encouragement and management of problematic/defiant behavior.

**Registration of admissions to and discharges from specialized institutions.** Normally, children are admitted to the Patriarchate-run boarding facilities on the basis of their

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696 St. Apostle Matthias Foundation in Village Feria

697 St. Ilya the Righteous Boarding School in Stepantsminda

698 St. Apostle Matthias Foundation in Village Feria, the Patriarchate of the Georgian Orthodox Church

parents' request. According to the managers, they are sometimes receiving such requests for accommodating children at their facilities also from municipal bodies and law enforcement authorities.

Children enlisted at the Orthodox boarding school in Feria and the boarding house in Ninotsminda<sup>699</sup> are aged between 0 and 18. For admission, a parent has to lodge an application with the principal. It should be noted that many of the residents of the Ninotsminda boarding house have been moved there<sup>700</sup> from the St. Barbara Boarding House after the latter was shut down. Both institutions are keeping journals to register admissions and discharges as well as a journal to register temporary leaves.

The boarding school in Stepantsminda has 125 beneficiaries of whom 40 children are receiving boarding services. Children are admitted and discharged based on their parents' requests.

The Rehabilitation Center for Children and Adolescents in Bediani serves juveniles aged between 6 and 18. By the time of monitoring, 6 juveniles were registered at the Center. In addition, there were 2 adult beneficiaries who were living there temporarily after they have attained their age of majority. The journal for registering admissions and discharges indicated the beneficiaries' identity data and persons accompanying them on admission and discharge. The journal for temporary leaves has been maintained since 2013. Persons accompanying the leaving beneficiaries are usually their parents, legal representatives or guardians. The longest period a beneficiary can be taken out from the facility for is 10 days but in exceptional cases this term may be extended. Juveniles are enrolled on the basis of a contract concluded with their legal representatives.

The monitoring showed that Muslim boarding houses are not maintaining any kind of documents: they have no internal regulations, codes of conduct or daily agendas. These facilities are not keeping the children's personal files. Managers of the facilities were unable to provide any documents requested by the monitoring group. Activities of the houses are not documented. On admission, the houses ask for the beneficiaries health certificates. Parents are made aware of the conditions at the boarding houses on admission of their juvenile children. If a beneficiary cannot cope with the facility's rules, the parent may take him or her home. The facilities are not accepting children with special needs because it is the facilities' basic rule that the beneficiaries must take care of themselves. Once a month, by the end of the week, the children leave the boarding houses for their homes (the juveniles mostly come from Achara and Guria). Representatives of the boarding houses states that the houses operate largely on the population's contributions.

699 St. Apostle Matthias Foundation in Village Feria; St. Nino Boarding House for Orphans, Waifs and Children in Need of Care

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**Personal files of beneficiaries and protection of confidentiality.** Confidentiality of the beneficiaries' personal information is guaranteed.<sup>701</sup>

Personal files of beneficiaries at the Patriarchate-run facilities are kept in administration rooms, out of reach of unauthorized persons. Confidential information about the children is protected and is not publicly available. For individual meetings with beneficiaries, the facilities use the beneficiary's room or a guest room.

At the Ninotsminda boarding house, the beneficiaries' personal files are kept out of reach of unauthorized people. Each personal file contains the following documents: a parent's request for admitting the child to the boarding house, a copy of the child's birth certificate and a copy of the parent's identification document. Each personal file also contains a contract between the parent and the boarding house principal that stipulates that the service provider must ensure the child's aesthetic and physical upbringing, provide healthcare services as necessary and provide conditions for the child to receive general education. According to the contractual conditions, the service provider must raise the child with the spirit of patriotism, honesty, virtue, kindness, responsibility and other spiritual properties; the service provider shall encourage the beneficiaries to be devoted to the Georgian State, be fair and be law abiding.

At the Stepantsminda Boarding School,<sup>702</sup> in addition to the documents similar to those at the Ninotsminda Boarding House, the beneficiaries' personal files also include Form IV-100/a, a medical certificate.

At the Bediani Rehabilitation Center, the beneficiaries' personal files include copies of their birth certificates, copies of identification documents of their legal representatives or guardians, and Form 025, a medical certificate. Two of the beneficiaries' personal files also contained Form 100. Contracts between the facility and the legal representatives of beneficiaries are kept as part of the beneficiaries' personal files. According to the contracts, after a juvenile is admitted to the Center, the Center takes the responsibility for his or her upbringing, education, proper housing conditions, keeping his or her health in good order, nutrition, meeting his or her needs and raising the child as fully integrated member of the society. The contracts include personal data of the children and their legal representatives. The contracts also indicate the reason a child's legal representative requested his/her enrollment at the facility for. The contracts articulate the rights and obligations of the parties.

Monitoring revealed that, by the time of monitoring, the Muslim boarding houses in Feria (one for boys and the other for girls) and in Kobuleti (for boys) were not keeping their beneficiaries' personal files.

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701 Resolution of the Government of Georgia no. 66 dated 15 January 2014 approving "Childcare Standards: Technical Regulations", Standard no. 3

702 St. Ilya the Righteous Boarding School in Stepantsminda

**Feedback and complaints mechanisms; registration of measures taken.** The monitoring showed that the beneficiaries of boarding facilities run by both the Patriarchate and the Muslims' Association are not duly aware of their right to feedback and complaints and the procedures for exercising this right. Internal regulations of the Patriarchate-run boarding facilities do not prescribe mechanisms for feedback and encouragement. Some beneficiaries have no idea about this right. The children are not provided with information about their rights and this topic is not a matter of discussion.

None of the facilities monitored registers actions taken in response to reactions about the provision of services. The monitoring showed that beneficiaries at the Patriarchate-run facilities discuss problem issues with the priests or address the principal orally.

Actions taken in response to facts of violence have been registered in writing at the Ninotsminda facility<sup>703</sup> since June 2014. By the time of monitoring, 8 such cases were registered most of which concerned bullying. Discussion of the matter with the relevant beneficiaries by priests, caregivers and psychologists is a major response mechanism in such cases.

Only one case was registered at the Orthodox Boarding School in Feria;<sup>704</sup> the case description was too general and one could not discern whether any response measures had been taken and when.

Occurrences of violence are not registered at the Stepantsminda Boarding School.<sup>705</sup> However, the school representative told the monitoring group members that such cases are normally discussed by the children with the priests.

The Bediani Rehabilitation Center has two journals to register feedback and complaints by the beneficiaries and their parents as well as facts of violence but both journals are empty.

**Documents on the qualification of the staff and staff contracts.** By the time of monitoring, the Patriarchate's Orthodox School in Feria<sup>706</sup> employed 160 people, including 42 caregivers, 18 babysitters, 31 teachers, 2 physicians and 5 nurses. The school also employed teachers for separate trainings, technical personnel and an administration worker. The caregivers are on duty every third day. 2 babysitters look after infant babies. The monitoring showed that 1 caregiver works with 7 beneficiaries. According to the information supplied to us, in 2014, all the caregivers were trained in "Individual childcare methods", which was a basic 9-day course delivered by the "Partnership for Children" and the Georgian Foster Parents' Organization. Personal files of all of the staff members have been made available to the monitoring group. Each personal file includes

703 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care

704 St. Apostle Matthias Foundation in Village Feria

705 St. Ilya the Righteous Boarding School in Stepantsminda

706 St. Apostle Matthias Foundation in Village Feria



a contract concluded between the school and the staff member. Caregivers' job descriptions are separate documents articulating the caregivers' basic obligations, grounds for liability and disciplinary sanctions that may be applied if the staff members breach the contractual conditions.

The Stepantsminda Boarding School<sup>707</sup> employs 55 staff members, including 26 teachers, 8 caregivers, 4 babysitters, administration workers, a physician, a nurse and technical personnel. The caregivers have not undergone training. Personal files of all of the staff members have been made available to the monitoring group. The files contain contracts concluded between the school and the staff members.

The Ninotsminda children's boarding house<sup>708</sup> employs 49 workers, including 2 supervisors, 2 assistant supervisors, 24 caregivers, 2 physicians, 2 nurses and 8 technical staff. The boarding house accommodates 13 age groups. Each group (consisting of 12 to 14 children) has 1 caregiver and 2 babysitters. 2 caregivers are serving the infants' group at all times. 1 caregiver is meant per 7 beneficiaries. The caregivers serve in terms: they remain at the boarding house for 2 months and are having their time off for the next 2 months. By the time of our monitoring, the "Partnership for Children" and the Georgian Foster Parents' Organization were delivering a 9-day basic course entitled "Individual childcare methods" for the boarding house employees. The facility does not have a psychologist and a drawing teacher acts as a psychologist; the teacher has undergone a 3-day seminar in applied psychology entitled "How to help children in hardship" in 1998.

The Bediani Children's Rehabilitation Center<sup>709</sup> has employment contracts with 6 people: 1 chief, 4 caregivers and 1 physician. Two of these people simultaneously work at the Bediani Public School as teachers. One of the caregivers is a certified director at the Bediani Public School. The caregivers' personal files contain contracts between the Center and themselves, Form 100 health certificates, copies of identity documents and diplomas.

The Muslim Girls Boarding House in Batumi<sup>710</sup> employs mostly women of whom 5 are caregivers and 2 are cooks.

The Muslim Boys Boarding House in Feria<sup>711</sup> employs a director, 2 caregivers and 1 cook.

The Muslim Boys Boarding House in Kobuleti<sup>712</sup> employs 3 caregivers and 1 cook.

Monitoring of the Muslim boarding houses showed that the caregivers are not properly qualified to carry out caregivership. Their qualification documents could not be provided.

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707 St. Ilya the Righteous Boarding School in Stepantsminda

708 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care

709 Rehabilitation Center for Children and Adolescents in Bediani

710 Muslim Boarding House in Village Feria (for girls), the Georgian Muslim Association

711 Muslim Boarding House in Village Feria (for boys), the Georgian Muslim Association

712 Muslim Boarding House in Village Feria (for boys), the Georgian Muslim Association

ed to the monitoring group. However, they did mention to the monitoring group members that they had been educated in Turkey.

**Individual plans.** During the monitoring, we studied the beneficiaries' personal files. Patriarchate-run facilities are not keeping a record of individual activities with children depending on their individual needs. Keeping such a record is necessary to have an eye on the dynamic of the children's development. We also did not reveal any multi-disciplinary approach to acute cases or joint measures to deal with the problems.

The Orthodox School in Feria<sup>713</sup> has not started maintaining individual service plans yet but they are in the process of preparing such plans. The school caregivers are mostly busy helping children prepare their lessons. The Ninotsminda Boarding House does not keep individual records about children either.

Our monitoring showed that the Muslim boarding houses are not maintaining the children's personal files.

## RECOMMENDATIONS:

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL PROTECTION:

- Ensure that caregiving authorities participate in the process of children's enrollment at the above-mentioned facilities
- Ensure that religious schools and boarding houses are licensed according to the applicable Georgian law; inform the existing schools and boarding houses to that effect and provide appropriate consultation on licensing issues;
- Incorporate the principles of the UN Convention on the Rights of the Child and the principles of the State Childcare Standards in the boarding schools and boarding houses;
- Develop clear criteria and procedures for admission to and discharge of beneficiaries from these facilities;
- Put the children's personal files in order;
- Ensure that persons working with children at caregiving facilities attend basic training, are familiarized with the Convention on the Rights of the Child and are given qualification training; ensure that the personnel of the caregiving facilities are trained in developing individual service plans; ensure that beneficiaries' individual needs are taken into account in the process of developing

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713 St. Apostle Matthias Foundation in Batumi

such plans and the activities envisaged by the plans are meeting the needs of the children they are designed for.

TO THE PUBLIC LAW ENTITY “SOCIAL SERVICES AGENCY” OF THE MINISTRY OF LABOR, HEALTH AND SOCIAL PROTECTION:

- Conduct evaluation of the children and their families by the State social workers to help determine alternative forms of care
- With a view to observing confidentiality, develop a consent form to be signed by authorized persons concerning the release of the beneficiaries’ personal data by the boarding schools and boarding houses

TO THE BOARDING SCHOOLS AND BOARDING HOUSES RUN BY RELIGIOUS CONFESSIONS:

- Administrations of all of the boarding schools and boarding houses to ensure that their beneficiaries’ personal files are maintained in a proper manner<sup>714</sup>
- With a view to observing confidentiality, allocate special rooms in each boarding school and house for private conversation

### 9.3. HEALTHCARE

Access to healthcare in childcare facilities is provided in accordance with Article 135 on the Law on Healthcare, which states that the State shall provide healthcare services to the facilities for orphans, children in need of care, and children with psychical or mental problems.

**Access to healthcare services.** Beneficiaries of the Patriarchate-run children’s facilities are receiving outpatient healthcare services at primary medical units according to the locations of the facilities. The beneficiaries are under outpatient supervision of the district medical centers that the boarding schools and houses have concluded service contracts with.

The Orthodox Boarding School in Feria<sup>715</sup> employs two pediatricians. The physicians serve in turns. Two nurses are on duty during the daytime and three nurses are keeping the night duty.

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714 Resolution of the Government of Georgia no. 66 dated 15 January 2014 approving “Childcare Standards: Technical Regulations”, Standard no. 3

715 St. Apostle Matthias Foundation in Batumi

Beneficiaries of the Stepantsminda Boarding School<sup>716</sup> are registered at the Kazbegi District Hospital for outpatient services. A pediatrician visits the boarding school once a week to provide medical consultations to the beneficiaries and to draw up a weekly menu. A nurse is available at the boarding school every day between 10 and 14 hrs. Kazbegi District Hospital does not have ophthalmologists, neurologists, orthopedists and otorhinolaryngologists. For this reason, the beneficiaries are being sent to Tbilisi for consultation or their parents are informed about such needs.

Beneficiaries of the Ninotminda Boarding House<sup>717</sup> are registered at the Akhaltsikhe Clinic for outpatient services. The boarding house's administration invites physicians and nurses from Tbilisi who are visiting the boarding house according to an agreed schedule to provide the beneficiaries with healthcare consultations.

Bediani Rehabilitation Center is served by a physician who works also for the Tskalka Hospital. The Center has been having contractual relations with the physician since 10 January 2014. According to the contract, the physician should visit the Center residents twice a month to provide preventive examination and, when necessary, prescribe a treatment. In addition, the physician should periodically discuss issues of personal hygiene and healthy way of life with the children. Like the caregivers, the physician provides his/her services free of charge, without pay. If necessary, the physician visits the Center several times a month and at least once a month on his/her own initiative.

Beneficiaries of the Muslim boarding houses are registered for outpatient services with the healthcare units according to the locations of their boarding houses. The children at the Girls Muslim Boarding House in Feria<sup>718</sup> are provided with healthcare services by a physician within the "village doctor program" and the beneficiaries of the Boys Muslim Boarding House in Feria<sup>719</sup> are served by another village doctor.

**Mental health.** Having summarized the results of interviews with the healthcare staff and the beneficiaries and having analyzed the available medical documents, the monitoring group found that the beneficiaries of boarding schools and boarding houses run by religious confessions are not getting adequate psychological and/or psychiatric assistance in spite of their need in such assistance. The caregivers at the boarding schools and houses are unaware of how to manage difficult behavior. Professional psychologists are not available at the facilities. The facilities run by the Orthodox Church employ physicians who are inexperienced in managing psychiatric conditions and are not licensed. In other words, the children at the boarding schools and houses have not been evaluated by qualified psychologists or psychiatrists.

716 St. Ilya the Righteous Boarding School in Stepantsminda

717 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

718 Muslim Boarding House in Village Feria (for girls) of the Georgian Muslims Association

719 Muslim Boarding House in Village Feria (for boys) of the Georgian Muslims Association

We further found out that the care for mental and physical health of the children at the Orthodox Christian and Muslim boarding schools and houses is not consistent and well structured. Moreover, parents and the children themselves are either rarely or never involved in making important decisions about and the process of caring after the children.

At the Orthodox Boarding School in Feria,<sup>720</sup> available psychological assistance is limited to short conversations with individual beneficiaries. Comprehensive assessment and incident management using psychological intervention techniques are not performed.

At the Ninotsminda Boarding House,<sup>721</sup> as already mentioned, the children are provided with psychological assistance by a person who is a teacher by instruction who has taken a training course in psychology issues. The mental health of the Ninotsminda boarding house<sup>722</sup> residents is worth paying special attention. Psychic problems, behavioral and emotional disorders are common problems among the children. The children have not been examined and evaluated by a psychiatrist and, accordingly, have not received adequate psychiatric care. According to the healthcare personnel of the Ninotsminda boarding house, because of unavailability of local specialists, they have to take the children to medical clinics in Tbilisi for qualified evaluation of the children's health status, something that is related to significant costs and human resources.

Despite availability of psychiatric services in the region, we identified the need for having the children's mental health checked at the Orthodox Boarding School in Feria.<sup>723</sup> One of the beneficiaries shows mental retardation against the background of heavy somatic problems. The child has been growing up at the facility since his/her birth. He/she displays emotional and behavioral disorders. He/she has not been provided with comprehensive psychological/psychiatric assessment. Neither have the child's inclusive education needs been identified.

In the course of the monitoring, we revealed that in case of loss of control over a child's behavior or a difficult behavior, the child is returned to his/her birth family. For example, the staff at the Stepantsminda Boarding School<sup>724</sup> were incapable of managing a child with difficult behavior and they sent the child back to his/her birth family. The School representatives do not regard involvement of a professional psychologist or psychiatrist in the childcare process necessary due to the fact that this function is performed by priests.

