



## **Public Defender of Georgia**

### National Preventive Mechanism

### **Report of the National Preventive Mechanism**

**2019**

Drawn up in accordance with Article 21 (g) of the Organic Law of Georgia on the Public Defender of Georgia

2020

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## 1. Review of the performance of the National Preventive Mechanism

### Introduction

The activity report of the National Preventive Mechanism provides information on the activities carried out in 2019 and key findings.

On October 16-17, 2019, an international conference was held in connection with the 10th anniversary of the establishment of the National Preventive Mechanism of Georgia, which was hosted by Nino Lomjaria, Public Defender of Georgia. The theme of the conference was “Measuring and Enhancing the Impact of the National Preventive Mechanism<sup>1</sup>”.

Representatives of the UN Subcommittee on Prevention of Torture (SPT), European Committee for the Prevention of Torture (CPT), national preventive mechanisms, national human rights institutions, authoritative international organizations working in the field of prevention of torture and independent international experts discussed a study prepared by international experts on the impact of the Georgian National Preventive Mechanism on the prevention of torture, as well as the special cooperation between international treaty bodies and national preventive mechanisms.

On the second day of the conference, the guests discussed the existing and emerging needs of national preventive mechanisms, expressed their views on the significant contribution made by the National Preventive Mechanism and its recommendations, discussed the importance of prioritizing a strategic plan and recommendations, follow-up mechanisms and forms of cooperation between the National Preventive Mechanism and the Committee for the Prevention of Torture (CPT) and the Subcommittee on Torture Prevention (SPT). The necessity of increasing the visibility of the National Preventive Mechanism and changing the communication strategies, as well as methods of working with public, were also the topics of discussion.

On April 17, 2019, on the basis of an open competition, for the purpose of performing the functions of the National Preventive Mechanism, the Public Defender selected 40 members of the Special Preventive Group for monitoring penitentiary facilities, places of detention and restriction of liberty, military units, children’s homes and institutions for persons with disabilities. Members of the Special Preventive Group shall be selected on the basis of a competition, which shall be held once in every two years. The terms of the competition are determined by the order of the Public Defender of Georgia.

Pursuant to Article 191 (1) of the Organic Law of Georgia on the Public Defender of Georgia, the Special Preventive Group shall regularly inspect the situation and treatment of detainees, convicts and

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<sup>1</sup> The Public Defender thanks the Open Society Foundation for preparing the assessment of the ten-year work of the National Preventive Mechanism, as well as the European Union (EU), Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP) and Penal Reform International (PRI), as it would be impossible to hold this event without their support.

other persons deprived of their liberty, as well as those placed in psychiatric institutions, nursing homes for older persons and children's homes, in order to protect them from torture and other cruel, inhuman or degrading treatment or punishment.

To ensure the effective implementation of the functions of the National Preventive Mechanism, the Special Preventive Group is staffed with specialists from different fields. The group includes 10 specialists with expertise in monitoring penitentiary establishments, places of detention and restriction of liberty, 4 doctors, 3 psychiatrists, 3 psychologists, 3 social workers, 2 military unit monitoring specialists; in the direction of children's homes - 1 nutritionist, 4 social workers, 4 psychologists; in the direction of institutions for persons with disabilities - 2 psychologists, 1 social worker, 2 special teachers, 1 specialist in access to physical environment for persons with disabilities.

In the reporting period, the National Preventive Mechanism paid 88 visits to places of detention and restriction of liberty. In addition, the Special Preventive Group, within the framework of the monitoring of the territorial bodies of the Ministry of Internal Affairs, held 4 meetings with local lawyers working in the field of criminal justice and representatives of non-governmental organizations in the regions of Georgia. The purpose of the meetings was to obtain additional information about the protection of detainees from torture and other ill-treatment. At the same time, representatives of the Public Defender's Office briefed the persons involved in the meetings on the Public Defender's mandate and field of activity.

In the reporting period, the National Preventive Mechanism published one special report and drew up 6 visit reports, 4 of which were published in 2019. In addition, the report on the international conference – Measuring and Enhancing the Impact of National Preventive Mechanisms - was prepared. A study prepared by independent international experts Richard Carver and Lisa Handley, which assesses the results of ten years of work of the National Preventive Mechanism in the direction of prevention torture in Georgia, was published with the support of the Open Society Foundation.

In 2019, the National Preventive Mechanism drew up 95 recommendations aimed at identifying and responding to the risk factors of torture and other cruel, inhuman or degrading treatment or punishment. In addition, it assessed the implementation of 74 recommendations made to the penitentiary system, Ministry of Internal Affairs and psychiatric institutions in 2018.

A number of dialogues were conducted with civil society, international organizations, state agencies and other stakeholders. The National Preventive Mechanism continued to inform public and raise awareness of human rights situation at places of restriction and deprivation of liberty. Information was provided to public through publication of visit reports, special and annual reports, organization of various events and meetings, as well as through the media.

## Preventive visits

According to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Optional Protocol), measures aimed at eliminating torture should primarily focus on its prevention, the most important component of which is regular visits of the National Preventive Mechanism to places of detention.<sup>2</sup> The Special Preventive Group paid 88 such visits in 2019.



During the reporting period, members of the Special Preventive Group were able to move freely on the territory of the facilities and the monitoring has not been obstructed by the administration. **However, during one of the visits, the Special Preventive Group again encountered a problem in the penitentiary system while performing the mandate of the National Preventive Mechanism under the Organic Law on the Public Defender of Georgia and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

In particular, the Special Preventive Group was refused by chief doctor of Establishment No. 3 to access the register of injuries and the medical cards of the convicts. In addition, after talking to the Head of the Medical Department of the Special Penitentiary Service of the Ministry of Justice, members of the Special Preventive Group were refused to access the medical referrals on the ground that the

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<sup>2</sup> Preamble to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

information about the convicts' identities and diagnoses was confidential in terms of personal data protection.

Later, the doctor, with the consent of the Head of the Medical Department, allowed the Group to review medical referrals and consultations register provided that the prisoner's name would be hidden and the medical cards would be accessed only after getting informed consent from prisoners. Due to the hidden first and last names in the medical referrals and consultations register, the Special Preventive Group was unable to identify inmates or to conduct a thorough examination of the documents. In addition, given the number of prisoners and the time allotted for the monitoring, obtaining informed consent from each prisoner significantly hampered the monitoring process.

In addition to the above-mentioned obstacle, the Deputy Director of the facility also refused members of the Special Preventive Group to provide information about **isolated prisoners** without their consent. The Deputy Director offered assistance to the Special Preventive Group in obtaining consent from prisoners, and finally, the Special Preventive Group was provided information only about 18 out of the 27 isolated prisoners, who, according to the Deputy Director, agreed to provide information to the Group. Due to this, the Special Preventive Group was deprived of the opportunity to fully examine the duration of the isolation measure used towards all 27 inmates.

In addition, it should be noted that members of the Special Preventive Group, without being provided with relevant legal justification by the administration, were refused to get copies of documentation of disciplinary sanctions and de-escalation registers where no information would be shaded (hidden). Moreover, the actions of the administration were contradictory. For example, members of the Special Preventive Group were refused to get the above-mentioned copies, whereas they did not encounter a problem with on-site data processing. In addition, the Special Preventive Group has not encountered any problem in getting the copies of information about the detainees against whom the prison staff had used handcuffs.

The most important component of the mandate and methodology of the Special Preventive Group is to process voluminous information obtained from various documents in accordance with the principle of confidentiality. It is unfortunate that the above was not the first case when members of the Special Preventive Group encountered obstacles in accessing special categories of personal data.<sup>3</sup> It should be noted that Article 20 (b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly obliges States Parties to grant national

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<sup>3</sup> Obstacles in terms of accessing special categories of personal data faced by the National Preventive Mechanism are also discussed in the 2018 Report of the National Preventive Mechanism (p. 6-7). In particular, on December 19-21, 2018, during the monitoring of Penitentiary Establishment No. 17, the chief doctor of the facility refused the members of the Special Preventive Group to check the register of injuries of the untried/convicted persons on the motive that information about the identity of the prisoner and injuries to his body was confidential and requested the written consent of prisoners.

preventive mechanisms **unrestricted** access to information on treatment of detainees and conditions of detention.

The letter sent by the UN Subcommittee on Prevention of Torture to the Government of Georgia on December 10, 2018 referred to Georgia's failure to meet its obligations under the Optional Protocol. **In the correspondence, the Subcommittee emphasized the necessity of granting the National Preventive Mechanism unrestricted access to all relevant data, including medical documentation, registers and other documents.** It is unfortunate that the State has not yet taken measures to eliminate this problem.

**The Public Defender calls on the Government and Parliament of Georgia to immediately ensure the fulfillment of obligations as defined in the Optional Protocol and to eliminate all the restrictions and obstacles encountered by the National Preventive Mechanism in terms of accessing special categories of personal data. In addition, it is important to brief prison staff on the mandate and powers of the National Preventive Mechanism.**

### **Reports drawn up/published**

- ✓ 2018 Report of the National Preventive Mechanism;<sup>4</sup>
- ✓ Report on the monitoring visit to the Temporary Placement Centre of the Migration Department of the Ministry of Internal Affairs;<sup>5</sup>
- ✓ Report on the visit to Bediani Psychiatric Clinic of East Georgia Mental Health Centre;<sup>6</sup>
- ✓ Thematic report on the monitoring of Acad. B. Naneishvili National Mental Health Centre;<sup>7</sup>
- ✓ Report on the monitoring visit paid to Penitentiary Establishments Nos. 2, 8, 14 and 15;<sup>8</sup>
- ✓ Report on the visit to Penitentiary Establishment No. 3;
- ✓ Report on the visit to Batumi Medical Centre;
- ✓ Report on International Conference – Measuring and Enhancing the Impact of National Preventive Mechanisms;
- ✓ Study prepared by independent international experts Richard Carver and Lisa Handley with the support of the Open Society Foundation: Does Georgia's National Preventive Mechanism Work? Assessment of 10 Years of Torture Prevention<sup>9</sup>

### **Evaluation of the implementation of recommendations**

The task of the National Preventive Mechanism, as part of the global system of the prevention of torture, is to identify and respond to the risk factors of torture and other cruel, inhuman or degrading

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<sup>4</sup> Available at: <<http://www.ombudsman.ge/res/docs/2020011615511256803.pdf>> [last accessed: 30.01.20].