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720 St. Apostle Matthias Foundation in Batumi

721 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

722 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

723 St. Apostle Matthias Foundation in Batumi

724 St. Ilya the Righteous Boarding School in Stepantsminda

It should be noted that the Rehabilitation Center in Bediani has concluded a memorandum with the Young Psychologists' Association on which basis the Association members provide the beneficiaries with psychological consultation without any charge. Representatives of the Association are arriving from Tbilisi to the Center once every two weeks to conduct various activities and individual meetings. Sometimes they are taking the children with them to the Tbilisi headquarters of the Association to provide them with consultation.

**Medical documents and oversight of the beneficiaries' health status.** Both Orthodox Christian and Muslim boarding schools and houses require, in addition to other documents, a health certificate on the health status of the child as part of the enrollment procedure (the so-called Form no. IV-100/a).

On admission to the Orthodox Boarding School in Feria, for children aged 3 and more, HIV/AIDS test results and syphilis test results should be submitted along with a lung X-ray conclusion to exclude lung tuberculosis. The School administration explained they have come across with cases in the previous years that newly enrolled children were found to have such problems. Hence, the School requires submission of the health certificate to timely reveal and treat such diseases. By the time of monitoring, the School personnel did not know whether the children had undergone a preventative medical examination in 2014. The Boarding School in Feria maintains a handover journal where children with various problems get registered.

The Boarding School in Stepantsminda keeps the children's health certificates (Form IV-100/a) in the personal files, while outpatient medical files are stored by a pediatrician at the Kazbegi Hospital.

The beneficiaries of the Ninotsminda boarding house<sup>725</sup> are provided with preventative medical tests once a year at the Akhaltsikhe clinic. The boarding house's healthcare staff are keeping a record of the children's health history through a special journal, which they maintain independently from the pediatrician. The boarding house's physician stated they consider the journal is important for keeping the children's health under dynamic scrutiny. In 2014, the Ninotsminda boarding house was visited by various healthcare specialists from Tbilisi clinics as part of their charity activity such as a neuropathologist, a gynecologist, an otorhinolaryngology and an orthopedist. The children received medical consultation and were lab-tested. Scoliosis and tonsillitis were identified as common problems among the boarding house beneficiaries. The children were provided with tonsillectomy and preventative massage. Additional expenses were paid by the Patriarchate. The healthcare personnel at the Ninotsminda boarding house<sup>726</sup> are keeping a

725 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

726 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

journal on beneficiaries with chronic diseases. Mostly, the children are having problems with thyroid gland and visual impairment. The healthcare staff regard the keeping of the journal important to be able to control the prescribed tests and consultation.

On admission to the Bediani Rehabilitation Center, information about the juveniles health status is collected by the local physicians through visual observation and interviews. If there are reasonable doubts that a juvenile might have health problems, he/she will be sent for medical tests. For outpatient services, the children are registered at the Tsalka hospital. Anti-tetanus vaccination was performed in Tbilisi. The children are part of the Universal Healthcare Insurance scheme. If a medical condition is not covered by the scheme, the Center will get funding from the Patriarchate and physical persons in the form of charity.

The children at the Girls and Boys Muslim boarding houses in Feria,<sup>727</sup> as already mentioned, are served by the village doctors when necessary. For outpatient services, they are registered at the medical units according to their places of residence. A Muslim boarding houses' administration stated that they are planning to add a staff position for a nurse at their facility. The nurse would provide the children with first medical aid on the spot. As mentioned, the Muslim boarding houses could not provide medical documents on their beneficiaries. Representatives of the boarding houses stated the children are having their preventative medical checks according to their places of residence when they go back to their families for rest. The beneficiaries of the Muslim boarding house in Feria are insured also according to their places of residence. However, that is a challenge for the village doctor who provides his/her services within the "Primary Healthcare in Villages" scheme. The doctor offered the boarding house to register the children and to move their medical registration certificates to his/her workplace. Only the families of two beneficiaries accepted the offer. Parents of other children refused because they were afraid of losing their entitlement to social assistance. The doctor stated he/she does not have results of the beneficiaries' preventative medical tests, which impedes dynamic supervision over the children's health statuses, assessment of needs, timely intervention and provision of adequate healthcare services.

The Patriarchate's facilities in Feria and Ninotsminda as well as the Bediani Rehabilitation Center are maintaining accident registration journals.<sup>728</sup>

**Vaccination and infectious diseases.** Primary healthcare institutions are responsible for timely and quality vaccination. The beneficiaries of the Patriarchate's boarding schools and houses receive preventative vaccination according to the National Calendar, which

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727 Muslim Boarding House in Village Feria (for girls), the Georgian Muslims Association; Muslim Boarding House in Village Feria (for boys), the Georgian Muslims Association

728 St. Apostle Matthias Foundation in Batumi; St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

the boarding facilities' physicians are keeping eye on. They are helping conduct the vaccination process on time and provide the beneficiaries' transportation.

The healthcare personnel at the Ninotsminda boarding house have been keeping a record of vaccinations since 2005. They keep a calendar of scheduled vaccinations per each child. The children have not received anti-flu vaccination. The same is true about the children at the Patriarchate's boarding school in Feria. The School personnel said they refused the vaccination themselves while the Ninotsminda boarding house's personnel explained that the children were not vaccinated because of insufficient number of vaccines.

If case of an infectious disease outbreak, the boarding facilities are, in fact, unprepared to isolate the infected children. The boarding house in Ninotsminda<sup>729</sup> is an exception, since they have 4 beds at the medical room to keep sick children isolated and under supervision. At the Patriarchate's boarding schools in Feria<sup>730</sup> and Stepantsminda,<sup>731</sup> beneficiaries may temporarily be isolated in the healthcare staff's room in case of virus infection. At the Bediani Rehabilitation Center, in case an infectious disease is spread, the beneficiaries will be taken to Tbilisi clinics for treatment. There was a case when a child was moved to the Tsalka hospital for isolation purposes.

The Boarding School in Feria<sup>732</sup> maintains an infectious diseases registration journal. If an affected beneficiary's health deteriorates, the School staff will contact a pediatrician or will call an ambulance. When necessary, a sick child will be transferred to a hospital. The School informs the parents of the child concerned about all of such cases.

At the Muslim boarding houses in Feria, a village doctor is in charge of the beneficiaries' vaccination, while the beneficiaries of the Muslim boarding house in Kobuleti<sup>733</sup> are receiving vaccination according to where they live. As the monitoring group was informed, the children did not receive anti-flu vaccination. If a child gets sick, the staff will call an ambulance. If the child requires long-term treatment, he/she will be sent to his/her parents to recover.

**Dental services, personal hygiene and drug supplies.** The beneficiaries of the boarding house lack access to dental services because the available insurance package does not cover such services.

Children at the Stepantsminda Boarding School<sup>734</sup> can receive dental treatment at the

729 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

730 St. Apostle Matthias Foundation in Batumi

731 St. Ilya the Righteous Boarding School in Stepantsminda

732 St. Apostle Matthias Foundation in Batumi

733 Muslim Boarding House in Village Feria (for boys) of the Georgian Muslims Association

734 St. Ilya the Righteous Boarding School in Stepantsminda



Kazbegi district hospital. Often times they pay for the services by themselves. Those who cannot afford it are funded by the Patriarchate.

Beneficiaries of the Orthodox Boarding School in Feria<sup>735</sup> are receiving dental services at a dental clinic located in Batumi based on a contract concluded by the School with the clinic.

The Ninotsminda Boarding House<sup>736</sup> is visited by a dentist during 2 days a week to examine the children's teeth. When necessary, the dentist will schedule an appointment at his/her office in Ninotsminda. The costs are paid by the Patriarchate.

Beneficiaries of the Bediani Rehabilitation Center are using the services of a dental clinic in Tbilisi. The services are provided free of charge. The head of the Center buys items of personal hygiene for the children on funds allocated by the Patriarchate once a month on average.

At Muslim boarding houses,<sup>737</sup> the families are taking care of providing their children with dental services.

At Patriarchate-run facilities, the caregivers are responsible for supervising the observance of hygiene by the beneficiaries. Priests, caregivers and healthcare staff discussing with the children issues such as sexually-transmitted diseases, expected results of alcohol and drug abuse, the harmful nature of tobacco and the need for pursuing a healthy way of life.

The Patriarchate-run facilities in Ninotsminda<sup>738</sup> and Feria<sup>739</sup> are procuring medical supplies from pharmacies on the basis of relevant contracts. Medications are distributed by nurses who also supervise how the medications are administered. The nurses keep a log of received, used and remaining medications and neutralize outdated medications, if any. At the Stepantsminda Boarding School,<sup>740</sup> the nurse keeps a record of received and distributed medications. First aid medications are stored at the healthcare personnel's room but the taking of medications is not supervised. The nurses give out the prescribed medications directly to the children.

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735 St. Apostle Matthias Foundation in Batumi

736 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

737 Muslim Boarding House in Village Feria (for girls) of the Georgian Muslims Association; Muslim Boarding House in Village Feria (for boys) of the Georgian Muslims Association; Muslim Boarding House in Kobuleti" (for boys) of the Georgian Muslims Association

738 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

739 St. Apostle Matthias Foundation in Batumi

740 St. Ilya the Righteous Boarding School in Stepantsminda

Head of the Bediani Rehabilitation Center purchases medications in Tbilisi based on the doctor's request. The Center has first aid medications that are stored in caregivers' rooms.

For the beneficiaries of the Muslim boarding houses, the families of the beneficiaries are buying items of personal hygiene and garments. In one case, clothes were received as charity contribution. The caregivers said they are teaching the children how to maintain personal hygiene.

It should be noted that, at a majority of the facilities monitored, the children's toothbrushes in water closets are kept without any means for protecting their hygiene and without any distinguishing signs. Hence, it is likely that the children will mix each other's toothbrushes as they use them or the brushes could fall on the floor or get contaminated otherwise – something that may be putting the children's health under risk.

**Children with disabilities.** According to Article 23 of the Convention on the Rights of the Child, "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."

The administration, caregivers and, on some occasions, the healthcare personnel at the Orthodox and Muslim boarding houses are not aware of the rights of people with disabilities. Hence, the granting of a disability status to children with disabilities does not take place in a systematized and orderly manner. The Social Services Agency is rarely involved in caring for children with disabilities, granting the disability status, identifying healthcare and educational needs, and provision of required services.

As mentioned above, the Muslim boarding houses are not accepting children with disabilities. But if a child demonstrates health problems after he/she admitted to the boarding house, be it somatic or mental problems, the house administration will send such child back to his/her family. According to the Muslim boarding house's representatives, the beneficiaries must be able to independently take care of themselves, learn the materials taught and understand the explanations of Quran by the caregivers. In the course of our monitoring we found out that a child was excluded from the Muslim Boarding House in Kobuleti because of enuresis.<sup>741</sup>

At the Stepantsminda Boarding School,<sup>742</sup> there is a beneficiary with disability. The juvenile is not receiving inclusive education. He/she does not have the status of a person with disability because his/her parents object to that.

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741 Urinary incontinence or loss of bladder control

742 St. Ilya the Righteous Boarding School in Stepantsminda

At the Ninotsminda Boarding House,<sup>743</sup> there are several beneficiaries with disability statuses. A number of other beneficiaries are in the process of getting the statuses. The Social Services Agency is working on moving two beneficiaries with disabilities to a specialized facility. The house's administration said the process has been taking too long.

There are no children with disabilities at the Bediani Rehabilitation Center. As the head of the Center stated, the Center would refrain from accepting such children because the Center personnel does not have required knowledge and skills to take care of such children.

It has to be pointed out that the Social Services Agency is not actively involved in caring for children with special needs, granting the disability status, identifying healthcare and educational needs and provision of required services.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL PROTECTION AND THE BOARDING SCHOOLS AND HOUSES RUN BY RELIGIOUS CONFESSIONS:

- Ensure that the beneficiaries are provided with care for their mental and physical health and with access to adequate and timely healthcare services;
- Ensure involvement of parents and, as far as possible, of children, in the process of making important health-related decisions about the children;
- Where necessary, ensure that the beneficiaries go through a medical examination to determine their disability status in cooperation with and through the involvement of the Social Services Agency;
- Regularly control the observance of hygiene.

### TO THE MINISTRY OF HEALTH, LABOR AND SOCIAL PROTECTION:

- Assist the boarding schools and houses in training their personnel in how to treat persons with disabilities
- Cooperate with the boarding schools and houses to ensure that Form IV-100/a is included in the personal files of the beneficiaries.

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743 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti

## 9.4. FEEDING

Article 27 of the Convention on the Rights of the Child guarantees the right of a minor to be provided relevant standard of living, while Paragraph 3 of the same Article stipulates the obligation of states to implement this right, which, above all, involves assistance to the parents and caregivers of minors particularly with regard to nutrition. Article 25 of the Universal Declaration of Human Rights also refers to the right of adequate standard of living, which envisages food, among others.

**Arranging for safe and adequate feeding** – As a result of monitoring performed at boarding houses run by the Patriarchate it has been identified that the infrastructure of kitchens and canteens of the mentioned institutions is well organized, sanitary and hygiene conditions are observed.

At the Stepantsminda school-boarding house,<sup>744</sup> meals are served three times a day to beneficiaries. In this case, three-times meals is envisaged only for the children of the boarding house, of these, lunch is also provided to those children who stay for extended classes. Soup is served to beneficiaries every day. During the fasting period only fasting food is made and all beneficiaries residing at the boarding house, irrespective of their wish, are fasting. The boarding school/house has 24/7 water supply.

They offer four meals a day at the school-boarding house on the Feria Mountain run by the Patriarchate<sup>745</sup>, this comprises breakfast, lunch, dinner and supper. The menu for the following 3 days is developed by a nurse considering the wish of minors. Soup is included in daily menu. During fasting period fasting food is prepared only for the minors over 7 years of age. Furthermore, if a child has health related problems, with the permission of a priest; non-fasting food may also be cooked for such child. Distributors deliver food supplies to the school/boarding house once every 3 days. The caregivers are assisting small children with eating. As for the infants, there is a separate dining room allocated for them. Caregivers prepare porridge for children under 1.5 years, while children from the age of 2 are having meals together with other beneficiaries. There is no separate menu for the children under 7 years, but according to the kitchen staff, they take into account the age of children, when cooking. The samples of food made daily at the kitchen are stored for 48 hours.

At the Ninotsminda Boarding House<sup>746</sup> menu is designed with the involvement of a physician and kitchen personnel. There is no separate menu prepared for babies, but similar to the Feria facility<sup>747</sup>, here too, kitchen personnel have told the monitors that they take

744 St. Ilya the Righteous Boarding School in Stepantsminda

745 St. Apostle Matthias Foundation in Batumi

746 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

747 St. Apostle Matthias Foundation in Batumi

into account the age of children in the process of cooking. Fasting menu is provided for all on Wednesdays and Fridays. During the monitoring a total of 75 persons were fasting—service personnel, as well as beneficiaries. The youngest children who were observing fast were in the 4<sup>th</sup> grade. Beneficiaries of the boarding house have meals in their rooms. They take food from the kitchen in containers to their bedrooms, where there is separate space for eating, with relevant tableware. They wash the dishes there as well.

Beneficiaries of the Bediani Rehabilitation Center are having meals four times a day. Menu is not designed in advance. Soups are cooked daily. The menu for the following day is prepared in agreement with the children, considering their wish. Caregivers have general knowledge of calories required for adolescents and themselves determine what type of food beneficiary has to take during a day. Meals are cooked by houses. Daily menu varies by houses, since this depends on the wish of children. During the fasting period, fasting as well as non-fasting food is cooked at the center, since fasting is not mandatory and depends on the wish of minors.

At the Muslim Boarding house for Girls at the Feria Mountain, they did not have a pre-designed menu but according to caregivers, soups are included in daily menu. The meals are primarily provided three times a day, occasionally supper is added to the meals. As the caregivers and kitchen personnel have told the monitors, during the fasting period minors fast according to their own wish. Irrespective of the fasting period, meals are cooked at the boarding house and the children can have meals according to their own wish.

The situation in the food bloc of the Boys Muslim Boarding House on the Feria Mountain is similar to that at the Girls' Boarding House. During the day, children are provided meals three times a day, in the dining room. Menu is not designed in advance and meals are made according to verbal agreement with the director.

Infrastructure at the Kobuleti Boys' Muslim boarding house is in very poor condition, conditions at the food bloc are insanitary, hygiene norms are not observed. There is no hot water, natural air and heating. Menu is agreed verbally among the employees of the boarding house. The staff has also told us that the meals are served three times a day.

**Food bloc/kitchen technical supply and storing foodstuff**— According to kitchen personnel, foodstuff is provided to the Stepantsminda School-Boarding House<sup>748</sup> from Tbilisi on a monthly basis. Furthermore, every week, dairy and meat products are supplied to the institution. Bread is supplied two times a week. There is no weekend menu at the institution, and for those who stay at the institution over the weekend, a Bishop's assistant cooks meals. Kitchen has a storeroom for foodstuff, separate from a dining room. Children have a schedule, according to which they clean the 12 tables in the dining room, in turns.

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748 St. Ilya the Righteous Boarding School in Stepantsminda.

School-boarding house on the Feria mountain<sup>749</sup> run by the Patriarchate has agreements with the stores. Bread is supplied to the institution daily.

In the kitchen of the Ninotsminda boarding house,<sup>750</sup> there are differentiated tables, cutting boards, knives, and forks for fish products, bread, meat products and vegetables. A total of 6 persons are employed at the kitchen. They bake bread in-house, in the kitchen, using a relevant appliance. The boarding house has 24/7 electricity, natural air and water supply. Garbage is stored in closed containers and is removed daily by a trash collection vehicle. They buy products twice a week at local stores, while meat and dairy products are supplied from the farm of the Boarding House. There is a separate fridge for infants. Food designed for them is purchased in Akhalkalaki pharmacy. Often individuals provide pro bono foodstuff assistance to the boarding house.