<sup>5</sup> Available at: <<http://www.ombudsman.ge/res/docs/2019110109240829750.pdf>> [last accessed: 30.01.20].

<sup>6</sup> Available at: <<http://www.ombudsman.ge/res/docs/2019101014124962763.pdf>> [last accessed: 30.01.20].

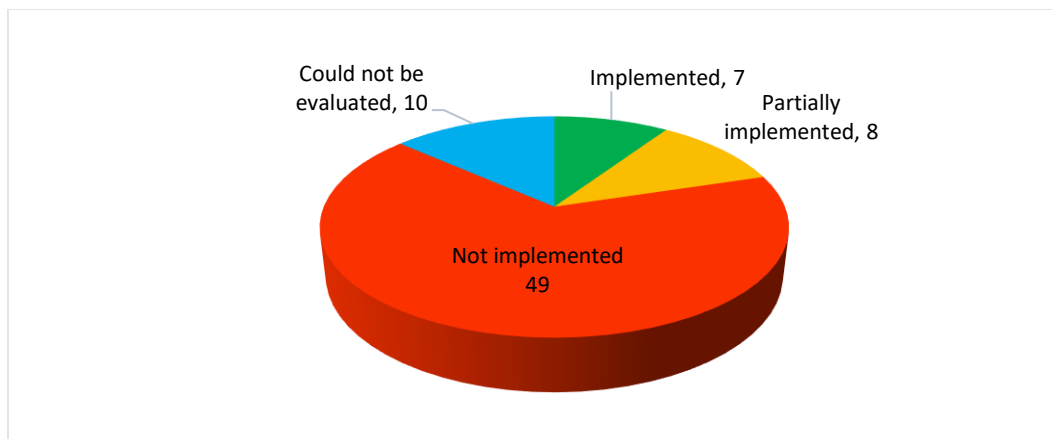
<sup>7</sup> Available at: <<http://www.ombudsman.ge/res/docs/2019101014124916439.pdf>> [last accessed: 30.01.20].

<sup>8</sup> Available at: <<http://www.ombudsman.ge/res/docs/2019121618092132463.pdf>> [last accessed: 30.01.20].

<sup>9</sup> Available at: <<http://www.ombudsman.ge/res/docs/2019101708445059651.pdf>> [last accessed: 30.01.20].



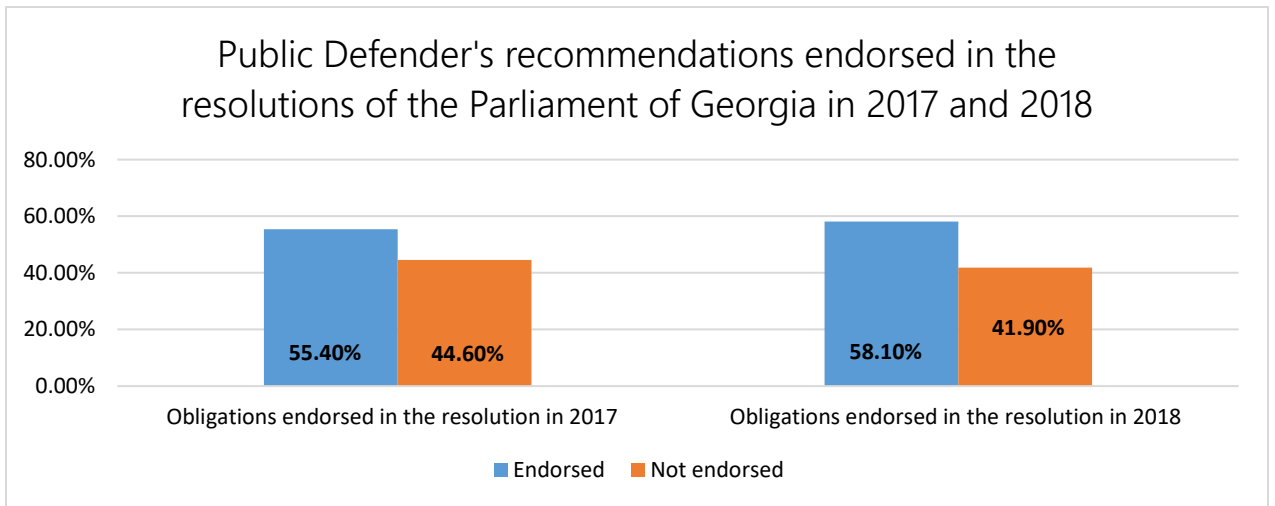
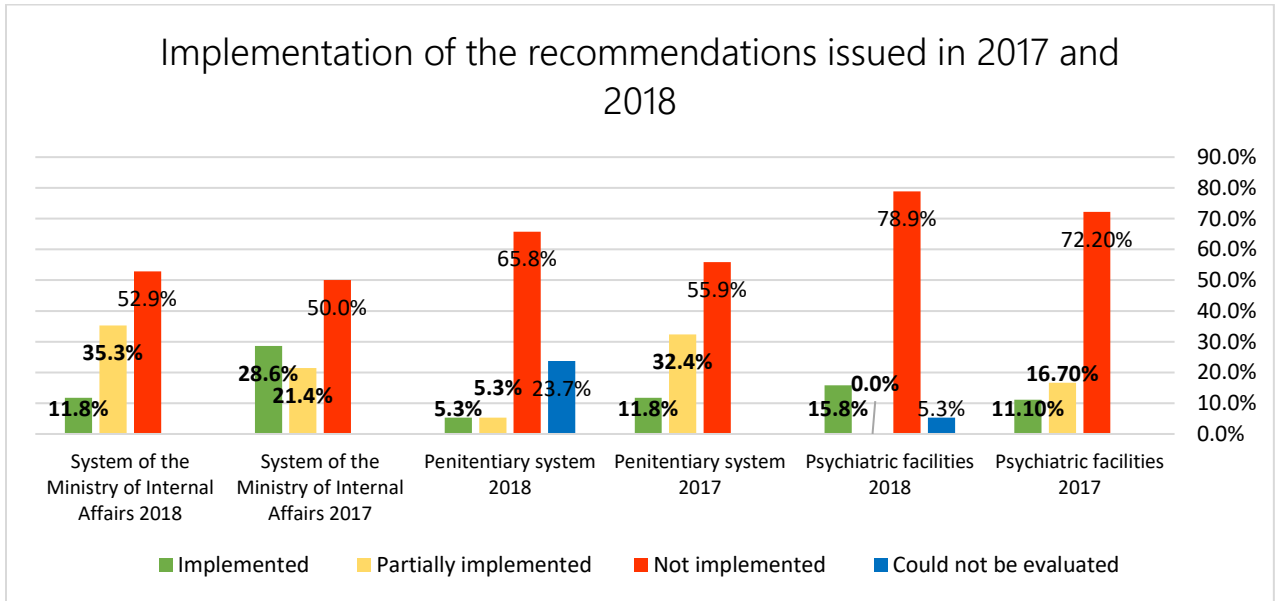
treatment or punishment; to draw up recommendations aimed at eliminating these factors.<sup>10</sup> Information on the situation of implementation of recommendations issued by the National Preventive Mechanism is given in the diagrams below.

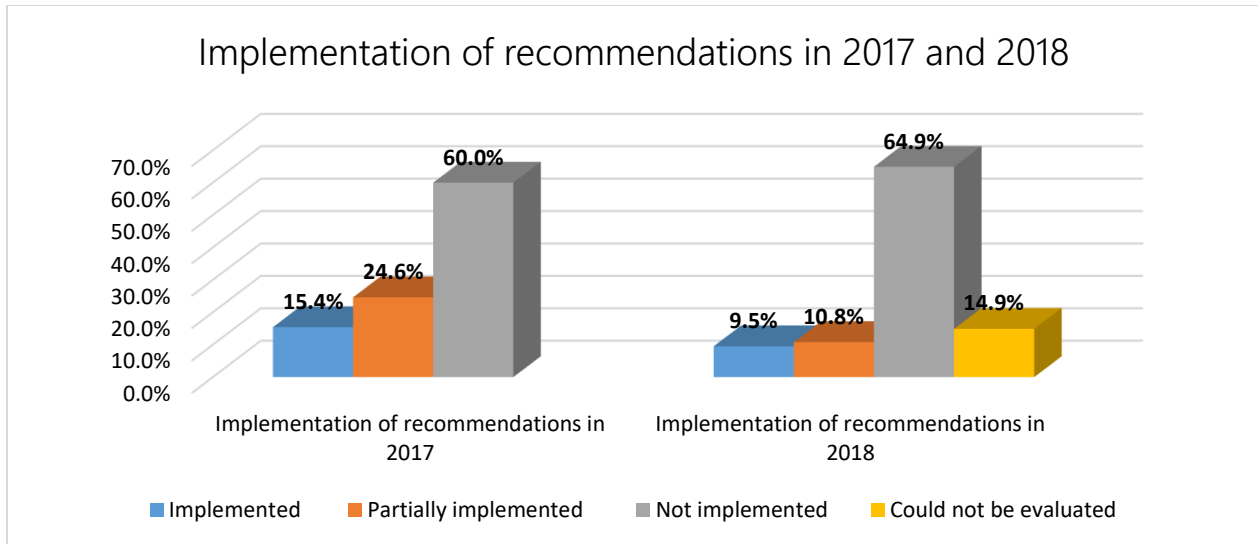


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<sup>10</sup> The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment, paragraph 5 (C), 12<sup>th</sup> session, Geneva, November 15-19, 2010, available at: <https://bit.ly/2Ubj99> [last accessed: 11.02.2020].