At the Bediani rehabilitation center the head of the Center brings food products from Tbilisi, once a week. This include dairy and meat products as well. The mentioned products are purchased at a store using relevant invoices. There are cases when they purchase some foodstuff locally. Bread is brought from Tbilisi or is baked in-house.

The food block of the Feria Mountain Girls' Muslim Boarding House<sup>751</sup> is clean. They have sufficient dishes at the kitchen. There is a separate storeroom for foodstuff. Absolute majority of the foodstuff at the kitchen was of Turkish origin – the products are primarily purchased at Turkish stores. During monitoring, some expired products have also been discovered, such as packaged tomato paste and oil. They have one week of the supply of meat and dairy products. The dining room is separately where all beneficiaries have meals together.

At the Boys' Muslim Boarding House on the Feria Mountain they purchase foodstuff as needed, but are primarily receiving those as donation, including dairy and meat products. Large amount of soda drinks have been found at the kitchen. They serve these products about 4 times throughout a week. The consumption of high amounts of these drinks is contrary to the healthy eating principle. The products in the kitchen were of Turkish origin.

At the Kobuleti Muslim Boarding House, products and funds are received as donations. Expired food products have also been discovered during monitoring. Dairy and meat products are fully supplied by rural population as donations. They do not have renewed dishes at the Boarding House, the refrigerator was out of order. Vegetables were stored in a storeroom, together with firewood, in non-hygienic conditions. Trash is burned close to the kitchen, in the yard of the Boarding House.

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749 St. Apostle Matthias Foundation in Batumi

750 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

751 Muslim Boarding House (for girls) in Village Feria

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS AND THE BOARDING HOUSES OF RELIGIOUS CONFESSIONS:

- Ensure regular retraining of personnel of boarding houses in the matters of storage of foodstuff, their safety and healthy, balanced food of for children.

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Design nutrition standards

### TO THE BOARDING HOUSES OF RELIGIOUS CONFESSIONS:

- Administration should check on a regular basis the quality and expiration date of foodstuff received as donations
- Ensure developing a menu for the beneficiaries

## 9.5. THE RIGHT TO EDUCATION AND PREPARING FOR INDEPENDENT LIFE

According to Article 35(1) of the Constitution of Georgia, every person is entitled to education and to choosing the form of education.”

According to Article 28 of the Convention on the Rights of the Child, a child has the right to education and states, on the basis of equal opportunity, shall facilitate the realization of such right. Article 3 of the Law of Georgia on General Education sets forth basic goals of state policy in general education, among them, establishes the principle of openness and equal access, the introduction of inclusive education, etc. According to Article 13 of the International Pact on Economic, Social and Cultural Rights, “participating states acknowledge the right of every person to receive education.”

**Access to general education** –Minors accommodated at the boarding houses run by the Patriarchate<sup>752</sup> as well as by the Association of Muslim Confession<sup>753</sup>are involved in the process of gaining general education.

**Beneficiaries of Stepantsminda and Feria Orthodox boarding houses<sup>754</sup> receive education**

752 St. Ilya the Righteous Boarding School in Stepantsminda; St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti; St. Apostle Matthias Foundation in Batumi.; Rehabilitation Center for Children and Adolescents in Bediani.

753 Muslim Boarding House in Village Feria (for girls); Muslim Boarding House in Village Feria (for boys); Muslim Boarding House in Kobuleti (for boys)

754 St. Ilya the Righteous Boarding School in Stepantsminda; St. Apostle Matthias Foundation in Batumi

not at the local public school but at a school within the institutions. At the school-boarding houses, directors are clergymen. Teaching is performed according to the national educational plan.

Stepantsminda school-boarding house<sup>755</sup> is housed in a single building. About up to 40 children live on a permanent basis at the institution, and 123 minors are enrolled at the school. The academic process is from 1<sup>st</sup> through 12<sup>th</sup> grades. There are a total of 22 teachers working at the school, out of those three teachers also perform caregiver functions. After school, children are kept at the extended classes until approximately 7 pm, while their bedrooms are locked during the day.

Beneficiaries of the Bediani Rehabilitation Center are involved in the general education process. Minors study at the Bediani public school, and one of the teachers and a director of which, as has been mentioned above, are working as the caregivers of the Centers pro bono. There is no kindergarten in Bediani. Therefore, preschool education is not available for the beneficiaries of the Center and village residents.

A total of 120 children are enrolled at Apostle St. Matthias Feria school-boarding house<sup>756</sup>, while 80 minors are involved in the academic process. At the school of the facility, children receive basic education – teaching is performed from 1<sup>st</sup> through 9<sup>th</sup> grades, while in 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> grades beneficiaries continue studies at the Batumi spiritual high school. One full floor of the building is allocated to the school located in the Feria facility, and classrooms are situated on this floor. 23 teachers are employed at the school. After the school classes extended classes are held; schoolteachers and 3 invited teachers deliver these lessons. There is a kindergarten for preschool children at the institution.

Beneficiaries of the Ninotsminda school-boarding house<sup>757</sup> receive general education at the Ninotsminda public school. And there is a problem with the access to preschool education – in Ninotsminda there is no Georgian language kindergarten for this age of children.

Muslim boarding houses combine the functions of a 24/7 caregiving establishment and a religious school (madrassa). It has been discovered as a result of the interview with caregivers (khoja) and children that beneficiaries of this facility are usually involved in general education process. After returning from school, caregiver helps them with preparing school homework.

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755 St. Ilya the Righteous Boarding School in Stepantsminda.

756 St. Apostle Matthias Foundation in Batumi

757 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.



50 girls live at the Batumi Muslim Girls' Boarding House<sup>758</sup> from 6<sup>th</sup> through 12<sup>th</sup> grades; they receive general education at a public school of the Feria settlement. After coming back from school, with the help of caregivers or independently they prepare school homework. Each caregiver has his/her group assigned. After school, at about 4 pm the preparation of school homework starts, and this process lasts until 10 or 11 pm.

**Inclusive education** -- School-boarding-houses are not involved in the inclusive education program. For example: according to the caregivers of the Bediani facility<sup>759</sup> some children lag behind in studies, school lacks special teachers. Therefore, they try to overcome this problem with their own forces.

As has been mentioned above, there is a beneficiary at the Stepantsminda school-boarding-house<sup>760</sup> who is in need of assessment and inclusion in the inclusive education program, and a parent of this child is against this. Teachers work with the minor only during the classes, since the child is not included in the boarding-house services. Officially, the school does not have a special teacher.

At Feria Muslim boarding house for boys a total of 40 children are enrolled, from 8<sup>th</sup> through 12<sup>th</sup> grade. Each of them are enrolled in public school and are engaged in the general education process. There are a total of 2 caregivers at the facility and similar to the caregivers of the girls' boarding house, they were required to have high education and the knowledge of religion. Parents of the children pay the charge for the extended classes. They are taught by additionally invited teachers.

A total of 15 children are enrolled at Kobuleti boys' Muslim boarding house, from 6<sup>th</sup> through 9<sup>th</sup> grades. Beneficiaries receive general education at the Kobuleti public school. After grade 10 they are taken to the madrasa for boys on Feria Mountain; for the admission at the madrasa they take into account academic achievement of a child, specifically, a child should not have lower grades than 8 in any of the subjects. There are a total of 3 caregivers at the boarding house. During the day one hour is dedicated to the religion classes, and afterwards the caregivers help beneficiaries in preparing school subjects. This process lasts until 10pm. On Saturdays they have additional classes in English language and math.

**Teaching religion at boarding houses** –At the facilities run by the Patriarchate, except for the Bediani Rehabilitation Center<sup>761</sup>, scripture is taught along with the general education subjects, for example: at the Stepantsminda school-boarding house<sup>762</sup> scripture is taught from 1<sup>st</sup> through 12<sup>th</sup> grade twice a week, which means that minors read the Gospel and learn certain portions of it by heart. At the facility, during 5<sup>th</sup>-7<sup>th</sup> grades old script

758 Muslim Boarding House in Village Feria (for girls)

759 Rehabilitation Center for Children and Adolescents in Bediani

760 St. Ilya the Righteous Boarding School in Stepantsminda.

761 Rehabilitation Center for Children and Adolescents in Bediani

762 St. Ilya the Righteous Boarding School in Stepantsminda.

is also taught. The lessons in the scripture are also delivered in Batumi, school-boarding house on Feria mountain.<sup>763</sup>

At Batumi facility for Muslim Girls<sup>764</sup> during the day about three and half hours are dedicated to religious-didactic lessons. There are a total of ten caregivers at the facility. Staff are required to have secondary education, necessary knowledge of religious rites and relevant faith. Caregiver should be capable of conducting classes in religion and teaching the Koran to the minors. These personnel, for implementing caregiving activities, are trained specifically by older women. On the area of the facility there is a block where adult girls live; they are trained by older women for didactic/caregiving activities and are instructed about religious matters. It has to also be mentioned that if a beneficiary wants to receive religious education only, when she becomes of age, she may move to the department where older women deliver religious classes to the girls above 18 years.

At the Batumi boys' Muslim facility the children have one hour of a religion class a day.

**Extracurricular activities** – The academic process at the facilities comprises school and extracurricular activities.

In this regard, the Feria school-boarding house<sup>765</sup> is distinguished especially, where extracurricular activities are diverse and what is most important, are oriented to the wishes of minors.

At the Bediani Rehabilitation Center<sup>766</sup>, in addition to school activities, beneficiaries are involved in different activities as well. They have lessons in drawing, they learn different handicraft, often hold the exhibition sale of their own works. They have rich library. According to a caregiver, children select the literature for reading themselves. Sometimes caregiver provides recommendation as to a work of an author. During the year, they have English, computer, drawing, embroidery classes. A teacher sent to the village under a special program by the Ministry of Education teaches English to the children.

At the Stepantsminda school-boarding house classes are conducted from 10 to 3 pm, while work in circles and with caregivers is led from 2 to 7 pm. Beneficiaries are involved in local and national academic competitions. For example, for demonstrating the knowledge in civic education, they participated in Georgia-wide academic competition. At the school-boarding house they hold in-house activities, such as: we Study the Bible, “the Smartest one”. They publish a monthly newspaper My School, where extensive information about church holidays, congratulations to the winners of different competitions, impressions of children, essays, poems, drawings, as well as information about the activities conducted at the facility are published.

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763 St. Apostle Matthias Foundation in Batumi

764 Muslim Boarding House in Village Feria (for girls)

765 St. Apostle Matthias Foundation in Batumi

766 Rehabilitation Center for Children and Adolescents in Bediani

There are libraries at the facilities run by the Patriarchate. Minors are authorized to use the Internet only for educational purposes, under strict supervision of caregivers.

There are additional computers without internet connection at the Feria school-boarding house<sup>767</sup> and these computers are used by beneficiaries for playing games.

Every beneficiary of the Bediani facility<sup>768</sup> has personal computer, telephone, tablet. In this regard, there is a problem at the Ninotsminda school-boarding-house<sup>769</sup>, where majority of the computers are dated and damaged, there is no internet communication.

Libraries at the institutions of Muslim confession primarily comprise school textbooks and religious literature. The use of TV, computer, internet and telephone by the beneficiaries is strictly controlled.

At Feria Girls' Muslim Facility,<sup>770</sup> parents provide school supplies to the children. There is no library at the facility and only religious literature is placed on the shelves in the classrooms. The use of the Internet is limited and is allowed only for educational purposes, under the supervision of caregivers. According to caregivers, children participate in school level academic competitions, although are not engaged in other additional activities, among them, sports and arts circles.

At the Feria boys' Muslim facility, similar to the Kobuleti boys' Muslim facility, there is only one computer that the minors may use, but only for educational purposes and under strict control of the adults. While in the Kobuleti Muslim facility, certain websites are blocked in the computer.

***Preparing for independent life***—According to the information obtained during the monitoring, often, after finishing grade 9, children do not plan to continue studies. Beneficiaries are not engaged in vocational education. The hindrance for this is the location of the facilities since in regions there are no special vocational colleges where minors would be able to master certain profession.

In this regard, the practice at the Feria facility<sup>771</sup> should be commended; at this facility children, with the funding of the Patriarchate, are able to obtain education at vocational colleges in Batumi.

Some of the beneficiaries of the facilities are prospective students who are preparing for Unified National Exams. It is primarily caregivers who help them with the preparation. In this regard, the situation in the Feria facility<sup>772</sup> is good, where, during the monitoring

767 St. Apostle Matthias Foundation in Batumi

768 Rehabilitation Center for Children and Adolescents in Bediani

769 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

770 Muslim Boarding House in Village Feria (for girls)

771 St. Apostle Matthias Foundation in Batumi

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stage there were 3 prospective students, who are taken for additional classes in Batumi, to attend the lessons given by the tutors of relevant subjects. The caregivers of the facility have noted that the institution retains relationships with the beneficiaries who have come of age. If necessary, Feria facility<sup>773</sup> rents apartment for the beneficiaries and pays tuition fees. Former beneficiaries of the facility study at the Georgia Technical University, Georgia Public Affairs Institute. One of the former beneficiaries also studies at the Milan Academy of Arts. It should also be mentioned that Non-Commercial Legal Entity Batumi Saint Matthias Foundation is covering their tuition expenses.

The trend has been identified at facilities that if a beneficiary does not wish to gain higher or vocational education, he/she is returned to a biological family. There are cases when former beneficiaries are employed at the facility.

Beneficiaries of the Ninotsminda school-boarding house<sup>774</sup> primarily enter Adjara region universities, including village Khichauri institution, because there is a residence of the Patriarchate nearby where they are able to live. Moreover, beneficiaries of the Ninotsminda school-boarding house are sent to Zestaponi, to a farm run by the Patriarchate of Georgia, for employment.

According to the practice at the Bediani Rehabilitation Center, at attaining the full age, beneficiary is given a choice: they are able to stay and continue living at the Center, or leave the institution to study/work. If they opt to stay, former beneficiaries are engaged in the activities performed at the Center. And in case they decide to continue studies, they enter Tbilisi higher educational or vocational institutions and select profession according to their desire. During the study in Tbilisi, youth live in a house owned by the head of the Center. In case a youth fails to obtain full funding, tuition fees there are covered by donations received at the Center from foreign and Georgian individuals.

At the institutions of Muslim confessions, the beneficiaries are taught Arabic and Turkish languages. Certain number of interviewed minors plan to continue studies at religious educational institutions in Turkey.

At the Muslim Feria girls' facility,<sup>775</sup> 3 beneficiaries were prospective students. Parents were funding their tutors' fees.

The caregivers have mentioned that once they turn 18 beneficiaries can return to own families. They are also given an option, if they continue studies in Tbilisi, to apply to a local madrasa where they will continue receiving religious education.

At the Feria boys' Muslim facility, beneficiaries are learning Arabic. Beneficiaries that

773 St. Apostle Matthias Foundation in Batumi

774 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

775 Muslim Boarding House in Village Feria (for girls)

become of full age are often sent to Turkey for studies at the similar facility, where at the first stage they learn the Turkish language, and afterwards they enroll at a relevant faculty.

## RECOMMENDATIONS

TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS:

- Introduce at the boarding houses the program for preparing for independent life.

TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA,  
AND THE FACILITIES OF RELIGIOUS CONFESSIONS:

- Ensure additional preparation of beneficiaries in necessary subjects
- Ensure active involvement of beneficiaries in additional educational activities

TO THE MINISTRY OF EDUCATION AND THE MINISTRY OF LABOR, HEALTH  
AND SOCIAL AFFAIRS OF GEORGIA:

- Ensure the retraining of teachers and personnel of boarding houses and school-boarding houses in the area of working with the children with special educational needs

## 9.6. REST, RECREATION AND LEISURE TIME

Article 31 of the UN Convention on the Rights of the Child protects the right of a child to recreation and leisure time.

The monitoring has demonstrated that in the majority of facilities opportunities for rest and recreation are not adequately ensured.

At the Stepantsminda<sup>776</sup> school-boarding house, a circle of chants is functioning, out of extracurricular circles. At the wish of parents, some of the beneficiaries of the boarding house are taking rugby and dancing lessons. In addition to the subject envisaged by the National Educational Plan, the majority of available educational or extracurricular activities are religious -- Scripture, chanting circle; if willing, beneficiaries do not have the option to satisfy different interests, e.g., a student with good vocal skills and willingness to study a genre different from chant will not be given such possibility. At the New Year's

776 St. Ilya the Righteous Boarding School in Stepantsminda.

concert, children presented several pop songs, and received a reprimand from the bishop. In summer children go for vacation at a camp for 2 weeks annually and periodically they go for excursions, organize field activities in the villages, to visit various significant and historic places. There is a sports hall at the Stepantsminda facility where beneficiaries' friends are allowed for sports games.

In addition to the academic process Bediani<sup>777</sup> facility beneficiaries are able to get engaged in different activities. As has been mentioned above, every day they have a drawing lesson, they learn handicraft and often hold exhibition-sale of their own works. Each child has a bicycle. They have access to different sports and entertainment supplies. Including mountain shoes, tents, skating shoes. During the conversation with the members of the monitoring group caregivers and beneficiaries mentioned that they often go on excursions, in winter they have the possibility to spend time in Bakuriani, and in summer go for long hiking tours, as well as rafting. At the facility they celebrate birthdays of beneficiaries and each beneficiary recalls this with joy. There is a stadium in the village where children play together with local residents.

In Ninotsminda<sup>778</sup> informal activities need to be promoted more (e.g., summer camps, excursions, hiking tours, as well as vocational, sports, music and other circles). Girls learn handicraft, although lack relevant tools and supplies. At the institution there is one tennis table. According to the received information children seldom go on excursions. There are dance and drawing circles at the facility. Beneficiaries have own telephones (they are not allowed to use mobiles during the classes). In a common room there is a large TV set, where children watch together and discuss films. Just several beneficiaries go out of the facility for wrestling and computer courses. They keep a ledger of activities where the activities carried out by them are logged. Children participate in different competitions. E.g., participated in the folk concert, multi-ethnic arts festival –“Under a Common Sky—dialogue of cultures, Tbilisi 2014” and were given diplomas for participation.

At the Feria Orthodox facility,<sup>779</sup> informal activities are promoted. There are the following studios at this institution: sports, arts, cognitive, musical and handicraft. Beneficiaries, according to their interests, are able to enroll in a desirable circle. As part of the above-mentioned studios the following circles are available for the beneficiaries at the facility: dance, folk songs, chants, violin, piano, folk instruments, Sewing, embroidery, iconography, drawing, stone and woodcarving courses. Beneficiaries are also able to enroll in the design studio, learn gobelin tapestry, enamel work, enroll in chess, basketball circles. There is a musical team and a band composed of the beneficiaries at the facility. Here relevant specialists work with the children. Children are often taken to excursions within Georgia as well as abroad. They take beneficiaries for vacation once a year. During free time, children are able to play computer games. At the facility they organize fun

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777 Rehabilitation Center for Children and Adolescents in Bediani.

778 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

779 St. Apostle Matthias Foundation in Batumi

games, intellectual and sports competitions.

The yards of Stepantsminda<sup>780</sup> and Ninotsminda<sup>781</sup> school-boarding houses are not organized for sports, entertainment activities or play of beneficiaries. The situation is similar at the facilities of Muslim confessions.

It has been revealed following monitoring that at the facility managed by the Patriarchate access to internet is limited for beneficiaries. Minors are able to use internet only for study purposes under the supervision of administration representative. Children, for ensuring their safety, are not allowed to leave the territory of the institution without permission.

At Muslim facilities beneficiaries are limited in the use of telephone, they use the Internet for study purposes only, under the supervision of caregivers, they are not involved in informal activities, various circles, are fully oriented at the study process. After classes, at home they are provided extended classes. At the mentioned facility, the daily schedule is designed in a way that children have less time for physical development.

At the Girls' Muslim facility,<sup>782</sup> the monitors were told that they go for picnics and excursions at certain frequency. During the monitoring, there was no TV set at the instituting. At the Feria boys' Muslim facility,<sup>783</sup> one TV set is located in the dining room and primarily they are watching the news. Several beneficiaries at school attend football, arm wrestling and chess circles. In the evenings, they watch movies, which are selected with the involvement of administration representatives. For the beneficiaries of the Kobuleti facility<sup>784</sup> the means for physical activity is playing football in the yard of the boarding house. On weekends, children are able to go out to the city and spend time as they wish. During the days off, they watch TV for longer period. The program is selected by administration representative.

## RECOMMENDATIONS:

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS AND THE INSTITUTIONS RUN BY RELIGIOUS CONFESSIONS:

- Support the promotion of healthy lifestyle in the institutions where this is not adequately promoted. Increase in these institutions the role of physical and sports activities in daily life of beneficiaries; Support the involvement of beneficiaries in informal activities—arts, sports, intellectual circles and games – according to their interests.

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780 St. Ilya the Righteous Boarding School in Stepantsminda.

781 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

782 Muslim Boarding House in Village Feria (for girls)

783 Muslim Boarding House in Village Feria (for boys)

784 Muslim Boarding House in Kobuleti (for boys)

## 9.7. BENEFICIARY ORIENTED ENVIRONMENT

According to the UN Convention on the Rights of the Child,<sup>785</sup> “every child has a right to the level of living that is necessary for his/her physical, mental, spiritual, moral or social development.” While the State, in turn, is required to ensure relevant conditions for realizing this obligation. For the complete development of a child normal environment equalized to the family environment is necessary.

**Infrastructure** – At the Kobuleti boys’ Muslim facility, building requires repair. Here there is no central heating system. In winter, the institution is heated via a firewood stove located in the hall of main building which does not ensure relevant temperature throughout the building. The walls of the bedroom are peeled off and moist. In 21.2 sq. m. bedroom there are seven double-tier beds, where 14 beneficiaries sleep. In the bedroom, kitchen and dining room unpleasant specific smell can be felt. In none of the parts of the building there is a ventilation system. The toilets and bathrooms are depreciated. In the bathroom beneficiaries are having shower directly from the rubber hose. At the facility there is a lack of furniture and other supplies, while existing ones are already old. TV set and computer are located only in the room of a head.

The bathroom is depreciated at the Feria Boy’s Muslim Boarding House. Due to the absence of a shower room, beneficiaries are having shower using water taken from the barrel. There is no ventilation system at the boarding house. In the same boarding house, there is no window in a classroom. Lighting of the classroom is only artificial. In a bedroom with the area of 92.6 sq.m. 22 two-tier iron beds are placed, designed for 44 beneficiaries. The mentioned overload<sup>786</sup> makes observance of sanitary-hygiene conditions difficult and creates the threat of the spread of an infection. There is no other furniture in the bedroom, except for the beds. Children store personal belongings in a clothes storage room on the first floor.

The building of Feria Girls Muslim Boarding House has been renovated recently, general condition of infrastructure is satisfactory. There is sufficient room in the study, reception room for guest and bedrooms. All rooms have primary lighting source. There are two bedrooms in the building, of these, in a bedroom of 100.2 sq.m. There are 20 double-tier beds designed for 14 beneficiaries. At both bedrooms, there is a problem of lack of necessary furniture and overload.

The building of the Stepantsminda boarding house run by the Patriarchate has been renovated. 8 boys are accommodated in a 22 sq.m. bedroom. There are 17 boys in a 66

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785 UN Convention on the Rights of the Child; Article 27(1).

786 According to Technical Regulations Approved under the Resolution of the Government of Georgia no. 66 dated 15 January 2014 on approving “Childcare Standards: Technical Regulations”, Standard no. 14, there should be at least 6 sq. m. per beneficiary.



sq.m. bedroom of the same boarding house. The area of one bedroom of the Boarding house bedroom for girls is 22 sq.m., where 5 girls are accommodated. The area of another bedroom for girls is 62 sq.m., where 6 girls are accommodated. Just one bedroom for girls is equipped with relevant furniture and supplies.

Patriarchate run Rehabilitation Center in Bediani owns several private houses with own courtyard. The houses are old, although during the monitoring the repair works at the newly built building for beneficiaries were coming to a conclusion. Residential houses were heated using firewood stoves.

At the Ninotsminda<sup>787</sup> facility the children are distributed in their rooms according to groups. Bathroom, bedroom, dining and study space are located in one area. The rooms for beneficiaries where they spend almost the entire day and where they study, are not organized respectively. Children need relevant soft furniture. During the monitoring we saw the children studying by the desks, and their age and physical parameters did not match with the size of the desk. Sitting at such desk on a regular basis and for long periods raises the threat of developing spine problems; moreover, for the prevention of vision problems, the given study areas should have better lighting.

Monitoring results have revealed that at some facilities individual needs and infrastructure are not approximated to family conditions. The rooms are overloaded. Not all facilities are equipped with the central heating system, relevant temperature, furniture, equipment, fittings, articles necessary for keeping hygiene norms, telephone, natural and artificial lighting, repaired bathrooms and toilets, kitchens and dining rooms. Children are not provided personal corner and the areas for storing clothes and other items.

In the yards of boarding houses run by religious confessions monitored by the Monitoring team there are not relevant conditions and supplies for the entertainment of children. The lack of the supplies necessary for sports activities can be felt at all facilities.

At the monitored boarding houses there are no fire extinguishing equipment and emergency escape plan. Rarely, they have fire equipment, although they are placed in non-prominent places and in insufficient amount. Caregivers and beneficiaries effectively do not have information about the risks (threats) caused by natural disasters, the possibilities of avoiding or reducing them.

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787 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS AND THE FACILITIES RUN BY RELIGIOUS CONFESSIONS:

- Ensure improving religious boarding houses, adding supplies and creation of adequate living conditions for children.
- Design an emergency escape plan for all boarding houses that will be introduced to caregivers as well as beneficiaries;
- Provide fire extinguishers to boarding houses. For this purpose, dedicate a special corner at the buildings of institutions;
- Ensure training to caregivers on the reduction of natural disasters risks.

## 9.8. EMOTIONAL DEVELOPMENT AND PROTECTION AGAINST VIOLENCE

According to Article 19 of the Convention on the Right of the Child, “State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”, According to Article 36 of the Convention, States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare, while according to Article 37(a), “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”;

The UN Committee on The Rights of the Child, in its General Comment N 8 calls on the states to make swift response to any type of any physical violence against minors<sup>788</sup>. In the mentioned comment the Committee stipulates that a clear line should be drawn between disciplining and violence. The latter, unlike the former, causes the pain of certain intensity, discomfort and humiliation.

Article 27 of the UN Convention on the Rights of the Child stipulates the right of a child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

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788 General Comment N°8, *the Right of the Child to Protection from Corporal Punishment and other Cruel or Degrading Forms of Punishment*, Committee on the Rights of the Child, 2006, Para. 2.

A number of religious restrictions have been set for the beneficiaries of boarding houses run by religious confessions; often the minors are obeying these restrictions against their will. Among them, the restrictions related to clothing should be mentioned. Beneficiary girls of Muslim boarding houses, according to their religion, are not allowed to wear trousers. They are not required to wear head covers at public school and only wear those at the boarding house area.

Except for the Feria Orthodox and Bediani boarding houses, beneficiary girls of the boarding houses run by the Patriarchate are not allowed to wear trousers. Moreover, the restrictions apply to the length of the dress as well. Children express discontent in this direction.

At Muslim boarding houses children are brought up at the environment where childcare is performed in compliance with Islamic traditions. Beneficiaries live in strict observance of religious rites. The satisfying of individual needs of a child is not a priority.

Caregivers of Muslim boarding houses have told the monitors that when there are certain problems related to upbringing a child they, in all specific cases, refer to the Muslims' sacred book, the Koran. When any specific issue comes up caregivers refer a child to a specific verse in the Koran and explain how a true Muslim should behave. The principles of individual upbringing of a child are not a priority and primary goal is to bring a child up according to religious rites. Hence, there are no articles demonstrating individuality and different interests at Muslim boarding houses, each child is only provided school textbooks, the Koran and religious articles.

During a conversation with the monitors the beneficiaries of boarding houses would always mention that they live at boarding houses based on their own wish, although each of them stated that at first they found it very hard to get accustomed to the life at the boarding house and adapt to the rules, they wanted to return home, experienced discomfort by living at the boarding house. Beneficiaries leave boarding houses and go out to city only for limited time and when it is necessary for buying necessary items. While living at the boarding house the communication of children with the community is restricted to the communication with the children living in the Muslim community only, of the same sex and the attendance of a religion lesson at the boarding house with the children and adults of the same sex. At Muslim boarding houses they do not celebrate birthdays of beneficiaries and periodic motivation of beneficiaries is not performed.

All beneficiaries of boarding houses run by the Patriarchate have their own spiritual father/priest. Contact of a child with a biological family is best promoted and supported. Just climatic conditions or inability of a family to receive a child may serve as hampering factors. Beneficiaries often go to visit their families (region residents every weekend,

while those living in relatively remote region about once every two weeks). Some beneficiaries of boarding facilities do not have biological families and service providers try to find biological families of such children and restore links at their own expense, without the involvement of social services, but such attempts are often futile. They congratulate children with birthdays, organize modest celebrations, while children also gift each other symbolic presents they can afford.

Social, cultural and sports life in Stepantsminda<sup>789</sup> and Ninotsminda<sup>790</sup> region is less active and children do not have many options in this regard.

Institutional style at boarding houses often differ from family environment significantly. This is especially noticeable when assessing the daily schedule and living environment of beneficiaries: e.g., at Stepantsminda school-boarding house beneficiaries are in extended classes after school, bedrooms are locked during the day, there are no articles for entertainment and those demonstrating individuality of children. Similar environment is observed in the rooms of boys as well.

At the Ninotsminda<sup>791</sup> school-boarding house children are accommodated in isolated sectors according to groups. A sector comprises two bedrooms and a dining room. Minors spend most of their free time watching TV. As has been discovered as a result of interviews with beneficiaries, children are not allowed to play or spend certain time freely in the hall of the boarding house, to avoid noise and disorder.

Positive emotional and social environment prevalent at the Feria Orthodox boarding house<sup>792</sup> should be noted. The building of the boarding house has been repaired and painted in bright colors; interior is decorated with the works created by beneficiaries of the same boarding house at arts studios, the children of any age are able to freely move within the building. There is a space for all age groups for informal meetings, equipped with soft furniture and TV set. As has been mentioned already, at the boarding house there are 24 different profile studios and a sports group, children are actively involved in the activities of studios and they have best opportunity for realizing and satisfying interests. Minors, together with caregivers, go to concerts, to the theater, seaside, on excursions, participate in sports activities, competitions, exhibitions and academic competitions.

Village Bediani, where the Bediani boarding house<sup>793</sup> is located, is quite far from the district center and during the winter harsh conditions access to the boarding house, due

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789 St. Ilya the Righteous Boarding School in Stepantsminda

790 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

791 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

792 St. Apostle Matthias Foundation in Batumi

793 Rehabilitation Center for Children and Adolescents in Bediani.

to the poor roads and climatic conditions is difficult. As has been discovered during the conversation with caregivers, children of former beneficiaries are also accommodated at the boarding house, effectively, this is a second generation. The communication with children is open for the parents. They can visit their children, take them away during vacation and holidays. Residential environment is adapted to children's needs, currently one of the houses is being constructed, where the conditions will be significantly improved. At meeting with the beneficiaries of the Bediani Rehabilitation Center their openness, sincerity was evident. They freely spoke and expressed their opinions. Beneficiaries remember the New Year Night, birthdays with joy, when they get gifts and get the feeling of a real holiday. Furthermore, according to caregivers, adolescents have certain behavioral difficulties. Caregivers mention that they have not undergone any special training related to the work in a small family-type institution, although they have caregiving as well as teaching experience. In conversation with monitors, they demonstrated the skills of effective communication with children, have approaches directed to the rights of a child. Daily routine of the institution, according to beneficiaries and caregivers, envisages the possibility of gaining formal as well as informal education, preparing homework during a fixed period of a day, and entertainment and play during the leisure time. Caregivers have mentioned that they are performing main household activities, although beneficiaries are actively involved in all activities.

At boarding houses run by the Patriarchate, certain number of beneficiaries have told the members of the monitoring group about the cases of bullying among the children. In this regard, the situation in the Ninotsminda boarding house<sup>794</sup> should especially be mentioned; here the cases of psychological as well as physical bullying among beneficiaries is frequent.

Through the interviews with the beneficiaries, the monitoring group has revealed individual cases of psychophysical violence from caregivers: it has been discovered at the Ninotsminda boarding house<sup>795</sup> that beneficiaries, as a punishment, are banned from leaving the room, have to skip one of the components of a meal, e.g., supper. According to beneficiaries, for physical punishment, minors have to crawl in the hall in front of the peers, while having their hands to their pressed to head.

At the Feria Orthodox boarding house<sup>796</sup> the fact of verbal insult of a beneficiary by one of the caregivers and undue treatment of girls as well have been discovered. It was identified that this caregiver would make the same beneficiary get to knees in punishment, when she was younger. According to the information provided to monitors two caregivers were dismissed due to the above-mentioned reason.

794 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

795 St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti.

796 St. Apostle Matthias Foundation in Batumi

The trend has been identified that at boarding houses run by the Patriarchate one of the common methods of punishment is prostration. Caregivers of the Stepantsminda<sup>797</sup> school-boarding house, in case of a child's difficult behavior, beneficiaries are sent to clergymen and a spiritual father makes children prostrate to repent sins or as a punishment. 50-100 prostrations are determined as the measure of punishment. Beneficiaries have also mentioned the obligation to make prostrations when they miss prayer. It has been revealed as a result of monitoring that Ninotsminda boarding house beneficiaries also have the obligation of prostrations as a form of punishment.

It has been discovered during monitoring that the providers of school-boarding house services are not familiar with the standards and legal regulations of prevention and managing violence/bullying cases<sup>798</sup>.

Due to the low level of knowledge of service providers in the matters of identification of and referral in case of violence, of legal regulations of managing the case of the victims of violence, none of the beneficiaries are identified as the victims of violence and therefore no relevant psychosocial activities are implemented for them.

The lack of relevant skills for managing difficult behavior of a child on the part of caregivers serves as a provoking factor for violent treatment of children and the punishment of minors takes the form of psychological as well as physical influence.

At Muslim boarding houses the beneficiaries interviewed by the monitoring team do not speak about systematic physical violence cases, although they mention that sometimes caregivers scream at them and rarely demonstrate physical violence. It has been identified following monitoring that during the initial period of placing at a boarding house children find it hard to adapt to the existing rules. The mentioned causes stress reaction in minors, hence, caregivers send a beneficiary for several days to a biological family and often a minor, against his/her wish, forcibly goes back to the boarding house.

At Muslim Boarding House, they deny the presence of the children with psychological or mental health problems among beneficiaries and do not see the need for psychological assistance.

Another factor impeding psychiatric assistance is the geographic location of boarding houses and the lack of specialists in the region. Despite urgent need for mental health assistance, it is impossible to provide psychiatric assistance to the beneficiaries of boarding schools without informed consent of a legal representative of a child under the age

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797 St. Ilya the Righteous Boarding School in Stepantsminda.