The Public Defender issued 66 recommendations to the penitentiary system, Ministry of Internal Affairs and psychiatric institutions in 2017 and 74 - in 2018





### Communication with stakeholders

It is impossible to monitor situation in the penitentiary establishments and develop recommendations, advocate and monitor their implementation without a dialogue with the civil society, international organizations, relevant state institutions and other stakeholders. Accordingly, the National Preventive Mechanism of Georgia carried out a number of important activities in this direction in 2019.

#### Dialogue with state bodies

In accordance with Article 22 of the Optional Protocol, "**The competent authorities shall examine the recommendations of the National Preventive Mechanism and enter into a dialogue with it on possible implementation measures.**"

In order to meet the commitments under the Optional Protocol, the following is important:

- ❖ **First** - The willingness of state agencies to enter into a constructive dialogue and hold meetings on measures planned or taken for the implementation of recommendations. Inter alia, the National Preventive Mechanism should be given the opportunity to submit observations and recommendations on draft laws and other documents;
- ❖ **Second** – Timely provision of data requested by the National Preventive Mechanism;
- ❖ **Third** - Transparency of the system and proactive provision of information to the public about the situation of prevention of torture and other cruel, inhuman or degrading treatment or punishment.

### *Cooperation with the Ministry of Justice*

According to the changes made **on July 5, 2018**,<sup>11</sup> the Ministry of Corrections of Georgia merged with the Ministry of Justice of Georgia and a state sub-agency operating within the jurisdiction of the Ministry of Justice of Georgia - Special Penitentiary Service – was founded. Due to the ongoing reorganization in the agency, communication between the National Preventive Mechanism and the Special Penitentiary Service was delayed in the mentioned period.

**On February 22, 2019**, the Minister of Justice of Georgia approved the 2019-2020 Strategy and Action Plan for the Development of Penitentiary and Crime Prevention Systems, which was welcomed by the Public Defender.

**On May 17, 2019**, the Interagency Coordination Council, an agency implementing the measures directed against torture and inhuman or degrading treatment or punishment, approved the 2019-2020 Action Plan for Combating Torture, Inhuman, Cruel or Degrading Treatment or Punishment. The Public Defender's Office presented its opinion on the draft action plan. In addition, the Public Defender's Office was actively involved in the Council meetings.

**On May 10, 2019**, the European Committee for the Prevention of Torture published a report on the visit paid to Georgia on September 10-21, 2018, which focused on the so-called informal governance in the Georgian penitentiary establishments and particularly dangerous, informal prisoner hierarchy in Penitentiary Establishment No. 15. It was also noted in the report that the management of Establishment No. 15 admitted that it considered itself compelled to share a part of its responsibility for order and security with informal leaders (so-called “watchers”), thus exposing weaker inmates to the risk of violence and intimidation.

The Public Defender/National Preventive Mechanism has been talking about informal governance in the penitentiary establishments in its reports for years. The influence of prison criminal subculture has been manifested in various forms for decades, since the Soviet times, and the above is still actively used in the penitentiary establishments and serves to maintain "order" by the so-called “watchers”. In addition, since 2015, the Public Defender has been recommending that the Ministry of Corrections develop a strategy to tackle criminal subculture, which has not been taken into account.

After publication of the report on the visit to Georgia carried out by the European Committee for the Prevention of Torture on September 10-21, 2018, the Public Defender made a decision to explore the extent of informal governance and its forms in the penitentiary establishments. The aim was to identify problems in detail and to make specific recommendations, which would help the Ministry to carry out

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<sup>11</sup> Law of Georgia No. 3024-rs of July 5, 2018 on the Amendments to the Law of Georgia on the Structure, Authority and Rules of Operation of the Government of Georgia and Law of Georgia No. 3128-rs of July 5, 2018 on the Amendments to the Imprisonment Code of Georgia.

correct and human rights-based reforms. Accordingly, the Special Preventive Group conducted monitoring in Penitentiary Establishments Nos. 2, 8, 14 and 15 in July and August 2019.

**On July 24, 2019**, a meeting was held with the Director General of the Special Penitentiary Service of the Ministry of Justice on the initiative of the Deputy Public Defender, where the latter briefed the Director General on the ongoing efforts aimed at examining the scale of informal governance in the establishments.

**At the end of 2019**, the National Preventive Mechanism started to work on an annual report. On October 11, 2019, a letter was sent to the Special Penitentiary Service of the Ministry of Justice, requesting information on the situation of implementation of recommendations offered in the 2018 Report of the National Preventive Mechanism, but no reply has been received. Most of the letters sent in September, October, and November 2019,<sup>12</sup> which requested the data required for the annual report have not been replied either. Despite numerous attempts of the National Preventive Mechanism, both through letters and telephone communication, the Ministry of Justice did not respond, which significantly hampered the process of processing various data and evaluating the implementation of recommendations.

It should be noted that the delay in replying to the letters of the Public Defender represented the non-fulfillment of the legal demand and should have resulted in a fine.<sup>13</sup> However, due to the fact that the Public Defender acted in the spirit of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is based on a constructive dialogue, she refrained from applying the punitive mechanism in the reporting period.

**In early November 2019**, the Special Preventive Group completed the process of drawing up a report on the monitoring carried out in Penitentiary Establishments Nos. 8, 14 and 15. On November 15, 2019, the report was sent to the Director General of the Special Penitentiary Service, who was asked to submit, within two weeks, his opinion on the issues and recommendations presented in the report. The reply received from the Director General of the Special Penitentiary Service on December 13, 2019 did not provide information on any strategy/plan to address the issues of criminal subculture and informal governance in the penitentiary facilities. The reply received from the Ministry refers to the cases of violence among prisoners. According to the Ministry, they launched investigations in 334 cases, but could not identify torture, other cruel, inhuman or degrading treatment among prisoners.

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<sup>12</sup> The National Preventive Mechanism sent letter No. 03-3/11037 on October 11, 2019, requesting information from the Special Penitentiary Service of the Ministry of Justice on the state of implementation of the recommendations offered in the 2018 Report of the National Preventive Mechanism. Repeated letter No. 03-3/13394 on the same issue was sent on 12 December 2019. Nevertheless, no reply has been received to any of the said letters.

<sup>13</sup> Administrative Offences Code of Georgia, Article 173<sup>4</sup>.

Due to the importance and scale of the issues referred to in the report on the monitoring visit to Penitentiary Establishments Nos. 2, 8, 14 and 15, the Public Defender requested that the above-mentioned report be discussed at the sitting of the Human Rights and Civil Integration Committee.

**On January 21, 2020**, at the sitting of the Parliamentary Human Rights and Civil Integration Committee, the Public Defender of Georgia spoke about the scale and forms of informal governance in the penitentiary establishments, as well as the issues of health care, overcrowding, lack of staff and rehabilitation-resocialization. In addition, the Public Defender stressed the necessity of developing a multi-component strategy to tackle informal governance. Given that the issues mentioned in the report had drawn the attention of the European Committee for the Prevention of Torture as well, the Public Defender expressed her hope that the Parliament of Georgia would also exercise effective parliamentary oversight over these issues.

The second speaker at the committee hearing was the Minister of Justice, who, in response to the important report of the Public Defender, tried to discredit the latter, denounced the frequency and professionalism of the visits paid to the penitentiary establishments, and accused the Public Defender of refusing to defend members of the ruling political party. By blatantly violating the law, the Minister of Justice showed the committee videos of a confidential meeting between authorized representatives of the Public Defender and prisoners in the cell and criticized the actions of the representatives of the Public Defender. By doing so, she tried to discredit the Public Defender and the entire institution, weaken trust towards them and provoke aggression among radical groups.

On January 22, 2020, the Public Defender addressed the State Inspector and requested that the lawfulness of the action of the Minister of Justice at the sitting of the Human Rights and Civil Integration Committee on January 21, 2020 be examined. Two of the videos showed certain episodes of the visits paid by the Public Defender's authorized representatives. On the same day, the videos were uploaded to the official Facebook page of the Ministry of Justice. The faces of Public Defender's representatives were not blurred and it was easy to identify them. It is noteworthy that the Organic Law of Georgia on the Public Defender of Georgia prohibits any kind of eavesdropping or surveillance of a meeting between Public Defender's authorized representatives and prisoners.<sup>14</sup>

In addition, the rules for carrying out visual and/or electronic surveillance and control in penitentiary establishments, as well as keeping, deleting and destructing recordings are defined by Order No. 35 of May 19, 2015 of the Minister of Corrections of Georgia. The order sets forth specific grounds for archiving video recordings, the relevant procedure, persons responsible for the procedure and the term of keeping the recordings. Since the video recording showing the meeting between one of the representatives of the Public Defender and a prisoner does not reveal any illegal action and the purpose of archiving the video is unclear, the Public Defender considers that the decision of the Ministry to

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<sup>14</sup> Organic Law on the Public Defender of Georgia, Article 19, part. 3.

archive and keep the video recordings for a long time was an unequivocally illegal action. In addition, the disclosure of identifiable episodes involving both of the authorized representatives of the Public Defender violated the Law of Georgia on Personal Data Protection.