798 Joint Order of the Minister of Labor, Health and Social Protection, the Minister of Interior, and the Minister of Education and Science no. 152/N-496-45/N dated 31 May 2010 approving Child Protection Referral Procedures; The Law of Georgia on Prevention of Domestic Violence, Protection of and Assistance to the Victims of Domestic Violence.

of 16.<sup>799</sup> While a number of the beneficiaries of the mentioned boarding houses do not have legal representatives, since it is impossible to find biological families of children, while the Social Service is not involved in the care process – children are not under the state care.

Notably, Bediani boarding house is an exception in this regard. Beneficiaries of the institution<sup>800</sup>, according to caregivers, have certain difficulties of behavior. In such cases, as has been mentioned above, specifically invited psychologists provide assistance to them.

## RECOMMENDATIONS

TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA:

- Ensure professional training/retraining of individuals involved in the child care process in the matters of skills of identifying violence on children, difficult behavior and stress management and identifying psychological/psychiatric needs a child and/or a child who is a victim of violence;
- Ensure multidisciplinary assessment of beneficiaries of boarding facilities and design development plans adapted to their individual needs;
- Continue the deinstitutionalization process to support raising children in family environment and strengthening biological families.

## 9.9. CONCLUSION

Several directions have been identified as a result of monitoring of rights status of children at the facilities run by the Orthodox Church of Georgia and Muslim Confession, performed by the Public Defender of Georgia, addressing which is aimed at the improvement of well-being of children and is an obligation of the state. The quality of provided care differs by the above-mentioned institutions and is not regulated by a unified childcare system. Beneficiaries of boarding houses and school/boarding houses are not under the state care. Hence, the Social Service is not involved in the care process. This is contrary to the genuine interests of a child and makes the discharge of such fundamental rights and freedoms difficult such as, for example, the right to health care, right to education, protection against violence, etc. The fact that the beneficiaries of these boarding houses are not receiving state care creates problems for the children with dis-

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799 Article 8(2) of Georgia Law on Psychiatric Assistance.

800 Rehabilitation Center for Children and Adolescents in Bediani.

abilities as well. Without state involvement, their status cannot be determined and relevant medical services cannot be implemented. Furthermore, without the cooperation with the Social Services Agency the matter of organizing personal documentation of minors, as well as determination of their educational needs is a problem. In the case of beneficiaries of boarding houses run by religious confessions, too, it is necessary to vest the Guardianship and Care Body with rights and duties of their legal representation, which is important in the process of resolving the issues related to minors.

At the children's' boarding houses run by religious confessions, similar to minors living at small family type houses, majority of beneficiaries are children who are the victims of various types of violence, traumatized children in need of special approach, consistent psychological rehabilitation, and in a number of cases, psychiatric involvement. At the same time, full-fledged psychiatric/psychological services are not provided to these beneficiaries. In this context, the matter of qualification of caregivers is important. A caregiver, according to the Order<sup>801</sup> on Approving the Procedures for Referral with the Purpose of prevention of Violence and Protection of Children, should have relevant knowledge and skills to identify, detect a fact of violence of a minor who is a victim of violence and refer a child to a relevant body. Therefore, the professionalism of the personnel working at the mentioned institution becomes of special importance. While, in this regard, as the monitoring results have demonstrated, majority of caregivers require retraining in childcare<sup>802</sup>, since the lack of the skills to correctly treat children who are the victims of violence and hence, have difficult behavior is an increased risk factor of violence against a child. Notably, an NGO Partnership for Children provides training for caregivers at the children's' boarding houses run by the Patriarchate of Georgia. Furthermore, it has also been revealed following monitoring that all administrations of the mentioned boarding houses have expressed willingness for regular retraining of caregiver-teachers of the institutions in the matters of general education, as well as child care.

Moreover, it is necessary to establish an individual approach that would be directed at individual needs of beneficiaries, considering their views and interests, to enable the minors to fully realize their own capacity.

Hence, for the improvement of welfare of children, full-fledged implementation of their rights and freedoms and consideration of genuine interests of minors, the services provided to the beneficiaries of boarding houses run by religious confessions requires harmonization with the state childcare standards and upbringing the beneficiaries of boarding houses in conditions that are maximally close to the family environment. The

801 Joint Order of the Minister of Labor, Health and Social Protection, the Minister of Interior, and the Minister of Education and Science no. 152/N-496-45/N dated 31 May 2010 approving Child Protection Referral Procedures;

802 It should be mentioned that since 2014, NGO Partnership for Children provides has been providing systematic trainings to caregivers.



measures taken by the state for this purpose can be assessed as unsatisfactory. Respectively, considering the objective of deinstitutionalization, in close cooperation with service providers, the state has to direct all necessary resources to fulfill state childcare standards at the mentioned institutions. It should create a relevant mechanism for overseeing subsequent fulfillment of these standards, as well as provide training and build the capacity of individuals involved in the services process. Conduct dialogue with all stakeholders in the process of the care for welfare and harmonious development of children. Strengthen international cooperation for the implementation of the Convention on the Rights of the Child.

## 10. RIGHT OF THE CHILD IN SMALL FAMILY TYPE HOUSES

### INTRODUCTION

During the reporting period, the Special Preventive Group members together with Child's Rights Centre of the Public Defender under the scope of National Preventive Mechanism carried out the monitoring of following 10 children's small family type houses situated in eastern Georgia: 1. Charity Humanitarian Centre "Abkhazia" (Telavi, Village Kurdgelauri), 2. "Telavi Education Development and Employment Center" (Akhmeta, Vazha-Pshavela turn N1), 3. Charity Foundation "Breath Georgia" (Telavi, Gr. Orbeliani. N6), 4. NELP "Divine Child Foundation of Georgia" (Village Gldani), 5. "Association of SOS Children's Villages " House N8 ,(Tbilisi, Vera, IV m / d, Herman Gmainer str. N1), 6." Cheerful Family ", NELP "Child and Environment" (Rustavi, Baratashvili N19), 7. Charity Foundation "Caritas " (Gardabani region, Village Martkopi), 8. NELP "Child and Environment" (Gardabani region, Village Norio), 9. Charity Foundation "Breath Georgia" (Dusheti, Shamanauri st. N94), 10. Society "Biliki" (Khashuri, Shola street N1).

The monitoring studies the situation in small family type houses and its compliance with the requirements enshrined in the national standards. Herewith, assessed if the 2014 recommendations issued as a result of monitoring small family type houses were taken into consideration.

Alike the result of the monitoring in small family type houses, in 2014, the problem of juvenile education and the right to health remains, as well as their preparation for independent living. Herewith, child abuse and rehabilitation of child victims of violence is a problematic matter, as well as their provision with psychological / psychiatric services. The psychological and physical cases of bullying among children were distinguished at schools and at small family type homes.

There is a permanent change of the forms of education, which negatively effects on a child's mental health, makes it difficult to adapt to the changed environment and provokes emotional and behavioral disorders.

**Information on Services (Standard N1)** - Article 1 of the child care standards defines the list of the documents, which should be produced by the service provider and should make them accessible for interested parties.<sup>803</sup>

During the monitoring implementation all the small family type houses presented detailed information sheet and childcare licenses. As a result of the research, revealed that Khashuri house was also serves disabled children, but this was not mentioned in the

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803 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards.

information sheet. Educational program has been developed and presented in all the houses. It should be noted that according the Monitoring Group assessment, the mentioned document was very in detailed and only a few of them included all components defined by the law.<sup>804</sup> the childcare license and educational program was not presented only by the Dusheti House.<sup>805</sup> In all houses the schedules are posted in a prominent places, however in some cases it is only formally developed and defined activities are not fulfilled.<sup>806</sup>

During monitoring process, the service providers presented internal regulations, however it should be noted that in some cases the document did not include all components of the child care standards.<sup>807</sup> In 2014, the results of the monitoring revealed the cases of providing incomplete internal regulations, including Gldani small family type house.

According to the child care standards all small family type house should maintain records of the person's placement in a special institution or withdrawal from there, which was submitted by all small family type houses, except Telavi house,<sup>808</sup> where the information was incompletely recorded on the paper. It became clear that in some cases the mentioned recording in this institutions are produced inconsistently to the standards and the information is not fully reflected. In certain cases, information about the person who took of the child is obscure; the data about the beneficiary is incomplete.<sup>809</sup> Monitoring results showed that a temporary withdrawal of the beneficiary person is not recorded according the standards. Information is not a fully reflection in the recording form,<sup>810</sup> as well as the case outlining that despite the withdrawal of the child the case was not recorded in the journal.<sup>811</sup> The duration of child withdrawal is not recorded in the majority of the houses. The record keeping practices' related problems were identified in the 2014 monitoring period by the Special Preventive Group, including in the small family type house of Gldani. This issue still remains in this particular house, regardless the change of the provider organization.

The personal files of the employees, including documents proofing the qualification and employment agreements according to the Georgian legislation, the mentioned filed were provided by all of the small family type houses, except the house in Telavi.

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804 Charity Humanitarian Centre «Abkhazia» (Telavi, Village Kurdgelauri) and "Association of SOS Children's Villages " House N8 ,(Tbilisi, Vera, IV m / d, Herman Gmainer str. N1).

805 Charity Foundation «Breath Georgia» ,Dusheti, Shamanauri st. N94

806 NELP "Child and Environment", Rustavi, Baratashvili N19

807 Charity Foundation "Breath Georgia", Telavi, Gr. Orbeliani. N6;

808 Charity Foundation "Breath Georgia", Telavi, Gr. Orbeliani. N6;

809 Charity Humanitarian Centre "Abkhazia" , village Kurdgelauri; "Telavi Education Development and Employment Center" (Akhmeta,Vazha-Pshavela turn N1); NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).

810 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri. NELP "Divine Child Foundation of Georgia" , Tbilisi, Village Gldani; Society "Biliki" Khashuri, Shola street N1.

811 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1; Charity Foundation "Caritas " Gardabani, Village Martkopi.

During the monitoring period in 2014, the recording of the measures carried out in response to the expression of opinion was available only in a few houses that were recorded incompletely. This is still a problem. Recording of the measures taken in response of opinion expression has a formal character. The mentioned document is not kept in a number of houses,<sup>812</sup> and in some cases it is available without any footage in it.<sup>813</sup> Record keeping of opinion expression is not being kept in the houses of Norio and Rustavi.

Small family type houses are keeping the journal of the facts of the violence and accidents. Violence recording was not kept in Telavi small family type house, however the monitoring group revealed the existence of the violence cases by studying other documentations. All cases were not recorded in Khashuri house, a similar fact occurred in the same house regarding the keeping records of accidents. Herewith, certain information was recorded in the “SOS Children’s Village” journal.

Small family type houses are keeping the personal data of each beneficiary, it revealed that in some cases personal files were not complete and it did not include all the required documents, alike the 2014 monitoring results.<sup>814</sup>

**Inclusiveness of the Services (Standard N 2)** - Child care standard N 2<sup>815</sup> defines inclusiveness of the services, according to which the beneficiary enjoys the services that meet their individual needs and is in line with their capabilities. Beneficiaries have an equal opportunity to use the services. They have access to a variety of community services.

The monitoring results revealed that possibility of taking the age and interests of the beneficiaries of the small family-type houses into consideration, their involvement in various activities depends on the capacity and location of the organization.

It should be noted that the beneficiaries of Gldani family type house<sup>816</sup> were not benefiting from additional activities for the time of the monitoring, according the leader, they are planning to engage the beneficiaries in different activities.

The case of Norio<sup>817</sup> small family type house beneficiary has been revealed that of one of the children was spending whole days in the house hold. After joining the house, one of

812 Charity Humanitarian Centre “Abkhazia” , Telavi, village Kurdgelauri; “Telavi Education Development and Employment Center” Akhmeta, Vazha-Pshavela turn N1; Charity Foundation “Breath Georgia” , Telavi, Gr. Orbeliani. N6.

813 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

814 NELP “Divine Child Foundation of Georgia” , Tbilisi, Village Gldani; Charity Humanitarian Centre “Abkhazia” , village Kurdgelauri.

815 Technical regulation on Confirming Child Care Standards confirmed by the Decree of Government of Georgian, 2014, January 15 №66 , Article 2 , standard N2.

816 NELP “Divine Child Foundation of Georgia” , Tbilisi, Village Gldani.

817 NELP “Child and Environment” Gardabani, Village Norio.

the child is not allowed to leave the house, in some occasions can go to the shop nearby, but only with other beneficiary. The child is taken to the districts' or school's cultural and other events only if other beneficiaries and staff is going too. According to the leader of the house, this is the social worker's decision. The child does not attend school and has not graduated from 9 classes, accordingly cannot take professional education. The child wants to learn hairstyling. One of the beneficiaries of the house, who is taking football training in Tbilisi, the company "Natakhtari" stopped giving money to travel. He has some success in this area and if adoptive mother does not give travel funds, the child cannot go to the practice. The mentioned issue is not reflected in the documentations and nobody strives to solve it.

The Monitoring Group has learned that one of the beneficiaries<sup>818</sup> left vocational school due the conflict with children. According to the words of the leaders and mentors<sup>819</sup> there are cases when the children are ashamed that they are beneficiaries of these institutions. House staff said that in general, children have complexes, and therefore it difficult to socialize. Disabled children living in small family type houses are target of double stigmatization.<sup>820</sup> There is no work done for to prevent / eliminate the issue.

The review of individual development plan of one of the beneficiary of Dusheti<sup>821</sup> house states that according the characterization from the school the child has difficulty to learn foreign language and technical subjects. According to the House manager, the organization does not have the financial resources to eliminate this problem. The Plans do not reveal exact steps taken to solve the issue, about the results achieved. Municipal caregiver of Dusheti house does not know whether the beneficiary is involved in inclusive teaching and believes that this is "the discretion of the school."

Despite the rare exceptions,<sup>822</sup> in small family type houses children's contact with the biological family without caveat. Children are visiting to their families, receiving guests, relatives, also communicating with them by phone and social networks. The frequency of contact is individual.

The phone is not available in some houses,<sup>823</sup> but the teachers encourage beneficiaries to contact with their relatives and give them possibility to call from their own mobile phones.

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818 NELP "Child and Environment" Rustavi, Baratashvili N19.

819 NELP "Child and Environment" Rustavi, Baratashvili N19; NELP "Child and Environment" Gardabani, Village Norio.

820 NELP "Child and Environment" Rustavi, Baratashvili N19; Charity Foundation "Caritas" Gardabani, Village Martkopi; Society "Biliki" Khashuri, Shola street N1.

821 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

822 Charity Foundation "Caritas" Gardabani, Village Martkopi

823 Society "Biliki" Khashuri; Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94; NELP "Child and Environment" Gardabani, Village Norio.

In Khashuri<sup>824</sup> house the training and activities of the card is being produced, where is marked a variety of community involvement and other activities of the beneficiaries, such as excursions, hiking, planting trees, Santa Claus visit.

In addition, it was revealed that the beneficiaries with psychiatric diseases do not have opportunity to access the proper psycho-social rehabilitation services.

**Protection of Confidentiality (Standard N3)** - Article 3 of the “child care standards” determines the protection of privacy issues. The expected results are the protection of confidentiality of the personal information of the beneficiary.

The correspondence, conversations and personal meetings of beneficiaries in the small family type houses are more or less protected by confidentiality. According to the caregivers information, individual consultations with children are carried out in private rooms, in cases of small family type house of “SOS Children’s Village”<sup>825</sup> the study room is used as well.

Personal files of the beneficiaries are protected and kept out of reach (mainly, in the staff’s room). Before the dissemination of information about the beneficiaries, the service provider shall notify the territorial social service center, which is known for teachers and leaders.

Protection of confidentiality is one of the provisions in the contract of Martkopi service provider, however the caregivers said that they are attending phone calls of the beneficiaries,<sup>826</sup> and if the visitor has requested a separate meeting with the child, attending the visits in the kitchen or living room, which has no door.

As employees are clarifying, they know that they must abide confidentiality requirements, however found it hard to convey what kind of information is considered confidential and for whom this is available.<sup>827</sup>

**Individual Approach to Service Provision (Standard N4)** - Article 4 of the Child Care Standards<sup>828</sup> focuses on the individual approach of the services, which takes into account the child’s individual skills and requirements. Services received by the beneficiary must be made-to-order to their unique needs, for this it is necessary, provided the activities based on the child’s strengths, individual needs and resources.

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824 Society “Biliki” Khashuri, Shola street N1.

825 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1;

826 All the beneficiaties of the home is disabled person.

827 NELP “Divine Child Foundation of Georgia” , Tbilisi, Village Gldani; “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1. Charity Foundation “Breath Georgia» Telavi, Gr. Orbeliani. N6.

828 Technical reglament on Confirming Child Care Standards confirmed by the Decree of Government of Georgian, 2014, January 15 №66.

The personal file of all beneficiaries is stored in all small family type houses. Several flaws were revealed after studying the cases. Individual service plans have been presented in Gldani, Telavi small family type houses. A number of houses could not present the new curriculum.<sup>829</sup> Telavi small family type house presented the draft of the curriculum, according to the caregivers' words; they do not have an experience of writing such kind of documents and must settle the issue with the manager. In some cases the individual service plans were presented with shortcomings. In particular: the information was not covering the matters of achieved results, the impeding factors of achieving the goal. The similar cases were reported in the plans presented in the past<sup>830</sup> and a complete picture of the relationship between the child and child's family is not presented.<sup>831</sup> Herewith, there is no complete information about the child's education, health and other issues. The individual development plans of the last services were not developed in small family type houses.<sup>832</sup>

Social workers have not provided some of the houses with renewed individual development plan / review.<sup>833</sup> Monitoring results showed that in some cases social workers were sending the individual development plan by the delay,<sup>834</sup> which would hinder the process of developing an individual care plan by caregivers. In certain cases, the caregivers elaborated the individual service plan before delivery of the delayed individual development plan.<sup>835</sup> Herewith, revealed the cases when the social worker elaborated the individual development plan without consulting the caregivers and the beneficiary. As a result, the activities desired by the beneficiary, which was agreed with the caregiver, was not in accordance with the actions listed in the plan.<sup>836</sup>

In certain cases, there are no signatures of beneficiaries and caregivers in an individual development plan.<sup>837</sup> The cases of incomplete filling out of the individual development plans revealed, for example, children's opinion on the activities implemented are not reflected in the plan.<sup>838</sup> In some houses<sup>839</sup> the beneficiaries are not familiar with their individual plans. In case of Rustavi house, the individual activities do not correspond

829 Charity Humanitarian Centre "Abkhazia", village Kurdgelauri; NELP "Divine Child Foundation of Georgia", Tbilisi, Village Gldani.