**On January 23, 2020**, the Public Defender and the Deputy Public Defender visited Establishment No. 9 to meet with prisoners. When they left the building, representatives of the media had already been mobilized outside the facility. Information about the visit was provided to them by the Special Penitentiary Service and the Ministry of Justice confirmed the above. At approximately 8:30 pm, information about the visit was released through the web and social media page of the Special Penitentiary Service, listing the names of the detainees met by the Public Defender and the Deputy Public Defender and/or those who the Public Defender and the Deputy Public Defender wanted to meet.

The Public Defender considers that Article 19 of the Organic Law on the Public Defender of Georgia was blatantly violated by the Special Penitentiary Service/Ministry of Justice: “The meetings of the Public Defender of Georgia/a member of the Special Preventive Group with detainees, prisoners or persons whose liberty is otherwise restricted, convicted persons, persons in psychiatric facilities, old people’s and children's homes shall be confidential. Any kind of eavesdropping and surveillance shall be prohibited.” The above stipulates that any meeting of the Public Defender with prisoners shall be confidential until the Public Defender makes an opposite decision. Information may be disseminated only with the prisoner’s express consent. The same requirement can be read in Article 21 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which says that no personal data shall be published without the express consent of the person concerned.

Article 35 of the Constitution of Georgia stipulates that creating obstacles to the activities of the Public Defender shall be punished. The activity of the Public Defender of Georgia, as a constitutional body, is based on important and fundamental principles, such as full independence from any branch of government, impartiality, objectivity and confidentiality. The disclosure of information about the persons met by the Public Defender increases the risk of ill-treatment and/or illegal action against them and deteriorates their rights situation. The disclosure of similar information may make prisoners refrain from applying to and meeting with the Public Defender in the future. In addition, all prisoners may suspect that the details of their meeting with the Public Defender will be monitored by the Ministry of Justice/Penitentiary Service and will be made public at any time.

According to Article 352 of the Criminal Code of Georgia, influencing the Public Defender in any manner, in order to interfere with his/her official duties, shall be punished. According to part 2 of the same article, the same act committed by using official position shall be punished. The identification of prisoners met by the Public Defender and/or Public Defender’s representatives represents an influence on his/her official duties. This

contradicts the requirements of the Organic Law of Georgia on the Public Defender of Georgia, according to which, any meeting shall be confidential. The purpose of this kind of obstruction is to weaken prisoners' trust towards the Public Defender's Office and to limit the effective functioning of the Office in this direction.

Based on the above, on January 24, 2020, the Public Defender addressed the Prosecutor General's Office of Georgia with a proposal to launch an investigation under Article 352 of the Criminal Code, to conduct all necessary investigative activities in a timely and effective manner and to identify responsible persons.

The reply received from the Prosecutor General's Office **on January 31, 2019** reads that the investigative agency could not identify any legal or factual grounds for launching an investigation. The Prosecutor's Office did not consider the disclosure of the secrecy of the meeting between the Public Defender and the convicts a violation of confidentiality.

In accordance with Article 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, national preventive mechanisms shall have "unrestricted access to all places of detention and their installations and facilities" in order to be able to fulfil their mandate, as well as "an opportunity to have private interviews with the persons deprived of their liberty, without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who may supply relevant information to the national preventive mechanisms."

According to Article 21 of the Optional Protocol, "Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned." In addition, Article 21 of the Optional Protocol to the Convention against Torture underscores that:

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

These international norms refer to the right of the Public Defender/members of the Special Preventive Group to have unrestricted access to the places of detention/deprivation of liberty and the opportunity to have private interviews with persons placed in the above facilities, as well as to the safeguards against the risk of repression of the above persons for meeting with the Public Defender/members of the Special Preventive Group and provision of information to them. The above norms are the most important and essential guarantees for the effective functioning of the National Preventive Mechanism and prohibition and prevention of torture. Any step taken against these norms would be a significant blow to the fulfillment of commitments by the State under the Convention against Torture and its Optional Protocol.



As one of the main purposes of the Public Defender/Special Preventive Group's monitoring visits is to interview detainees, analyze information received from them and then reflect this information in the report, the Public Defender/members of Special Preventive Group make special efforts during each monitoring visit to ensure that the prisoners interviewed by them are not identified and subjected to repression. To this end, during monitoring, members of the Special Preventive Group try to talk to as many prisoners as possible in order to make it impossible for others to know which prisoner provided particular information to them. The reports also describe facts so that to make it impossible to identify specific prisoners.

The fact that the state agencies register the prisoners, who had a meeting with the Public Defender/members of the Special Preventive Group and especially the disclosure of such facts make it easier for others to know which prisoners provided information described in the report of the Public Defender/National Preventive Mechanism, putting prisoners, as well as their family members and relatives, at great risk. Prisoners may be abused by other prisoners, or repressed by the prison administration and other state agencies, while their family members may be repressed by the state agencies and third parties.

In addition, the breach of confidentiality by the Ministry of Justice sends a clear message to the thousands of inmates in the penitentiary establishments, who trust the ombudsman's institution, that the Ministry can identify them anytime, which may force them to refrain from talking to the Public Defender/members of the Special Preventive Group in the future.

The above-mentioned cases were termed as interference with the activities of the Public Defender by the UN Special Rapporteur on the Situation of Human Rights Defenders, European Network of National Human Rights Institutions (ENNHRI), Global Alliance of National Human Rights Institutions (GANHRI), International Ombudsman Institute (IOI) and European Network of Equality Bodies (EQUINET).<sup>15</sup>

#### *Cooperation with the Ministry of Internal Affairs*

We welcome the practice of timely provision of various data by the Ministry of Internal Affairs. The readiness of the Ministry to conduct a constructive dialogue with the Public Defender's Office/National Preventive Mechanism should be welcomed. In 2019, the staff of the National Preventive Mechanism (Department) attended a meeting in Borjomi, the theme of which was the implementation of the recommendations issued by the Public Defender to the Ministry of Internal Affairs. In addition to the above, the Public Defender had a number of telephone communications with representatives of the Ministry of Internal Affairs in the reporting period.

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<sup>15</sup> Available at: < <https://bit.ly/3cs1eyF> > [last accessed: 29.01.20].

## *Cooperation with the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs*

The Public Defender/National Preventive Mechanism positively assesses the cooperation with the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Labour, Health and Social Affairs. In the reporting period, a meeting was held with the Deputy Minister. The readiness of the Ministry to provide the Public Defender with information on the reforms implemented/planned in the field of mental health should be welcomed. In addition, the National Preventive Mechanism had periodic communication with various representatives of the Ministry.

### **Dialogue with international partners**

The National Preventive Mechanism had active communication with international organizations both in Georgia and abroad in the reporting period. Representatives of the Public Defender and the National Preventive Mechanism personally participated in various forums and meetings held under the auspices of international organizations.

- On April 17, 2019, a meeting was held between representatives of the National Preventive Mechanism and the Kyrgyz delegation;
- On May 30, 2019, a meeting was held between representatives of the National Preventive Mechanism and Ms. Bärbel Kofler, Federal Government Commissioner for Human Rights Policy and Humanitarian Assistance, as well as German diplomats and civil society representatives from 6 Eastern Partnership countries;
- On June 24, 2019, a meeting was held with representatives of the International Committee of the Red Cross to discuss the situation in the penitentiary system;
- On July 29, 2019, a meeting was held with representatives of the UN Voluntary Fund for Victims of Torture to discuss the activities of the National Preventive Mechanism and the situation of the prevention of torture and ill-treatment in closed institutions
- In 2019, the National Preventive Mechanism had active communication with the Subcommittee on Prevention of Torture (SPT). The Subcommittee was provided with reports developed during the year. In addition, the Committee was briefed on the situation of implementation of the mandate of the National Preventive Mechanism.

### **Public relations**

Raising public awareness of human rights situation at places of deprivation and restriction of liberty is one of the main priorities of the National Preventive Mechanism. Information is provided to public through visit reports, special and annual reports, various events and meetings, as well as through the media.

- On February 12, 2019, at the Tbilisi Justice Training Centre, representatives of the National Preventive Mechanism (Department), within the framework of the winter school of international law organized by the European Law Students' Association (ELSA Georgia), conducted a training for students on prohibition and prevention of torture;
- On May 19, 2019, Ivane Javakhishvili Tbilisi State University hosted a public discussion on rehabilitation and resocialization of convicts. The event was organized by the EU-funded project - Promoting and Monitoring Reforms in the Penal Sector through the Engagement of Civil Society Organisations. The project was implemented by Penal Reform International in partnership with *Rehabilitation Initiative of Vulnerable Groups* and Human Rights Centre. The event was also co-organized by the Scientific-Research Institute of Criminology of Tbilisi State University's Department of Law. Students had the opportunity to hear interesting answers to their questions from the representatives of the Special Penitentiary Service, Public Defender's Office, academia and non-governmental sector. A representative of the National Preventive Mechanism (Department) gave a presentation, the theme of which was: Monitoring of Rehabilitation-Resocialization of Convicts in Penitentiary Establishments;
- On June 7, 2019, within the framework of the memorandum of understanding signed between the Parliament's Office and the Public Defender's Office, a meeting was held between representatives of the Public Defender's Office and the Parliament's Office, where a representative of the National Preventive Mechanism spoke about the role, working methodology and activities of the National Preventive Mechanism;
- On June 26, 2019, in connection with the International Day in Support of Victims of Torture, the Public Defender of Georgia presented the 2018 Report of the National Preventive Mechanism. The report reviews the situation of torture and ill-treatment at places of restriction and deprivation of liberty. The role of national preventive mechanisms in implementing the mandate of the prevention of torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was discussed at the event;
- On October 10, 2019, in connection with the World Mental Health Day, Public Defender Nino Lomjaria held a public meeting, the theme of which was: Mental Health and Human Rights. **Giorgi Burjanadze**, Deputy Public Defender of Georgia, presented a monitoring report on Bediani Psychiatric Hospital and National Mental Health Centre;
- On October 25, 2019, a public discussion was held at the Courtyard Marriott Hotel, the theme of which was: Living Conditions in the Penitentiary System and Convicts' Contact with the Outside World. The event was organized by the EU-funded project - Promoting and Monitoring Reforms in the Penal Sector through the Engagement of Civil Society Organisations. The project is being implemented by the Penal Reform International in partnership with Rehabilitation Initiative of Vulnerable Groups and Human Rights Centre. Khatia Kheladze, a representative of the National Preventive Mechanism, gave a presentation

on the following topic: Living Conditions in the Penitentiary System and Convicts' Contact with the Outside World;

- On December 23, 2019, a meeting was held within the framework of the joint project of the Public Defender's Office and the UN High Commissioner for Refugees in Georgia. The theme of the meeting was: Migration and Asylum. The National Preventive Mechanism of the Public Defender's Office presented a monitoring report on the Temporary Placement Centre of the Migration Department of the Ministry of Internal Affairs. The findings of the monitoring, alternatives to detention and legal remedies for the detainees were discussed and information was exchanged after the presentation.

#### **Participation in international events**

- On November 4-5, 2019, Giorgi Burjanadze, Deputy Public Defender of Georgia, and Akaki Kukhaleishvili, Deputy Head of the National Preventive Mechanism (Department), attended events organized by the European Committee for the Prevention of Torture (APT) and the Association for the Prevention of Torture in Strasbourg. They participated in a working meeting organized by the Association for the Prevention of Torture, which was dedicated to the challenges relating to the rights situation of defendants in the first hours of their detention. Special attention was paid to the importance of effective monitoring and appropriate techniques in this area. At the same time, a conference dedicated to the 30<sup>th</sup> anniversary of the European Committee for the Prevention of Torture was held on November 4. The event was particularly focused on the importance of harmonious work of international and local monitoring mechanisms and strengthening/supporting each other's activities.

#### **Relations with NGOs and donor organizations**

The National Preventive Mechanism actively cooperated with various local and international NGOs and donors in 2019.

- The National Preventive Mechanism actively cooperated with the European Union within the framework of the project - Combating All Forms of Discrimination in Georgia. For several years now, the EU has been providing significant financial and analytical assistance to the National Preventive Mechanism by financing regular activities, such as trainings, monitoring visits, public presentations, etc.
- In December 2018, in accordance with the rules of cooperation with non-governmental organizations<sup>16</sup> and within the framework of the memorandum of understanding signed with

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<sup>16</sup> Available on the following address:

[http://www.ombudsman.ge/res/docs/2019041010484470943.pdf?fbclid=IwAR2xAJ51tZ-iZj-LxR-8hxpFir-OX\\_S1nQkaPiZjSIUZ4YuxyBDoZ1uVcEc](http://www.ombudsman.ge/res/docs/2019041010484470943.pdf?fbclid=IwAR2xAJ51tZ-iZj-LxR-8hxpFir-OX_S1nQkaPiZjSIUZ4YuxyBDoZ1uVcEc) , [last accessed: 12.02.2020].

non-governmental organizations,<sup>17</sup> thematic monitoring was carried out by representatives of the National Preventive Mechanism (Department) and non-governmental organizations in Penitentiary Establishment Nos. 2, 3, 17 and 16. The monitoring results served as basis for drawing up a monitoring report on penitentiary establishments<sup>18</sup> by the Human Rights Centre, which was published in 2019. Representatives of non-governmental organizations - Human Rights Centre, Penal Reform International and Rehabilitation Initiative for Vulnerable Groups - carried out monitoring visits within the mandate of the National Preventive Mechanism of the Public Defender of Georgia.

## **Working methodology and trainings for members of the National Preventive Mechanism**

### **Consultative Council**

The purpose of the Consultative Council is to promote the effective operation and transparency of the National Preventive Mechanism. The Council submits an opinion to the Public Defender on the following issues: a) plan of activities to be implemented by the National Preventive Mechanism; B) working methodology; C) thematic research; D) professional trainings for members of the National Preventive Mechanism; E) other strategic documents of the National Preventive Mechanism; F) other issues important for the effective operation of the National Preventive Mechanism. The opinion of the Council is of an advisory nature. Its visiting members assist the National Preventive Mechanism in establishing communication with academia, donor organizations and other stakeholders.

In addition to the representatives of the Public Defender's Office, the Council also consists of visiting members, who may be a) a person engaged in educational/academic activities in the field related to the mandate of the National Preventive Mechanism; B) a member of an international organization working in the field of prevention of torture or criminal justice; C) a member of an international non-governmental organization working in the field of prevention of torture or criminal justice; D) a member of a local non-governmental organization working in the field of prevention of torture or criminal justice.<sup>19</sup>

The Consultative Council of the National Preventive Mechanism held a meeting on October 31, 2019. Members of the Council received information about the activities implemented and planned by the National Preventive Mechanism. For their part, members of the Council expressed their views and recommendations regarding the activities of the National Preventive Mechanism.

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<sup>17</sup> Penal Reform International, Rehabilitation Initiative for Vulnerable Groups, Human Rights Centre.

<sup>18</sup> The report is available at: < <https://bit.ly/2UbHE2v> > [last accessed:12.02.20].

<sup>19</sup> Detailed information about the Council can be found at: < <https://bit.ly/33EJn3p> >[last accessed: 11.02.20].

### **Working methodology**

The National Preventive Mechanism pays particular attention to reviewing and improving its working methodology. Numerous events and meetings were held for this purpose.

- On March 5-6, 2019, by the funding and organization of the Council of Europe, a working meeting was held in Kvareli, the aim of which was to develop tools for studying the situation of mental health in penitentiary institutions. The meeting, apart from the staff of the National Preventive Mechanism (Department), was attended by representatives of the Department of the Rights of Persons with Disabilities of the Public Defender's Office, Western Georgia Division and Department of Criminal Justice. A tool developed by Sophie Morgoshia, Council of Europe consultant, was discussed during the meeting. Remarks and opinions were expressed on the mentioned document by the persons present at the meeting.
- A tool was developed for studying subculture in penitentiary establishments; the monitoring methodology of the Ministry of Internal Affairs was improved.

### **Trainings for staff**

- On April 12-14, 2019, the staff of the National Preventive Mechanism (Department) attended a training in Borjomi on the following theme: "Novelties Proposed by the New Constitution and the New Rules of Procedure of the Parliament in the Field of Protection of Human Rights and Parliamentary Oversight."
- On December 11-12, 2019, representatives of the Department of the National Preventive Mechanism of the Office of the Ukrainian Parliament Commissioner for Human Rights paid a study visit to Georgia. Representatives of the National Preventive Mechanism (Department) of the Public Defender's Office of Georgia briefed their Ukrainian colleagues on the monitoring methodology, preparation of reports and supervision of the implementation of recommendations. Interesting presentations and discussions were held during the working visit. The meeting participants were engaged in practical exercises and assessed the skills necessary for monitors. Another topic of discussion was the situation of the prevention of torture in the penitentiary facilities of Georgia and Ukraine, bodies of the Ministry of Internal Affairs and psychiatric institutions. After the end of the study visit, both parties expressed their willingness for closer cooperation in the future.

## **2. Penitentiary system**

### **2.1. Implementation of the recommendations offered in the 2018 Report of the National Preventive Mechanism**

The National Preventive Mechanism offered 38 recommendations in its 2018 report, which were aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment and improving

the conditions of detention in the penitentiary facilities. 27 out of the 38 recommendations have been endorsed in the resolution of the Parliament of Georgia.<sup>20</sup>

**None of the 6 proposals submitted to the Parliament of Georgia has been implemented. 1 recommendation to the Government of Georgia has not been implemented either.<sup>21</sup> 2 out of 31 recommendations to the Ministry of Justice of Georgia have been implemented; 2 have been partially implemented; 18 have not been implemented; we have not received a reply to the letter sent to the Ministry of Justice of Georgia<sup>22</sup> relating to the situation of implementation of recommendations during the reporting period. Consequently, the implementation of 9 recommendations could not be assessed.**

The purpose of this chapter is to review in detail the recommendations offered in the report of the National Preventive Mechanism and the situation of their implementation. Additional Information on these issues is given in the relevant thematic chapters.

As in previous years, the situation of implementation of important recommendations developed by the Special Preventive Group was unsatisfactory in 2019 as well. In many cases, systemic recommendations issued over the years, which would have a significant impact on the prevention of torture and ill-treatment, remain non-implemented. The Special Preventive Group of the Public Defender is ready to closely work and communicate with relevant state agencies and use its knowledge and expertise in order to make it possible to develop a human rights-based penitentiary system.

### *Proposals to the Parliament of Georgia*

None of the 6 proposals submitted by the National Preventive Mechanism to the **Parliament of Georgia was implemented** in 2019. 2 of the proposals addressed the issue of equal conditions and rights for the untried and convicted persons.<sup>23</sup> 3 proposals concerned the compliance of disciplinary proceedings in

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<sup>20</sup> Resolution No. 5003-Is of the Parliament of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018, September 20, 2019.

<sup>21</sup> Letter GOV 0 19 00053402 of the Administration of the Government of Georgia, December 26, 2019.