830 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94. Charity Foundation "Caritas" Gardabani, Village Martkopi; NELP "Child and Environment" Rustavi, Baratashvili N19.

831 Society «Biliki» Khashuri, Shola street N1.

832 NELP "Child and Environment" Village Norio; Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

833 Charity Humanitarian Centre "Abkhazia", village Kurdgelauri; "Association of SOS Children's Villages" House N8, Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

834 Society «Biliki» Khashuri, Shola street N1; NELP "Child and Environment" Village Norio.

835 NELP "Child and Environment" Gardabani, Village Norio; Charity Foundation "Caritas" Gardabani, Village Martkopi.

836 Society «Biliki» Khashuri, Shola street N1.

837 NELP "Child and Environment" Gardabani, Village Norio; Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94, Charity Foundation "Caritas" Gardabani, Village Martkopi.

838 Society «Biliki» Khashuri, Shola street N1..

839 NELP "Child and Environment" (Rustavi, Baratashvili N19); NELP "Child and Environment" Gardabani, Village Norio.

to the truth and do not reflect the needs of the child. For example, one of the plan states that the beneficiaries have frequent contact with their parents, which was not confirmed by the caregiver. The mentioned house is providing incomplete individual, as well as service plans

According to the leader and the children,<sup>840</sup> social workers involvement in the process of child care and supervision is deteriorated. Superficiality of the relationship between the Educators and social workers was pointed out in the monitoring group after they conducted the supervision in the houses in 2014. The reason named is a change of social workers. One of the house's caregiver asked the social worker to help in the facilitation of the child's meeting with the parent according the child's will, but without a result. There is no sufficient and adequate communication between the house and a social worker. Educators and leaders sometimes act arbitrary, while involvement of the legal representative is obligatory.

The monitoring group's observation on the small family type houses in 2014 showed that the individual development and individual service plans were formality and did not reflect the objectives of the planned activities, expected results in a detailed manner. Similar violations were reported as a result of the 2016 monitoring. The needs of the individual development and individual service development plans are not in accordance, the plans do not always provide individual demands and needs of the beneficiary. Educators and social workers do not / could not identify the needs of beneficiaries with disabilities, children with mental and complex behaviour issues.

**Emotional and Social Development (Standard N5)** - 5<sup>th</sup> standard determines that the environment of the service should promote beneficiaries' emotional and social development, it should prepare them for independent living and encourage their social integration and strengthen contact with family.

Some part of the beneficiaries, interviewed during the monitoring, is appraising the living conditions positively, mostly caregivers service was estimated as a helpful.

In all the small family type houses has established the so-called duty and sometimes the beneficiaries with a help of caregivers and mainly independently, clean their rooms and common use areas, garden, kitchen and toilets. Beneficiaries also are involved in the process of preparing the dinner.

The walls of the small family type house mostly is full of posted rules of behaviour, a timetables, applications created by the children, the poster expressing their desires and interests, children's paintings, application signs of appreciation and congratulations dedicated to the caregivers. There is not enough necessary equipment to satisfy the in-

<sup>840</sup> NELP "Child and Environment" (Rustavi, Baratashvili N19); Society «Biliki» Khashuri, Shola street N1.; Charity Foundation "Caritas" Gardabani, Village Martkopi; NELP "Child and Environment" Gardabani, Village Norio.



terests of children’s cognitive and intellectual development in the Akhmeta small family type house. According to the children, music player and TV that is allocated in informal meeting place is not working already for a long time in Telavi small family type house. The computer in one of the beneficiary’s room was damaged long ago. There is no internet connection in the house.

It is noteworthy that situation in The Rustavi<sup>841</sup> small family type house is in less favourable environment for the development of children’s emotionally and intellectually. Wall-papers of the house is torn off; inventory and furniture that are used by the beneficiaries is dirty and derelict, the number of books is meagre, part of the rooms are heated well, however in some parts there is no heating system at all.

The environment created in Norio<sup>842</sup> small family type house cannot ensure the children’s emotional and social development. An appropriate psychological service is not accessible for children with hard-traumatic stress, as well educational needs and social integration matters - one of the juvenile, who will soon become adult and should take off from state care, is not getting a professional education and is spending the whole days in the house hold.

The monitoring revealed that in the “SOS Children’s Village” N8 house<sup>843</sup> had an unpleasant smell. Household items and furniture, as well as personal items for children, entertainment tools were messy and disordered some of them were damaged. There was only one computer in the house, most of the children’s personal tablets were damaged. The children wore according the season and age, but the clothes were jumbled.

During implementation of the monitoring only one beneficiary was allocated in the Dusheti small family type house.<sup>844</sup> The environment in this house is risky for adolescent’s psycho-emotional and social development, limited social relationships, emotionally draining situation (loneliness) in the house, coldness, lack of informal education, the absence of recreation and sport activities is a violation of right to have necessary environment for the physical and emotional development. There is a supposition that the beneficiary is living in the flat of the caretaker, not in the small family type house. An assumption is based on the following facts: there is unnatural coldness in the house and it felt that the heater did not go on for a long time. The furniture is broken, there are no books and personal belongings scattered on the table of the beneficiary’ room, there is a water vessel that lies on dining table in the kitchen, which seems was not used for a long time. The caregiver and child is not confirming the above mentioned fact, however,

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841 NELP “Child and Environment” (Rustavi, Baratashvili N19).

842 NELP “Child and Environment” Gardabani , Village Norio.

843 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

844 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

the caregiver notes that she is taking the beneficiary to her flat in the evenings, because there is no heating or internet connection in the house, and to make sure that Nato is not bored. She takes her as a guest with her family while visiting someone or takes her on holidays to her summer-cottage.

Despite the exceptionally difficult contingent of the beneficiaries, compared to the previous years, the emotional and social environment at village Gldani small family type house<sup>845</sup> is significantly improved. The interior of the house is clean and comfortable, the children are provided with clothing, food, age-appropriate accessories, durables, educational and entertainment items, as well as internet and telephone communications.

The reading literature and entertainment options are meagre at small family type houses and it does not always coincide the age of the beneficiary.

Mostly beneficiaries of the small family type houses are integrated in the community, in the school society. Beneficiaries are participating in a variety of entertaining and educational activities along with the classmates and neighbours. The exception is the “SOS Children’s Village” N8 house<sup>846</sup> beneficiaries, who do not have classmate friends and sometimes have conflicting relationship with rural children.

Contacting with the biological family is without caveat in small family type houses. Despite the rare exceptions, children are visiting their biological families, receiving the guests, communicating with them by the phone and social network. Despite the fact that some of beneficiaries of the village of Gldani small family type house<sup>847</sup> does not have determined “withdrawer person”, it is distinguished that children insist to be taken independently to their biological family by the educators. Social Service Center worker, who is in charge of the small family type house, gives the verbal recommendations to house leader that in case of the request let children go to their biological families, because in case of banning previously mentioned right, they will still escape.

**Nutrition (Standard N6)** - Article 6 of the Child care standards<sup>848</sup> defines obligations of the service providers in the process of providing the food to the beneficiaries. The children under state care must be provided with the nutrition according to their age.

During the monitoring revealed that a house ventilation system did not work in some of

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845 NELP “Divine Child Foundation of Georgia” (Tbilisi, Village Gldani).

846 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

847 NELP “Divine Child Foundation of Georgia” (Tbilisi, Village Gldani).

848 Technical reglament on Confirming Child Care Standards confirmed by the Decree of Government of Georgian, 2014, January 15 №66.

the homes<sup>849</sup> and the kitchen window had no insect-proof net.<sup>850</sup> Kitchen environment and cooking equipment needs to be renewed in some houses.<sup>851</sup>

Refrigeration food storage rules were violated in most of the houses. Different types of product were placed together in the refrigerator freezer.<sup>852</sup> The cutting boards and knives (bread, fish, meat, and dairy products) were not labeled.<sup>853</sup> The bread products were kept in the open cupboard with the violation of the sanitary norms.<sup>854</sup> Product standards incompatible storage cases were recorded in Telavi house. In particular, sugar, flour, beans, oil were kept in a damp room, where the water was placed in a plastic tank. Sugar and flour packages were placed on the cement floor.

Monitoring showed that perishable products were kept in the refrigerator, but was either expired or have not had relevant inscriptions. In some houses, there was no indication of a release date and expiry date on the food, which makes it impossible to control the validity.<sup>855</sup> In the house of “SOS Children’s Village” N8 house was kept the expired pork in the refrigerator, while in the village of Gldani small family type house was keeping - expired milky sausage.

In 2015, Special Report, on the monitoring of small family type houses, emphasizes that the nutrition menus were not in accordance the standards. It was monotonous, and the ratio was unbalanced. The mentioned problems were still recoded during the monitoring in 2016. Revealed that the standard nutrition menu is comprised inappropriately and as usual, dinner is prepared based on daily practice.<sup>856</sup> The diversity of the food is an issue, herewith; the beneficiaries are getting same types of product for dinner and supper in Telavi small family type house. In certain cases, a meal is not balanced.<sup>857</sup> The same occurred during the monitoring in 2014 that in some cases the demand of the children is satisfied by eat unhealthy food - sausages, drink carbonated beverages. This

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849 Charity Humanitarian Centre “Abkhazia”, Telavi, village Kurdgelauri; Charity Foundation “Caritas” Gardabani, Village Martkopi; NELP “Child and Environment” (Rustavi, Baratashvili N19).

850 Charity Humanitarian Centre “Abkhazia”, Telavi, village Kurdgelauri; Charity Foundation “Caritas” Gardabani, Village Martkopi; NELP “Child and Environment” (Rustavi, Baratashvili N19); Charity Foundation “Breath Georgia» Telavi; NELP “Divine Child Foundation of Georgia” (Tbilisi, Village Gldani).

851 Charity Foundation “Breath Georgia» Telavi, Gr. Orbeliani. N6; “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1; NELP “Divine Child Foundation of Georgia” (Tbilisi, Village Gldani).

852 Charity Humanitarian Centre “Abkhazia” , Telavi, village Kurdgelauri; NELP “Child and Environment” Gardabani, Village Norio; Society «Biliki» Khashuri, Shola street N1..

853 Charity Humanitarian Centre “Abkhazia” , Telavi, village Kurdgelauri; NELP “Child and Environment” Gardabani , Village Norio; Society «Biliki» Khashuri, Shola street N1..

854 Charity Humanitarian Centre “Abkhazia” , Telavi, village Kurdgelauri.

855 “Telavi Education Development and Employment Center” Akhmeta,Vazha-Pshavela turn N1; NELP “Divine Child Foundation of Georgia” (Tbilisi, Village Gldani).

856 Charity Humanitarian Centre “Abkhazia” , Telavi, village Kurdgelauri; Charity Foundation “Caritas” Gardabani, Village Martkopi; NELP “Child and Environment” Gardabani , Village Norio.

857 Charity Foundation “Breath Georgia» Telavi, Gr. Orbeliani. N6.

is in contrary with the child's body healthy growth and development.

During the monitoring in one of the houses kept previous day prepared dinner. According to information received, in accordance with established practice, the dinners for the second day are prepared during previous evening.

Norio house does not have hot water supply. An insect problem revealed in the Telavi house, but the disinfection actions have not been carried out in order to eliminate the problem.

The caregivers are not provided with training opportunities on children's nutrition matters. Also, they do not talk to the beneficiaries about healthy nutrition issues.

According to the appraisal of the monitoring group, caregivers of the small family type houses need to get more information about the rules of purchasing and storing the food, in order to protect the safety of the food that is delivered to the beneficiaries. It is important to emphasize the necessity of implementation of food safety principle.

**Rest and Leisure Capabilities (Standard 7)** - Article 31 of the United Nations Convention on the Rights of the Child is protects the rights of the child on rest and leisure. Article 7 of the Child care Standards is dedicated to obligations of the service provider to provide rest and leisure capabilities for children.

The beneficiaries of small family type houses are provided with the vacation leisure time on the resorts for no less than 12 days per year.

The beneficiaries are involved in informal activities. Children are attending different circles. For example: painting, music, dancing, playing on panduri and so on. There are cases when the kids' desired circles are not yet available in the region. Alike the 2014 monitoring results, children are getting bored of doing one specific activity and they just quit it.

The involvement level of in desired and interesting activities for the beneficiaries of small family type houses are depending on the service provider organization's financial resources and capabilities. Mostly children have donors or go for free circles. Herewith, in cases of Norio small family type house the dance circle fee is covered by the beneficiary's mother.

TV and personal computer if available in small family type houses. According the caregivers, mostly, the beneficiaries are able to use the Internet for educational purposes.

Varieties of sports equipment are available in the houses: table tennis, rubber bands, backgammon, chess, hantels for exercises, badminton. In most of the houses the children have their own cell phones and personal computers.

The beneficiaries of small family type houses are going to the theatre as a group, as well as participate in school excursions and other events. The monitoring team discovered that the beneficiaries of Martkopi house<sup>858</sup> were not involved in school activities and the shortcoming was eliminated only after the intervention of the caregiver.

Individual Development Plan in certain cases does not reflect the wishes and interests of the child. There was the case, when the plan reflected the interest and desire of the beneficiary to start going to the chess circle. According to information provided by the teacher to the monitoring group, the beneficiary did not have the desire or have not expressed mentioned wish.<sup>859</sup>

**Education (Standard N8)** – According to the N8 standard of the technical regulation on approval of child care standards, the service provider is obligated to provide the beneficiary with an opportunity to realize the right to education.

Generally caregivers or other beneficiaries of the house are helping prepare lessons. The general trend has been revealed that a large part of the beneficiaries need additional professional help for to study for school, which are often recorded in their individual development plans and the social worker's reports. The mentioned needs are especially urgent in cases of foreign language and technical subjects, which in many cases are not provided. This issue is reflected in the special monitoring report of 2015 as well. In particular, Beneficiaries of Gldani small family type home<sup>860</sup> need additional help to study school subjects. The beneficiaries of the mentioned home were not actually going to school and attending the teaching process. The mentioned issue is somewhat regulated, but still in their academic education is not line with their biological age, three beneficiaries are involved in the inclusive education program, one of them refuses to go to school at all. Children do not have the motivation to get education. Caregivers mentioned that due to the lack of funds children are not provided with addition study possibility. The mother of one of the beneficiaries of Norio small family type house covers the fee of additional lessons for the child.

The most part of beneficiaries are not motivated to continue their studies after receiving basic education and mainly are oriented to get professional education. According to the caregiver's information, none of the beneficiaries of Kurdgelauri<sup>861</sup> small family type house have been entrants since 2011.

We welcome the practice of "The SOS Children's Village", where they have the SOS teachers who organize various circles and are a kind of mediator between the school and the educators. The teachers and volunteers in various fields are hired. "SOS" N8

858 Charity Foundation "Caritas" Gardabani, Village Martkopi.

859 Society «Biliki» Khashuri, Shola street N1..

860 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).

861 Charity Humanitarian Centre "Abkhazia", Telavi, village Kurdgelauri.

house<sup>862</sup> children are involved in sports, art or artistic circles, and they have an opportunity to study the additionally under the supervision of the individual teacher, however the motivation of children is so low that it effects negatively to the outcome.

Meeting the educational needs of juveniles is problematic in the regions, due to the peculiarities or territorial access limits the ability to fulfil the demand. For example, in Akhmeta<sup>863</sup> small family type house.

The beneficiaries of small family type houses have not attended school, skipped the classes and accordingly have the academic lag. They are involved in the inclusive education program and have the status of a child with special educational needs. The situation in this matter at Martkopi small family type house should be noted. Children with disabilities are enrolled at the institution and they are getting education at Martkopi N1 public school. The beneficiaries are involved in the inclusive education program. The monitoring team learned that the program was not designed to fulfil children's needs and capabilities. One of the beneficiaries of the house that uses wheelchair was involved in at house training program, but at the moment due to the resistance of the director of the school, teachers do not visit beneficiary's houses for teaching.

The issue of communicating with the special teachers has been distinguished. Teacher does not give recommendations to the educators and they are assisting beneficiaries to improve academic performance in the capacity of their own experience.<sup>864</sup> In many cases the school tasks given to the children does not coincides their knowledge and abilities. It was also distinguished that the individual curriculum does not correspond to the needs and capabilities of children. Due to the mentioned reason, the caregivers had to return the plans to school for to elaborate new plan that reflects the needs of children. There was a case revealed, when caregivers had no information on whether the beneficiaries were involved in the inclusive education program.<sup>865</sup>

The libraries of the small family type houses do not stand out with its diversity of literature and using the library is not encouraged by the caregivers.

All the small family type houses are provided with internet and computers, except Telavi<sup>866</sup> small family type house, in case of necessity the beneficiaries of the house are using close friends' or nearby located "Center for Civil Engagement" Internet communications. As usual, the children have possibility to use computers averagely during 1-2 hours in a day, under the supervision of educators.

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862 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

863 "Telavi Education Development and Employment Center" Akhmeta, Vazha-Pshavela turn N1.

864 Charity Foundation "Caritas ", Village Martkopi.

865 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

866 Charity Foundation "Breath Georgia» Telavi, Gr. Orbeliani. N6.

Due to frequent changes of the beneficiaries residential environment and care forms revealed the cases when minors lost their motivation and interest in getting education, they were studying unstably and had difficult to adapt to a new school and classmates.

Despite the fact that houses have the literature about children's rights, children do not have sufficient information about their rights.

**Healthcare (Standard 9)** - Article 9, paragraph 1 of child care standards<sup>867</sup> the beneficiaries should be raised in the environment where healthy lifestyle is encouraged and proper attention is paid to their health conditions.

Alike the 2015 monitoring results conducted in small family type houses, the issue of prophylaxis of viral infections and caregivers' lack of information on prevention measures remained in small family type houses this year as well. Lack of isolation facilities of infected juvenile is still problematic. The protection of hygienic rules and the awareness campaigns on communicable disease prevention measure are not properly conducted for the beneficiaries. The service provider has not listed down the ruled of flu prevention in the documentation at Gldani small family type house, although the mentioned document is not available for the beneficiaries, it is not posted in a distinguished place and the beneficiaries and caregivers does not even been orally informed about its content.

Like last year, the necessity more educational activity on healthy lifestyle for minor beneficiaries is distinguished. The cases of dependency on alcohol, tobacco has been revealed. This problem is particularly evident in the case of village Gldani<sup>868</sup> small family type house beneficiaries. There is a lack of educational literature on personal hygiene and on HIV / AIDS and other sexually transmitted diseases, as well as about alcohol, drugs, tobacco, and other harmful substances, the expected results of their usage and a healthy way of life.

There still exists the issue of gaining the complete information about the health status of beneficiary during the transferring process to small family type houses. There were cases when beneficiaries' health condition did not comply the health certificate presented during enrolment process. Despite the fact that the beneficiaries receive the necessary consultations from the doctor, it does not show the dynamics of the disease and the results of treatment, due to the records inconsistency. It is still problematic to designated special storage area for medication them not be available for the beneficiaries. For instance, in Kurdgelauri<sup>869</sup> small family type house the medications are stored in the closet of clothes of the staff, this location lacks conditions of properly storing the medicine and it is readily available to any beneficiary.

867 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66.

868 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).

869 Charity Humanitarian Centre "Abkhazia", Telavi, village Kurdgelauri.

Supervision of the organization of the drugs in case of sickness of beneficiaries is an issue. The monitoring revealed that the beneficiaries receive the medication under the prescription of the doctor, which does not provides possibility to find out who gave the medicine to beneficiary. The journals of the drug issue do not have universal form in all small family type houses. In most cases, in cases of the child's illness the records are not kept, there is no journal of medication acquisition and issuance, therefore, the children are not supervised well enough while getting the medicine during the illness.

It is especially noteworthy that in Dusheti<sup>870</sup> small family type house the right to health of the beneficiaries is not properly protected. During monitoring of expired medications were discovered (Citramonum, Korvalol, valerian tincture), while the box where medicines were kept was dusty and dirty. It is notable that in this particular house, the representatives of the provider organization and caregivers are not monitoring and conducting the necessary medical services for children.

Like the monitoring result of the previous reporting period, the problem of the social worker's role in the health care administration field still remains this year. Despite the fact that in care of medical necessity, the social worker is involved in the decision-making and treatment, the procedures of participation form and duration of the monitoring process of the conditions of child's health by the social worker is still obscure.

The small family type houses often do not keep records of all accidents in a special registry journal. For example, in SOS Children's Village N8 small family type house's journal only records two cases of the incidents, however, the personal health forms №IV-100 / A files indicates various injuries resulted by the accident that was not mentioned in the journal. The service providers often do not have full information about clear definition of "an accident". Therefore, the accident journal is filled formally and does not reflect the real situation.

Feedback and Complaint Procedures (Standard N10) – According the Article 10 of child care standards,<sup>871</sup> the supplier of services should shape and quality the service delivery, herewith create a simple and clear feedback and protest procedure for the children and their legal representatives.

During the monitoring revealed that all houses have regulations on the feedback and complaint procedures, which fully reflects the state's child care standards, however the internal regulations of the houses are not fulfilled and the beneficiary/ service recipient is not familiar with feedback and complaint procedures, and in most cases they do not have the opportunity to give feedback anonymously.

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870 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

871 Technical reglament on Confirming Child Care Standards confirmed by the Decree of Government of Georgian, 2014, January 15 №66.



During the monitoring period in 2014, the recording of the measures carried out in response to the expression of opinion empty in most cases and had a formal character. The same problem was revealed as a result of the monitoring in 2016. The feedback logging journal of the houses is just a formality, as it actually is empty and does not contain any records.<sup>872</sup> Basically, it records only a few letter expressing appreciation toward the caretaker or children’s apologies for certain behaviour.

After studying the documentation and interviewing the caregivers revealed that there are no procedures in the house,<sup>873</sup> which is provided to the beneficiary’s with right to express protest and submit feedback about services. There are no the questionnaire, or other anonymous means of comments expression, for example the boxes are not placed in the distinguished place, in cases of existence of such box it is not labeled. in certain parts of the house could not present a complaint box.<sup>874</sup>

According the appraisal of the monitoring group, the importance of feedback receiving and complain procedures are not realized by the leaders and house teachers, because they claim that mentioned procedures does not correspond to the principles family upbringing and even the beneficiaries are objecting it. Alike in the 2014, the results of the monitoring showed the feedback and complaint procedures are not promoted by the service providers and due the lack of information, service users can not enjoy this right.

After interviewing beneficiaries by the monitoring group members showed that they did not know the feedback and complaint standards.

In some houses teachers and beneficiaries are participants of the meeting that is dedicated to discuss their problems and complaints. Caregivers believe that this kind of event is more efficient to meet the needs of children and get their feedback.<sup>875</sup>

According the monitoring group, to improve the provided services and take beneficiaries opinion into consideration, it is necessary to implement these standards into practice. This will significantly contribute to the identification of service gaps and gives opportunities to the monitoring body, as well as provider organizations, to consider the child’s opinion into while formulating the appropriate recommendations / taking the necessary measures to improve the environment.

**Protection from Violence (Standard N11)** - This standard is guarantees child’s right to be protected from all forms of violence. This right is guaranteed by the Article 19 of the CRC.

872 Charity Foundation “Caritas “ Gardabani, Village Martkopi; Society «Biliki» Khashuri, Shola street N1.

873 NELP “Child and Environment” (Rustavi, Baratashvili N19); Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94; NELP “Child and Environment” Gardabani , Village Norio.

874 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94; NELP “Child and Environment” Gardabani , Village Norio; NELP “Child and Environment” Rustavi, Baratashvili N19.

875 Society «Biliki» Khashuri, Shola street N1; Charity Foundation “Caritas “ Gardabani, Village Martkopi.

The monitoring showed that the foster mother of the “SOS Children’s Village”<sup>876</sup> N 8 house attempts to subdue the children with shouting and screaming, is isolating them, prohibits the use of a computer or going to the yard, forces them to stand next to the wall. For punishment purposes she is isolating of children in the bedrooms, locked children often are jumping out from the second-floor window and escaping from the house.

The monitoring team learned that former foster parent were using violent methods to punish children in Akhmeta<sup>877</sup> small family type house. According to the beneficiaries, the former foster father was beating them with the stick over the years, was kicking out naked children from the house, foster mother was beating the children when she was getting angry.

The monitors reported family violence cases against children, when they were temporarily withdrawn to the biological family. Monitors became aware of the fact, when one of the beneficiaries of the small family type house was beaten by the school guard. The same child was beaten by another bully child’s grandmother. The first violence case finalized by firing the guard, and the other one completed with children’s the reconciliation. It should be noted that according to the existing information, neither school nor the caregivers of the “SOS Children’s Village” notified the social agency on child abuse and neglected case and accordingly no legal procedures defined by the Georgia legislation has been executed.

The cases of violence were reported at Rustavi<sup>878</sup> small family type house. Despite the fact that the educators have undergone training on the prevention of violence and children’s rights issues, they do not possess beneficiaries’ behavior management ability, experience and skills. The personnel of the small family type houses is not aware of some mental health issues, they are not able, except in emergency and urgent situations, to identify and timely response the cases.

Several beneficiaries of village Gldani<sup>879</sup> house have important behavioral and emotional disorders, the facts of one beneficiary oppressing, intimidating, pressuring, verbally abusing other beneficiary has been recorded. The specialized multidisciplinary examinations was not provided for the children and social service do not informed the house leaders and educators about the dynamic supervision and treatment possibilities in the framework of the state funding children’s psychiatric care subprogram.<sup>880</sup>

876 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

877 “Telavi Education Development and Employment Center” Akhmeta, Vazha-Pshavela turn N1.

878 NELP “Child and Environment” Rustavi, Baratashvili N19.

879 NELP “Divine Child Foundation of Georgia” (Tbilisi, Village Gldani).

880 Resolution of Georgian Government №308, 2015, June 30 Tbilisi , „ Confirmation of Health Care State Program of 2015“ annex №11, Psychic Health.

The fact of escape from the house, self-damage and suicide attempts are often occasion in small family type house of Martkopi,<sup>881</sup> which is obviously makes existence of the crisis management strategy guidelines very important, however, a document does not exist at this house.

Disagreement between beneficiaries and between beneficiary and teacher is not-so-rare occasion in village Norio<sup>882</sup> small family type house. The interviews with caregivers revealed that they do not possess the special knowledge and skills for managing complex behavior of the children, have not got proper training, only limitation of going out from the house and banning using the computers is used from the punishment-awarding system. The educators can not cope with the behavioral that is typical of traumatized children, there is no behavior management strategy at house and there is lack of pedagogic control.

Violence between the peers and self-injury facts were reported in the Khashuri<sup>883</sup> small family type house. According to our information, the beneficiaries have very open relationship with their tutors. They are talking about their problem, also what they did wrong. According to the leader, the house has a punishment-awarding system - the agreement on the rules of living in the house is placed in a visible place and all beneficiaries are informed about it. The document on the procedures for managing complex behavior is presented in the house, which should be appraised positively.

The obvious symptoms and signs of the child's emotional and behavioral disorders is totally neglected while enrolling in small family type house and presented form N100 during the enrolment process includes the conclusion of child being "healthy" or "almost healthy", so that the evaluation of the mental health problems and its diagnostic that was indicated in social appraisal form has not taken place. The beneficiaries of the small family type houses have suffered trauma, domestic violence, being orphans, being left without care or being neglected, frequent change of care methods and institutional forms. However, children are not identified as victims of violence. The health appraisal during the enrolment process in small family type houses has formal character. There is no child's mental health assessment, according the child under state care do not receives adequate psychological / psychiatric care and as a victim of violence does not get the appropriate psycho-social rehabilitation. The mentioned factors often are reflected to the child's mental health, behavior and have negative impact on the emotions and often provoke violent behavior. Dynamic surveillance of beneficiaries' mental health, multidisciplinary assessment and treatment in a specialized psychiatric institution only occurs during the crisis cases.

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881 Charity Foundation "Caritas" Gardabani, Village Martkopi.

882 NELP "Child and Environment" Gardabani, Village Norio.

883 Society «Biliki» Khashuri, Shola street N1.

Despite the positive dynamics comparing the previous years and the fact that the violence against children is not systematic, according several revealed cases by the monitoring, we can conclude that children's rights under the state care is violated - abuse cases are covered (all violence cases are not registered in the journal), referral procedures are violated.

**Bullying** – is still common among children, both psychological and physical violence in schools and in small family type houses. It was revealed that sometimes the teachers do not have any information about bullying cases or mostly, they request caregivers of the small family type houses to resolve the conflict.

Many cases of bullying revealed between beneficiaries of the “SOS village” N8 house.<sup>884</sup> Children often address each other loudly, roughly, with humiliating words, which mostly turns into a physical confrontation. One of the beneficiaries of the house helps foster mother to manage children's behavior in a violent manner in “SOS”, it most likely happens as a result certain privileges. By the encouragement of the “SOS” foster mother he can impose restrictions on the children, tell harsh words and shout, threaten or punish a child with locking in the room. There also are psychological bullying cases in the same house. There were two occasions when under the influence of the older beneficiary, the same house's and village's younger beneficiaries escaped and the police with the help of beneficiary's mother become capable to find them only after three days. According to unconfirmed information, teachers assumed that they were begging in the street, were entertaining at the internet cafe and were sleeping on the street during the night. Bullying cases at school was revealed at the same house.

Systematic bullying is carried out between two beneficiaries of the Akhmeta<sup>885</sup> small family type house, which often ends with physical injuries. There was occasion of money extortion at school toward the beneficiary of the house. The problem was resolved without the help of teachers, only by the involvement of foster father and parents.

There was the case when one of the beneficiaries of Telavi<sup>886</sup> small family type house returned at house with physical injuries after fighting with school peer and surgery became necessary. The fact of violence has become known for the school teachers only after notification of educators of the house.

Martkopi<sup>887</sup> small family type house caregivers are openly speaking about the facts of bullying among the beneficiaries, which often has a form of the physical confrontation.

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884 “Association of SOS Children's Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

885 “Telavi Education Development and Employment Center” Akhmeta,Vazha-Pshavela turn N1.

886 Charity Foundation “Breath Georgia» Telavi, Gr. Orbeliani. N6.

887 Charity Foundation “Caritas “ Gardabani, Village Martkopi.

**Care and Supervision (Standard N12)** - Article 12 of child care standards defines the service provider's obligations and is protected the rights of the child, to be provided with the proper care and supervision.

The majority of the small family type house's (Akhmeta, Telavi, Kurdghelauri, "SOS" N8 House) bylaws identifies, the keeping of the journal that records the child care daily progress updates, the child's disappearance and the monitoring of the child's behavior that does not happen, or happens formally, according the caregivers they are overloaded and lacking time for to keep the journal.

According to the results of the interview with the caregivers and beneficiaries, the caregivers rarely use positive management method with the children with complex behavior (promotion, award, praise, etc.) and mostly are using the ways of general discussion, giving instructions, restricting the computer use.

Special Report of 2014 on small family type houses noted that the majority of beneficiaries in the village Gldani small family type house<sup>888</sup> were distinguished with a complex behavior. Child care and supervision process have significantly improved compared to previous years in the house, however, despite the positive developments, the teachers still have difficulties to change the unhealthy stereotypes created during the previous years and to establish required child care standards.

2015 special report noted that the SOS Children's Village N8 house's<sup>889</sup> caregiver uses violent methods of child's punishment. The monitoring carried out during this year revealed that the foster mother and one of the beneficiaries encouraged by her were using psychological and physical violence for to manage children with complex behavior in "SOS" N8 house.

Monitoring has revealed that frequent change of the child care forms creates big problems for teachers and beneficiaries in the process of caregiving. As a result, process of creation the positive ties between the child and caregiver is prolonged, often emotional and behavioral problems are revealed and inclusion of the psychologist and psychiatrist is necessary in the process.

Beneficiaries' emotional and educational needs are neglected in Rustavi small family type house.<sup>890</sup> Only basic needs of the children are satisfied in the educational institutions. In the house, there is no condition is for adults' intellectual, emotional and social development, bullying cases among the beneficiaries are frequent, caregivers are lacking the skills to manage these cases. One of the beneficiaries of the house, who is 16 years old, is isolated from the formal and informal education already for a year. At

888 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).

889 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

890 NELP "Child and Environment" Rustavi, Baratashvili N19.

the moment the child is spending the most of the time in the house hold, she goes out to meet friends and her social connections with environment is limited to this activity. Sometimes she helps the educator with internal affairs and basically does not know how to spend time.

Norio<sup>891</sup> small family type house condition is notable. The majority of the interests of the house beneficiaries (especially in terms of education, psycho-social development) are ignored. According to the educators' recordings (so-called handover) in the journals, other than the fact that the beneficiaries are not engaged in formal or informal education, there is the so-called pedagogical spinelessness. Adults can return house late at night in drunk condition, sleep until the late morning. The caregivers cannot handle with the behavioral manifestation, which is typical for traumatized children, there is no behavior management strategy in the house.

During implementation of the monitoring only one beneficiary was allocated in the Dusheti<sup>892</sup> small family type house. The emotionally draining situation (loneliness) in the house, coldness, lack of informal education, the absence of recreation and sport activities is a violation of right to have necessary environment for the physical and emotional development that can also be considered neglecting the child's necessities, therefore we cannot consider that the child is under proper care and surveillance.

**Preparation for Living Independently and Leaving the Facility (Standard 13)** – According to the recommendation of the Committee of Ministers of the Council of Europe after leaving the institution, the state should provide adequate support and assistance for the juveniles in order to integrate in the society and with their families, meet their individual needs after leaving the care facility.<sup>893</sup> In 2008 report, the UN Committee on the Rights of the Child calls on Georgia to introduce measures for to assistance and care of the young people who already left the care.

In 2012 Annual Report The Ombudsman addresses to the Ministry of Labour, Health and Social Affairs with the recommendation, to develop effective program for an independent living support, and in 2015 in the framework of the special report - "Monitoring of the Small Family Type Houses" - called on the government to develop the system, which will contribute to the minor's employment and financial support before their complete independence.

The monitoring in 2016 revealed that the problem of preparation for independent living of the beneficiaries remains. Houses still do not have formulated plan for independent living preparation and there is no consistent approach to this matter.

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891 NELP "Child and Environment" Gardabani, Village Norio.

892 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

893 Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions.

Existing the individual development plan in the house in most cases record specific date for the beneficiary's preparation for independent living, although the specific activities to achieve this goal is not formulated. The same problem was observed in the case of individual service plans.