<sup>22</sup> On October 11, 2019, the National Preventive Mechanism sent letter No. 03-3/11037 to the Special Penitentiary Service of the Ministry of Justice, requesting information on the implementation of recommendations offered in the 2018 Report of the National Preventive Mechanism. A repeated letter (No. 03-3/13394) on the same issue was sent on 12 December 2019. Nevertheless, no reply had been received to any of these letters during the reporting period.

<sup>23</sup> 1) Define at the legislative level the obligation to provide **a minimum living space of 4 sq.m.** for defendants, like convicts; 2) Grant defendants the **right to long visits**, taking into account the interests of the investigation.

the penitentiary system<sup>24</sup> with international standards<sup>25</sup> and one proposal was aimed at improving the contact of convicts of high-risk facilities with the outside world.<sup>26</sup>

### *Recommendation to the Government of Georgia*

In 2019, the National Preventive Mechanism made a *recommendation*<sup>27</sup> to the Government of Georgia regarding the introduction of the practice of conducting forensic examination in accordance with the Istanbul Protocol for the purpose of effective documentation and investigation of torture and ill-treatment and the development of a plan by the Government to this end.<sup>28</sup> This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution.<sup>29</sup> However, the recommendation has not been implemented. The letter sent by the Administration of the Government of Georgia reads that the subject is voluminous and complex, and that a number of measures need to be taken in order to implement the guidelines set out in the Istanbul Protocol during forensic examination.

### *Recommendations to the Ministry of Justice of Georgia*

In 2019, the quality of cooperation with the Special Penitentiary Service of the Ministry of Justice of Georgia was low. Most of the letters sent to the Special Penitentiary Service<sup>30</sup> in 2019 were replied late or were not replied at all, which significantly hampered data processing and evaluation of implementation of recommendations. The evaluation of implementation of recommendations

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<sup>24</sup> 1) Record in the Imprisonment Code that the **disciplinary action shall be applied only as last resort**, at the level of legislation and practice; introduce **conflict prevention, mediation or other alternative dispute resolution mechanisms**; 2) Make amendments to the Imprisonment Code to abolish restrictions on the right to receive and send personal correspondence and to make phone calls, as well as the prohibition of short visits as a form of disciplinary sanction; 3) Take all measures to determine the types of disciplinary violations (less serious violation, serious violation and gross violation) by amending the Imprisonment Code, as well as appropriate penalties for each type of violation; introduce the rules for disciplinary case proceedings in oral hearing.

<sup>25</sup> According to European Prison Rules, disciplinary procedures shall be mechanisms of last resort (Rule 56.1). According to the Nelson Mandela Rules, prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.

<sup>26</sup> Convicts placed in high-risk facilities should be allowed to **enjoy video meetings**.

<sup>27</sup> The Government of Georgia should develop a plan aimed at practical implementation of the guidelines established by the Istanbul Protocol during forensic examination.

<sup>28</sup> For detailed information, see the 2018 Report of the National Preventive Mechanism, p. 29-30.

<sup>29</sup> Resolution No. 5003-Is of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018, September 20, 2019.

<sup>30</sup> On October 11, 2019, the National Preventive Mechanism sent a letter (No. 03-3/11037) to the Special Penitentiary Service of the Ministry of Justice, requesting information on the state of implementation of the recommendations offered in the 2018 Report of the National Preventive Mechanism. A repeated letter (No. 03-3/13394) on the same issue was sent on 12 December 2019. Nevertheless, no reply had been received to any of the letters during the reporting period.



presented in this chapter is based on information obtained from the sources<sup>31</sup> available for the National Preventive Mechanism during the reporting period.

3 of the recommendations made to the Ministry of Justice of Georgia concerned the **enhancement of procedural and institutional safeguards against ill-treatment**. In particular, in her *first recommendation*, the Public Defender called on the Ministry of Justice to define, by a subordinate normative act, the obligation of a doctor employed in penitentiary institutions to immediately report ill-treatment to an **independent investigative body**. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution.<sup>32</sup> **The mentioned recommendation has not been implemented.** According to the current edition,<sup>33</sup> in case of noticing injuries on a patient's body, the doctor of the penitentiary institution shall provide the relevant information to the Investigation Department of the Ministry of Justice of Georgia, which is a structural subdivision of the Ministry of Justice and is not independent or impartial from an institutional point of view. Immediately reporting the cases of torture and ill-treatment by a doctor to an institutionally independent investigative body is one of the most important requirements of the Istanbul Protocol.<sup>34</sup>

*In the second recommendation*, the Public Defender called on the Ministry to define, by a subordinate normative act, the obligation of the doctor to describe and photograph an injury, and to send it to an independent investigative authority in all cases when the doctor suspects that a prisoner was tortured or ill-treated, regardless of whether the doctor receives informed consent from the prisoner or not. This recommendation was also reflected in the report published by the European Committee for the Prevention of Torture on its visit paid to Georgia in 2019.<sup>35</sup> This recommendation has not been implemented. The Ministry of Justice, in its response to the report of the European Committee for the Prevention of Torture, says that the issue of documenting and photographing injuries, and taking

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<sup>31</sup> Information received during the monitoring visits conducted by the Special Preventive Group in 2019; a reply letter received from the Special Penitentiary Service of the Ministry of Justice regarding the report on the monitoring visit to Penitentiary Establishments Nos. 2, 8, 14 and 15; information obtained from other open sources (e.g. the website of the Special Penitentiary Service).

<sup>32</sup> Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018.

<sup>33</sup> Order No. 131 of the Minister of Corrections of Georgia of October 26, 2016 on the approval of the rules of registration of injuries suffered by the untried/convicted persons as a result of alleged torture and other cruel, inhuman or degrading treatment in penitentiary facilities of the Ministry of Corrections of Georgia, Article 2 (3).

<sup>34</sup> Office of the United Nations High Commissioner for Human Rights, Manual on the *Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol), para. 73, available in English at: <<https://bit.ly/2Ucx9vL>> [last accessed: 10.01.2020].

<sup>35</sup> Report (CPT/Inf (2019) 16) of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, para. 80, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

appropriate measures by the doctor in case of physical or verbal resistance of the prisoner requires additional discussions, for which it expressed readiness.<sup>36</sup>

In the *third recommendation*, the Public Defender requested the development of guidelines for the effective detection and quality documentation of the cases of torture and ill-treatment and to set out the criteria for selecting suspicious injuries by the doctor when documenting injuries according to the relevant rule. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. According to the reply of the Special Penitentiary Service of the Ministry of Justice of Georgia, efforts have been launched for the development of guidelines, which is welcomed by the Public Defender.<sup>37</sup> Nevertheless, the recommendation had not been implemented in the reporting period.

2 recommendations made to the Ministry of Justice of Georgia concerned the issues of **ensuring order and security in penitentiary facilities**. In particular, according to the *first recommendation*, the Public Defender called on the Ministry to set the maximum period of placement of a prisoner in the de-escalation room at 24 hours, as well as to ensure multidisciplinary work (joint, multidisciplinary work of a psychologist, psychiatrist, social worker, doctor and other staff) when placing a prisoner in the de-escalation room (for reducing and eliminating the risks posed by the prisoner) and to create a safe environment in the rooms (by covering walls and floors with soft material). This recommendation has not been implemented. The recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The European Committee for the Prevention of Torture also mentions the use of de-escalation rooms for punishment and requests revision of the relevant regulations.<sup>38</sup> The Ministry of Justice, in its response to the 2019 report of the European Committee for the Prevention of Torture says that the strategy and action plan developed by the Ministry provides for the revision of all regulations applied in the penitentiary system in view of international best practices.

*In the second recommendation*, the Public Defender requested the issuance of a new subordinate normative act, or an amendment to the regulations of penitentiary facilities, in order to provide for individual risk assessment (by adhering to the principles of proportionality) during full examination, as well as to determine the obligation to offer alternatives to full examination (scanner) to a prisoner and to establish separate procedures for naked examination and internal examination. In addition, the

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<sup>36</sup> Response of the Government of Georgia to the report of the European Committee for the Prevention of Torture on its visit to Georgia in 2019, available at: <<https://rm.coe.int/168098e29c>> [last accessed: 16.01.20].

<sup>37</sup> Letter No. 371652/01 sent by the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia to the Public Defender's Office on December 13, 2019.

<sup>38</sup> Report (CPT/Inf (2019) 16) of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, para. 108, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

recommendation prohibited simultaneous nakedness of different parts of a person's body. This recommendation has not been implemented.

One of the recommendations made to the Ministry of Justice of Georgia concerned the **assessment and classification of convicts' risks**. In particular, the Special Preventive Group proposed the following changes in the risk assessment rules: to determine the obligation of the penitentiary establishment to inform convicts of the risk assessment criteria and procedures when placing convicts in the facility and before the risk assessment procedure; to determine the right of the convicts to express their opinion during risk assessment on the circumstances that serve as the basis for assessing their risks, as well as to determine the obligation to reassess the risks of high-risk convicts at least once in every 6 months. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has not been implemented.

One of the recommendations made to the Ministry of Justice of Georgia was to abolish the obligation of convicts to clean corridors, staircases and other places, by amending the regulations of Penitentiary Establishment No. 16. This recommendation has not been implemented.

One recommendation to the Ministry of Justice of Georgia concerned the **isolation of prisoners for security reasons**. In particular, the Special Preventive Group demanded to make amendments to the regulations of penitentiary establishments to determine the maximum period of isolation of prisoners, as well as to determine the obligation of revising the measure of isolation after 14 days of its application and thereafter, at the same interval. This recommendation has not been implemented.

7 recommendations to the Ministry of Justice of Georgia concerned **rehabilitation and re-socialization of prisoners**. In particular, in the first recommendation, the Special Preventive Group called on the Ministry to ensure that prisoners placed in closed and high-risk facilities could spend more than an hour in the open air. The monitoring carried out by the Special Preventive Group in 2019 made it clear that mentioned recommendation had not been implemented.

In the second recommendation, the Public Defender requested: to introduce in semi-open facilities the rehabilitation programmes that were implemented in low-risk facilities; to introduce the rehabilitation programmes, which were implemented in semi-open facilities, in closed institutions; to introduce the rehabilitation programmes, which were implemented in closed facilities, in high-risk facilities, and to take into account the infrastructure and safety norms of each facility in this process, as well as to cover more prisoners in the rehabilitation programmes in each penitentiary establishment in 2019. The recommendation relating to the implementation of rehabilitation programmes for more prisoners has been endorsed by the Parliament of Georgia and has been reflected in its resolution. We have not received a reply to the letter sent to the Ministry of Justice of Georgia,<sup>39</sup> in which we requested

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<sup>39</sup> On October 11, 2019, the National Preventive Mechanism sent a letter (N03-3/11037) to the Special Penitentiary Service of the Ministry of Justice, requesting information on the situation of implementation of the

information on the situation of implementation of the recommendation. However, the monitoring carried out by the Special Preventive Group in 2019 made it clear that the recommendation had not been implemented.

In the *third recommendation*, the Public Defender demanded an increase in the number of psychologists and social workers. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. We have not received a reply to the letter<sup>40</sup> sent to the Ministry of Justice of Georgia, in which we requested information on the situation of implementation of the recommendation. The Ministry of Justice, in its response to the report on the visit paid by the European Committee for the Prevention of Torture to Georgia in 2019, says that 98 social workers and 28 psychologists were employed in the penitentiary facilities in 2018. The same letter reads that as a result of the reorganization carried out in 2019, the number of social workers decreased by 8 and the number of psychologists increased by 12. Based on the above, the recommendation can be considered **partially implemented**. The reply to the Committee also reads that the Ministry plans to increase the number of social workers (by 30 – on January 1, 2020, by 20 – in 2022, by 20 - in 2024).

The *fourth recommendation* requests that the social workers, who do not have a bachelor's, master's/equivalent, or doctor's academic degree in the field of social work, be retrained. This recommendation has also been endorsed by the Parliament of Georgia and has been reflected in its resolution. The reply received from the Special Penitentiary Service of the Ministry of Justice says that 13 employees participated in the social work certification in 2019 and 13 more employees will participate in the certification process in 2020. The Public Defender/Special Preventive Group positively assesses the steps taken to implement this recommendation. Accordingly, the recommendation can be considered **partially implemented**.

The *fifth recommendation* requests the expansion of material-technical base of the social departments of the penitentiary facilities. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. Despite requesting information by the National Preventive Mechanism from the Ministry of Justice, no reply has been received from the Ministry on the situation of implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

The *sixth recommendation* requests that persons deprived of their liberty in Establishments Nos. 2, 6 and 7 be allowed to be engaged in the rehabilitation activities like those placed in Establishment No. 8. Despite requesting information by the National Preventive Mechanism from the Ministry of Justice,

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recommendations offered in the 2018 Report of the National Preventive Mechanism. A repeated letter (N03-3/13394) on the same issue was sent on 12 December 2019. Nevertheless, no reply had been received to any of these letters during the reporting period.

<sup>40</sup> Ibid.

no reply has been received on the situation of implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

In its *seventh recommendation*, the Public Defender called on the Ministry to make efforts for the introduction of a mechanism encouraging employment of prisoners, which would reduce the sentence of the convict employed in the penitentiary facility in accordance with his/her working days. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. Despite requesting information by the National Preventive Mechanism from the Ministry of Justice, no reply has been received on the situation of implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

Five recommendations made to the Ministry of Justice of Georgia concerned the **material conditions in the facilities**. In particular, in its *first recommendation*, the Public Defender requested in 2019 that prisoners be transferred from Establishments Nos. 15 and 2 to another similar type facility for the purpose of solving the problem of overcrowding and to consider the place of residence of the convicts' family in this process. This recommendation has not been implemented. In the *second recommendation*, the Special Preventive Group requested in 2019 that each prisoner in Establishments Nos. 2, 8, 14, 15 and 17 be provided with 4 sq.m. of living space and that the "barracks" type buildings be abolished in Establishment No. 17.<sup>41</sup> This recommendation issued by the Public Defender/Special Preventive Group has not been implemented. The Ministry of Justice said in its response to the 2019 visit report of the European Committee for the Prevention of Torture, as well as in its letter<sup>42</sup> sent to the Public Defender, that it intended to build a new, small facility. **It is important for the Public Defender to have the opportunity to receive information about the Ministry's concept of small facilities and to present her opinions. The Public Defender has been emphasizing for years that along with developing a strategy for dividing the system into relatively small facilities, it was important to direct the country's penal policy towards the use of non-custodial measures. The parole system is also characterized by shortcomings and needs to be improved.**

In its *third recommendation*, the Public Defender requested improvements in the sanitary-hygienic conditions in Establishments Nos. 2, 5, 8, 14, 15, 17, 18 and 19 so that to provide minimum living conditions for prisoners, as well as to solve the issue of lighting in Establishments Nos. 3, 8 and 14 and the issue of ventilation in Establishments Nos. 3, 5, 6, 8, 9, 14, 15 and 17. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The visits paid by the Special Preventive Group in 2019 made it clear that the recommendation had not been implemented in Establishments Nos. 2, 3, 14, 14 and 15. Although we requested information from the Ministry of Justice relating to other establishments, we have not received a reply from the Ministry on

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<sup>41</sup> For detailed information, see the relevant sub-chapter on physical environment.

<sup>42</sup> Letter No. 371652/01 sent by the Special Penitentiary Service on December 13, 2019.

the situation of implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

In the *fourth recommendation*, the Special Preventive Group requested that the water supply problem be solved in Penitentiary Establishment No. 3. In connection with the mentioned issue, the Public Defender's Office addressed<sup>43</sup> Batumi Water Ltd and asked to solve the water supply problem in Penitentiary Establishment No. 3. Batumi Water Ltd informed the Public Defender's Office that they had studied and eliminated the mentioned problem, which was welcomed by the Public Defender.

2 recommendations to the Ministry of Justice of Georgia concerned the **equality of prisoners**. In particular, according to the *first recommendation*, the Special Preventive Group demanded in 2019 that all juvenile convicts be placed in an establishment with access to appropriate services.<sup>44</sup> During the monitoring visits carried out by the National Preventive Mechanism in 2019, there still were juvenile prisoners in Establishments Nos. 2 and 8, who could not enjoy the same rehabilitation conditions as the juveniles placed in Establishment No. 11. The recommendation has not been implemented.

*In the second recommendation*, the Public Defender requested that the needs of LGBT prisoners, prisoners employed in the penitentiary establishment and prisoners responsible for cleaning be studied and an action plan be developed according to the needs identified. Despite requesting information from the Ministry of Justice, the National Preventive Mechanism has not received a reply from the Ministry on the situation of the implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

4 recommendations to the Ministry of Justice of Georgia concerned **medical services**. In particular, in the *first recommendation*, the Special Preventive Group requested in 2019 that the primary health care rooms be provided with the required number of computers and the internet. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. During the visits made by the Special Preventive Group in 2019, this recommendation had not been implemented in Establishments Nos. 2, 3, 14, 14 and 15. Despite requesting information from the Ministry of Justice, the National Preventive Mechanism has not received a reply from the Ministry on the situation of the implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

In the *second recommendation*, the Public Defender requested in 2019 that an annual epicrisis be written in the outpatient medical cards at the end of each year to briefly reflect the dynamics of the prisoner's health, consultations provided to him/her, referrals, treatment and its results, in order to correct the existing deficiencies. This recommendation has been endorsed by the Parliament of Georgia

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<sup>43</sup> Letter No. 15-1/3986 of the Public Defender's Office, April 5, 2019.

<sup>44</sup> Monitoring visits carried out by the National Preventive Mechanism to Establishments Nos. 2 and 8 in July and August 2019.

and has been reflected in its resolution. The recommendation has not been implemented. According to the reply<sup>45</sup> received from the Ministry of Justice, the Ministry did not agree with the recommendation. According to the Ministry, there is no form of so-called "annual epicrisis" and no such thing is done in any medical institution of the country, therefore, the Medical Department refused to implement this recommendation.

In the *third recommendation*, the Public Defender requested in 2019 that prisoners be screened for non-communicable diseases. This recommendation has also been endorsed by the Parliament of Georgia and has been reflected in its resolution. The Public Defender welcomes the implementation of the recommendation. According to the information posted on the website<sup>46</sup> of the Special Penitentiary Service, the preventive medical examinations, scheduled on the initiative of the Medical Department, started on April 13, 2019 and are being gradually carried out in all penitentiary establishments in eastern and western Georgia. The untried and convicted persons, on the basis of their consent, were provided with consultations of a cardiologist, neurologist, otorhinolaryngologist, urologist, dermatovenereologist, endocrinologist, ophthalmologist, oncologist, rheumatologist, surgeon and infectionist, as well as *electrocardiology* and ultrasonographic examination. A total of 4743 consultations/examinations were conducted. As facilities' chief doctors said during the visits paid by the Special Preventive Group, each convict was provided with preventive examination by a primary health care doctor, although, as in previous years, no screenings was provided for the relevant age groups in accordance with the relevant order.<sup>47</sup>

In the *fourth recommendation*, the Public Defender requested provision of information to prisoners about the health services available in the penitentiary facilities, preventive health and healthy lifestyle, by holding regular meetings with them, organizing information campaigns and distributing information booklets. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The visits made it clear that there are no changes in this direction, therefore, the recommendation has not been implemented.