The monitoring showed that the beneficiaries, regardless of the wish, cannot be involved professional education programs and in many cases can not engage in any activities because of lack of finances. Like previous years, the provider organizations with their own resources or by the resources of charity organizations are trying to provide vocational education for the beneficiaries, for preparation for independent living. It should be noted that in most cases the resources are not enough. The monitoring group after interviewing the beneficiaries revealed that for that reason, despite of the desire, children cannot to be engaged in learning process of the courses of their interest.

In some cases the beneficiaries have some problems in terms of motivation. The case was recorded when the minor started to study the profession after graduating the basic school education , however some time later stopped and caregivers failed to persuade to get education. It is important to be provided consistent work on motivation of the beneficiaries in the process of independent preparation by the personnel. At this point, the situation at Norio small family type house <sup>894</sup> is very urgent, where two 17-year-old beneficiaries, who must be actively working for preparation for independent living, by the time of monitoring implementation were not involved in any activity, or receiving education. We were informed that they were spending the most of their time at house.

We welcome "SOS Children's Village" youth houses' practices, where the beneficiaries are still living after they are 18. At the same time, every year a multidisciplinary team assesses the needs of persons living in houses. Besides that, secure lodgings can be made for youngsters. In cases entrants there are preparatory courses, private teachers and cooperating with one of the Training Centers on basis of the contract.

**Beneficiary Oriented Environment (Standard N14)** - the United Nations, the Convention on the Rights of the Child stipulates that "every child has the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development ".<sup>895</sup> The State is obliged to provide appropriate conditions for the implementation of these commitments. The environment equal with the normal family atmosphere is required for the full development of the child.

According the child care standard N 14,<sup>896</sup> the provision of services is carried out in an environment that is appropriate and sufficient to meet needs of the beneficiary. Service

894 NELP "Child and Environment" Gardabani , Village Norio.

895 CRC; Article 27, first paragraph.

896 Technical regulation on Confirming Child Care Standards confirmed by the Decree of Government of Georgian, 2014, January 15 №66.

should be provided in an equipped, clean and comfortable environment. The physical environment of the service should be similar to the atmosphere of the family.

Martkopi<sup>897</sup> small family type house is a two-storied capital building. House entrance is adapted for the disabled wheelchair users. An internal staircase and an elevator are used to reach the second floor. The elevator is adapted for disabled persons, however, it is not functioning for technical reasons. Without the elevator for the disabled persons using wheelchair is not possible to reach the second floor of the house.

Due to the mentioned problem, the wheelchair user beneficiary sleeps alone on the living room couch on the first floor. All the other children living at house sleeps in the bedrooms arranged on the second floor.

Because of the issue, one of the beneficiaries of the Martkopi house have to live separately from the other beneficiaries for certain period of the day.

Kurdgelauri<sup>898</sup> small family type houses' the entrance stairs does not have railings and a roof. Due to this problem, the risk of sliding foot on the stairs during the precipitation increases.

The central heating system is not functioning at Dusheti<sup>899</sup> small family type house for already four years. Existed electric heaters in the house cannot provide the season appropriate temperature. There is the fireplace in the house, but no firewood. Due mentioned problems, there is an unbearable coldness in the house.

Small group houses in the district heating system will warm the house. The house has an old door and window, which can not provide temperature.

The central heating system of the Akhmeta<sup>900</sup> small family type house cannot heat the house. The mentioned house has an old doors and windows that cannot hold the temperature.

There is no hot water in kitchens and bathrooms of Norio<sup>901</sup> small family type house. Beneficiaries are heating the water for bath on the stove.

Bathroom vent systems are not functioning at Tbilisi,<sup>902</sup> Kurdgelauri,<sup>903</sup> village Gldani<sup>904</sup>

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897 Charity Foundation "Caritas" Gardabani, Village Martkopi.

898 Charity Humanitarian Centre «Abkhazia» Telavi, village Kurdgelauri.

899 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

900 "Telavi Education Development and Employment Center" Akhmeta, Vazha-Pshavela turn N1.

901 NELP "Child and Environment" Gardabani, Village Norio.

902 "Association of SOS Children's Villages" House N8, Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

903 Charity Humanitarian Centre «Abkhazia» Telavi village Kurdgelauri.

904 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).



and Khashuri<sup>905</sup> small family type houses.

In Tbilisi,<sup>906</sup> village Gldani,<sup>907</sup> Kurdgelauri,<sup>908</sup> Khashuri<sup>909</sup> and Norio<sup>910</sup> small family type houses, faucets, and water and sewage systems need to be changed in the bathrooms.

In village Gldani,<sup>911</sup> Dusheti<sup>912</sup> and Khashuri<sup>913</sup> small family type houses were recorded the problem of artificial lighting.

It should be noted that the artificial lightening problem has been eliminated in Telavi<sup>914</sup> small family type house bedrooms, which was recorded during the monitoring in 2014.

In Martkopi,<sup>915</sup> Akhmeta<sup>916</sup> and village Gldani<sup>917</sup> houses the vent systems above the oven are not operating.

**Safety and Sanitary Conditions (Standard 15)** – According this standard, the beneficiaries are taking the service in safe environment, which is protected by sanitary rules. The same standard defines the obligations of the service provider.

As it was mentioned in the special report on small family type houses in 2015, the same was recorded this year about the keeping children’s tooth-brushes in common open storage vessel fact, neglecting any hygienic protection means. Tooth-brushes does not have identification marks, accordingly beneficiaries find it difficult to differentiate which one is theirs that creates a risk of using other person’s brush. Above mentioned fact is a threat to their health condition. Also, the children’s towels are in constant touch with each other in the bathrooms open hanger, which creates the risk of bacterial contamination. There are no clothes hangers in the bathrooms. The beneficiary who is taking a shower happens to have to hang clothes on the open towel hanger.

In Tbilisi<sup>918</sup> small family type house dirty linen were placed on the bed. The bedrooms were messy and no in order. At the same house, on the second floor out from the two toilets none of them operated properly and was unsanitary conditions. The children

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905 Society «Biliki» Khashuri, Shola street N1.

906 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

907 NELP “Divine Child Foundation of Georgia” Tbilisi, Village Gldani.

908 Charity Humanitarian Centre «Abkhazia» Telavi village Kurdgelauri.

909 Society «Biliki» Khashuri, Shola street N1.

910 NELP “Child and Environment” Gardabani , Village Norio.

911 NELP “Divine Child Foundation of Georgia” Tbilisi, Village Gldani.

912 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

913 Society «Biliki» Khashuri, Shola street N1.

914 Charity Foundation “Breath Georgia» Telavi, Gr. Orbeliani. N6.

915 Charity Foundation “Caritas “ Gardabani, Village Martkopi.

916 “Telavi Education Development and Employment Center” Akhmeta,Vazha-Pshavela turn N1.

917 NELP “Divine Child Foundation of Georgia” Tbilisi, Village Gldani.

918 “Association of SOS Children’s Villages “ House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

mostly were using the toilet situated on the ground floor, which is not sufficient for the 6 beneficiaries.

There is also the so-called Asian common use toilet at Akhmeta<sup>919</sup> small family type home. There is no flushing tank and sinks installed in the toilet. There also are no necessary items for hygiene. The toilets are crumbling and in unsanitary condition.

There also is 3.7 square meters bathroom space in the building, the shower and toilet is placed there as well. 6 beneficiary and the foster parents are using the mentioned bathroom. The house needs additional sanitary establishment.

Kitchen stove burn marks were marked on the wall in Telavi<sup>920</sup> small family type house, which was covered by posting the plates on it. The mentioned plates are flammable and could fire from the stove. It is recommended to cover the back wall of the cooker by the refractory material. A large amount of ants were spotted behind these plates. At the house's kitchen has the connecting gate to the warehouse, where food products are stored without following any rules (including cereals). The warehouse is equipped with a water tank. The room is fully musty. Food storage in such circumstances is not appropriate. The same problem was existing during 2014 monitoring and it has not been eliminated.

In Khashuri<sup>921</sup> and Dusheti<sup>922</sup> small family type houses water from the well is consumed for drinking. The houses do not have water suitability certificate. Water certifying suitability document was presented only by the Martkopi<sup>923</sup> small family type house. Small family type houses failed to present water tanks washing confirming documents. Small family type houses also could not present disinfection, deratization, disinsection confirming documents.

**Requirements for Personnel (Standard N16)** – According to the standard, the services of beneficiaries' care and development should be carried out by sufficient number of staff with appropriate qualifications.

Staff qualifications confirming documents and the contracts signed in accordance the legislation of Georgia is represented in all small family type houses. Telavi<sup>924</sup> small family type house is an exception, according the information of the educator, the personal files are stored in the administration.

The problem of recruiting the qualified human resources is particularly vivid in the re-

919 "Telavi Education Development and Employment Center" Akhmeta, Vazha-Pshavela turn N1.

920 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.

921 Society «Biliki» Khashuri, Shola street N1.

922 Charity Foundation «Breath Georgia» Dusheti, Shamanauri st. N94.

923 Charity Foundation "Caritas" Gardabani, Village Martkopi.

924 Charity Foundation "Breath Georgia" (Telavi, Gr. Orbeliani. N6).

gions. There is a practice that the teachers are appointed to the position and only after are trained. In Norio<sup>925</sup> and Rustavi<sup>926</sup> small family type houses two caregivers started working in October-November 2015 and has not undergone any training.

It became clear that sometimes trainings are less productive in terms of the topics. According to the educators' and leaders' opinion, they need other types of training. Such as: management of complex behavior, the specifics of working with disabled children.

There is a need to raise the capacity of the personal to ensure production of the required standards of the relevant documentation.

Frequent ongoing personnel changes are problematic in the houses. There is no reserve for the staff and the training of the personal happens with local resources. After 2016, January 1 out of 5 employees of Kurdgelauri<sup>927</sup> small family type house the job has left 2 employees. Administration has selected several persons for interview, after the interview and 3 of them were picked up for the probation period. According the leader's information 2 of them will be employed. They are undergoing training at the place.

Personnel changed in Telavi<sup>928</sup> small family type house as well. Recruiting and selection of the foster parents was not made possible and for the time of the monitoring only the selected foster mother and two caregivers, employed for probation period, were managing the processes. None of the selected candidates has undergone for child care training and there preparation was limited by consultations provided by the old staff.

From December 1, 2015 the management of the village Gldani small family type houses was transferred to NELP "Divine Child Foundation". Leaders, caregivers were changed. Only one educator remained from the old staff, one employee has not undergone the trainings at all. Three educators He has attended the training of the federation "Save the Children" in 2009 and the Polish Association "Our House" training course "From Child Care Institutions to the Individual Care".

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925 NELP "Child and Environment" Gardabani, Village Norio.

926 NELP "Child and Environment" Rustavi, Baratashvili N19.

927 Charity Humanitarian Centre "Abkhazia", Telavi, village Kurdgelauri.

928 Charity Foundation "Breath Georgia» Telavi, Gr. Orbeliani. N6.

## RECOMMENDATIONS

### TO THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS:

- To monitor provision of relevant documentation-keeping of documentation as stipulated in the annex N3, decree N52/n as of February 26, 2010 of the Minister of Labour, Health and Social Affairs of Georgia “On approval of adoption of the regulations and conditions of placement of a child in a specialized institution and his/her removal from this institution” and the first article of Children Care Standards (Standard N1 – information on service).
- To ensure training on the production of documents in an appropriate manner according the first article of child care standards (standard N1 Information on Services) for the persons employed in the child care field by service providers
- To ensure training of the social workers / caregivers for to comprehensively produce the individual development plan and individual service plan purposes
- Territorial social service centers should ensure timely delivery of the beneficiaries’ individual development plans to the service providers
- To ensure adequate communication between social workers and leaders/ caregivers of small family type houses and beneficiaries
- To outline beneficiaries’ interests and need regarding the informal activities through communication. Based on this, specific activities should be scheduled in individual development plan
- To ensure comprehensive production of submitted medical records according the enrolling regulation, in particular, form N IV-100 / a certificate of health, in the small family type children’s houses
- To ensure the usage of feedback receiving and providing the right to oppose for the beneficiaries of the state care system and their biological families, their regular informing , simplifying the rules, using anonymous feedback questionnaires and ensuring the systematic interactive discussions of the raised problems and through the elaborating these procedure
- To ensure the prevention of child abuse and its neglect in education system, including bullying, through strengthening the timely identification and response mechanisms of the facts
- To ensure training and requalification of the employees of the education system on child abuse and violence identification matters

- To ensure inclusion of specific activities and process supervision in the individual development plan of the beneficiaries in order to prepare for independent living
- To ensure preparation and conduct of the training on children's and adults' complete, balanced nutrition issues in small family type houses
- To provide children's small family type house caregivers with detailed information on food safety, food purchasing, storage conditions and control of the expiry dates issues

TO THE SOCIAL SERVICE AGENCY OF THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS:

- To provide additional resources the beneficiaries of small family type houses, also, they should be involved in the activities concerning the children's interests and abilities
- To provide improved access to the territory of the rehabilitation centers during the enrolment process of children with psychiatric disabilities in small family type houses
- To ensure equally positive environment for children's emotional and social development in small family type houses, through strengthening of the supervision of small family type house beneficiaries and through enhanced cooperation with service providers
- To take Special measures to improve the physical conditions at Dusheti small family type house, to explore the issue of the beneficiaries' draining from the small family type house and carried out the proceeding for one of the beneficiaries case living in the house to the relevant services - in terms of child oriented decision-making
- To ensure the frequent change of care forms for the beneficiaries, that is additional factor for the stress and have negative impact on their emotional health
- To implement the monitor of health condition of the children living in small family type houses, prevention and rehabilitation of the disease taking their condition of health into consideration, especially with regard to chronic diseases
- To develop and implement unified supervision delivery journal of medicines at small family type houses, which clearly reflects medication prescription

dates that ensures transparency and dynamism of the medicine prescribed by the doctor

- To ensure providing proper information and educational literature on healthy lifestyle for small family type house
- To Ensure the implementation training modules and training on promotion of a healthy lifestyle for the children's small family type houses beneficiaries and with joint involvement of the educators
- To ensure the creation of multidisciplinary child abuse case guideline development and implementation. to ensure identification of child abuse and ill-treatment and traumatic event's psycho-physical consequences at all levels of child care, recognition of child as a victims of violence and the provision with psycho-social rehabilitation
- To ensure the prevention of child abuse and child neglecting, strengthening of the timely identification and response mechanisms of the cases, through enhancing knowledge of service providers on child rights and their protection mechanisms
- To Ensure multidisciplinary assessment and management of the victim of violence and inhuman treatment (even in an unspecified cases) and children with complex the behavior, with an active and dynamic involvement of psychologist and psychiatrist
- To extend the preparation and training of the persons involved in child care issues, on child abuse and ill-treatment, acknowledgment of abuse, identification, on the issue of legal, educational and psycho-social rehabilitation
- To ensure the strengthen of child care supervision through strengthening of social services and the monitoring mechanisms
- To ensure the training of service providers of small family type houses on theoretical / retraining of children's rights, child abuse, child's complex behavior management, psychological / psychiatric, problem acknowledgment and management, human trafficking, reproduction, drug abuse and other important issues of the child's upbringing
- To pay special attention individual qualities and stress reduction skills of the caregivers during the recruitment process
- To prevent frequent changes of the child's care forms, (small family type houses, foster care, reintegration, adoption) protection from violence

- To achieve the agreement between the Ministry of Health, the relevant agencies and with the managing organization of the problems and challenges and begin to search for ways to overcome the crisis in the mentioned small family type houses
- To ensure renovation, equipment, inventory replenishment in the mentioned small family type houses that cannot provide proper living conditions for children
- To keep the individual hygiene items of the beneficiaries in the hygienically protected conditions, where the identification of the owner of each item will be possible
- To ensure the regular control of hygienic conditions. disinfection, deratization, disinsection should be implemented in houses
- To implement taking of the samples of drinking water and conduct chemical and microbiological analysis in small family type houses; Regularly check the suitability of the water; Regularly wash water tanks

#### TO THE PROVIDER ORGANIZATIONS:

- To inspect the documents existing at house periodically, through internal monitoring, in order to ensure their standards of production
- To ensure a minimum monthly amount for the beneficiaries by the service providers, which increases the self-esteem of adolescent
- To ensure staff training concerning the privacy issues related to the beneficiaries
- To ensure allocation of the beneficiaries' the personal files; to supervise formulation of individual development plans, their implementation and periodic review
- To ensure food storage sanitary norms
- To make sure sanitary and hygienic norms by marking the kitchen inventory
- To incorporate relevant calorific value and product diversity in menus of the house
- To provide systematic involvement in informal activities according the beneficiaries' interests and needs
- To keep medication in secured place according to the rules, which ensures the inapproachability of medicines

- To ensure taking into consideration of the interests of the beneficiaries while identifying the higher / professional education issues and their inclusion in the process of the higher / professional education. in case of resistance from the beneficiary on education, make steps to motivate them
- To specify concrete activities in the service development plan of the beneficiaries, including independent living training goal
- To ensure with relevant educated staff at small family type houses, and periodically raise capacity of the leaders and caregivers on the production of documents, complex child behaviour, sexual education, persons with disabilities issues. In addition, to ensure better communication with the staff in order to improve their quality of service

#### TO THE LEPL SOCIAL SERVICE AGENCY AND SERVICE PROVIDER ORGANIZATIONS:

- To work with the beneficiaries of the small family type houses in order to raise the self-esteem and motivation;
- To ensure the children of the small family type houses with addition, qualified training in the significant subjects. To take relevant measures in order to increase their motivation. To pay special attention to the small family type houses in the regions, in accordance with their needs;
- To carry out educational activities in order to raise awareness of children of the small family type houses on the rights of the child;
- To introduce a State system that will support the employment and financial assistance of the juvenile who left the care before his/her complete independence; To ensure qualified awareness of the beneficiaries about the future planning and prof-orientation.