Three recommendations made to the Ministry of Justice of Georgia concerned **improvements in prisoners' contact with the outside world**. In particular, according to the *first recommendation*, any restriction on contact with the family should be used as a form of disciplinary sanction only if such a contact resulted in an offence and the duration of the restriction should be as short as possible (lasting not for weeks and months, but for several days). According to the *second recommendation*, the place

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<sup>45</sup> Letter No. 371652/01 sent by the Director General of the Special Penitentiary Service to the Public Defender's Office on December 13, 2019.

<sup>46</sup> Available at: <<http://bit.ly/2H1NqMP>> [last accessed: 16.01.20].

<sup>47</sup> Order No. 381 of the Minister of Justice of Georgia of February 15, 2019. Before that, the above was regulated by Order No. 31 of the Minister of Corrections of Georgia of April 22, 2015 (repealed by Order No. 381 of February 15, 2019).

of residence of the prisoner's family members should be considered when allocating prisoners to penitentiary institutions, in order to ensure the unrestricted enjoyment of the right of the prisoner to receive visitors. These recommendations have not been implemented.

The *third recommendation* concerned the issue of correspondence in Establishments Nos. 2, 6 and 8. In particular, prisoners were not aware whether their letters had been registered or sent to the relevant addressees. According to the prisoners, they are not given any written document proving that the letter was handed over to the social worker. As a solution to this problem, the recommendation of the Special Preventive Group was to draw up a document in duplicate when receiving/delivering an open letter by the social worker; the document should be stamped, should be drawn up in the presence of the prisoner and should contain the following information: a) first and last names of the author of the letter; B) first and last names of the social worker; C) date of delivery of the letter; D) addressee of the letter; E) number of papers. Both documents should be signed by both the prisoner and the social worker and each of them should keep a copy of the document. This recommendation has not been implemented.

3 recommendations to the Ministry of Justice of Georgia concerned the **improvements in the working conditions of the staff of the penitentiary institution**. In particular, according to the *first recommendation*, the Public Defender requested that professional burnout trainings be conducted for all the employees of penitentiary facilities in 2019 and 2020. The *second recommendation* concerned the remuneration of all the employees of penitentiary facilities for their overtime work in 2019. In the *third recommendation*, the Public Defender requested that all the employees of the penitentiary facilities be given the opportunity to fully enjoy their right to take a leave. These recommendations have been endorsed by the Parliament of Georgia and have been reflected in its resolution. Despite requesting information from the Ministry of Justice, the National Preventive Mechanism has not received a reply from the Ministry on the situation of implementation of the recommendation. Consequently, it is impossible to assess the implementation of the recommendation.

## 2.2. Violence-free environment

### 2.2.1. Abuse of prisoners by staff

#### *Physical violence*

With regard to physical violence against prisoners by staff, the monitoring shows that only few cases of physical violence were reported in closed institutions,<sup>48</sup> such as slapping and hitting in the chest. However, according to several inmates, there is a prisoner in Establishment No. 2, who physically

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<sup>48</sup> During the monitoring visits, the Special Preventive Group received information about 3 cases of physical violence committed by staff in Establishments Nos. 2 and 8. According to letter No. 371652/01 of the Special Penitentiary Service of December 13, 2019, the Investigation Department's Western Division launched an investigation into one case of alleged physical abuse of the convict by staff in 2019.



abuses other prisoners under the instruction of the administration. As for the semi-open facilities, the fact that convicts do not characterize negatively the staff and administration should be assessed positively. It is welcome that the staff of High-Risk Penitentiary Establishment No. 3 also avoid conflicts with prisoners as much as possible.

### *Psychological violence*

According to the Public Defender, psychological violence against prisoners by staff remains a challenge. Prisoners in closed facilities spoke of unethical, abusive and unequal treatment by staff. For example, according to them, they use rude and humiliating language towards prisoners employed in the penitentiary establishment, such as "shut up," "drag him into the cell" and „drive them into cells." Members of the Special Preventive Group, while being in the corridor of one of the buildings of Establishment No. 2, heard loud swearing by staff. In addition, one of the employees of the administration of Establishment No. 15, while talking to the Special Preventive Group, used degrading terms when referring to a certain category of prisoners<sup>49</sup>.

According to several prisoners interviewed at Establishment No. 8, they are often engaged in a conflict with staff when they request medical care. In particular, several prisoners reported that the staff of the facility spoke rudely to them, challenged them and threatened to deteriorate their conditions or isolate them. Prisoners also say that they are often reprimanded for bothering the medical staff with medical complaints. The cases described above were witnessed by the monitoring team as well.

### *Isolation of prisoners for security reasons*

The regulations of Penitentiary Establishments Nos. 2, 3, 6 and 8 provide for the placement of a prisoner in the de-escalation room as one of the security measures.<sup>50</sup> For years, the Public Defender has pointed to the vicious practice of placing prisoners in the de-escalation room and often assessed the practice of the use of de-escalation rooms as inhuman and degrading treatment of prisoners.

With regard to the above, problematic trends were again identified in the reporting period, like previous years. In particular, the monitoring revealed cases of placement of prisoners in the de-escalation room for a long time and sometimes without intervals; prisoners with mental health problems are placed in the de-escalation rooms instead of being provided with psycho-social services; the administration uses de-escalation rooms to psychologically influence and punish prisoners. In

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<sup>49</sup> Prisoners employed in the penitentiary establishment, responsible for cleaning.

<sup>50</sup> Pursuant to Article 17 of the Statutes of Establishments Nos. 2 and 8, Article 26 of the Statute of Establishment No. 3 and Article 27 of the Statute of Establishment No. 6, if the untried/convicted person poses or may pose a threat to his/her or others' life and/or health, taking into account the relevant infrastructure, upon the recommendation of the medical staff and/or the order of the director of the facility issued on the basis of a report of an authorized employee of the facility, he/she may be placed in a properly equipped de-escalation room under 24-hour visual supervision by security staff and with continuous access to medical staff.

addition to the above, the monitoring revealed that, apart from de-escalation rooms,<sup>51</sup> there is a tendency of placing detainees in solitary confinement (so-called safe) cells for a long of time,<sup>52</sup> for the purpose of punishment.

**Duration and continuity:** The Public Defender has repeatedly recommended in recent years<sup>53</sup> to set 24 hours as a maximum period for placing a prisoner in the de-escalation room, but unfortunately, this recommendation has not been implemented.<sup>54</sup>

As in previous years, this practice still continues and prisoners are placed in the de-escalation rooms of Penitentiary Establishment No. 3 and in the de-escalation rooms and solitary confinement (so-called safe) cells of Penitentiary Establishment No. 8 for a long time, virtually without intervals. As the visit revealed, prisoners are mostly placed in the de-escalation rooms and solitary confinement (so-called safe) cells for a maximum term (72 hours in case of the de-escalation room and 24 hours in case of the solitary confinement (so-called safe) cell). In addition, one and the same prisoner may be placed in these rooms/cells at intervals of minutes and hours, which may be considered a continuous placement. For example, in Penitentiary Establishment No. 3, one of the prisoners was transferred to the de-escalation room at intervals of a few minutes and hours 11 times. The prisoner spent a total of 17 days in the de-escalation room during the mentioned period. In addition, prisoners were isolated in the de-escalation rooms and solitary confinement cells of Penitentiary Establishment No. 8 for more than 5 days in 34 cases, for more than 10 days - in 14 cases, for more than 15 days - in 6 cases, for more than 20 days - in 4 cases, namely for 22, 26, 36 and 48 days. It should be noted that in the above cases, the mentioned measures were sometimes applied to one and the same prisoners. The placement of a prisoner in the de-escalation room for a long time contradicts the standards of the European Committee

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<sup>51</sup> The de-escalation room is a standard empty cell with the cement floor and poorly painted, dirty walls. There is a solid leather mattress on the floor; the room has a little dirty window that cannot provide natural light; there is a lack of air in the room and the smell of dampness. In addition, the toilet is covered by the surveillance camera.

<sup>52</sup> Article 57 (d) of the Imprisonment Code provides for the placement of a prisoner in a solitary confinement cell for no more than 24 hours as one of the security measures. The mentioned cell is equipped with an electronic surveillance system, a non-fragile washbasin and a toilet seat, which is why it is called a safe cell.

<sup>53</sup> 2015 Report of the National Preventive Mechanism, p. 50. available at: <<http://www.ombudsman.ge/res/docs/2019040513192545317.pdf>>, [last accessed: 17.02.2020].

2016 Report of the National Preventive Mechanism, p. 55. available at: <<http://www.ombudsman.ge/res/docs/2019040513214458561.pdf>>, [last accessed: 17.02.2020].

2017 Report of the National Preventive Mechanism, p. 22. available at: <<http://www.ombudsman.ge/res/docs/2019040513262313034.pdf>>, [last accessed: 17.02.2020].

2018 Report of the National Preventive Mechanism, p. 54. available at: <<http://www.ombudsman.ge/res/docs/2020011615511256803.pdf>> [last accessed: 16.01.2020]. Report (CPT/Inf (2019)16) of the European Committee for the Prevention of Torture on the visit paid to Georgia on September 10-21, 2018, para. 94, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 07.02.2020].

<sup>54</sup> It should be noted that the statutes of penitentiary establishments stipulate only the duration of placement of a person in the de-escalation room (72 hours), while the frequency of placement of a person in the de-escalation room is not limited. This makes it possible to place a person in the de-escalation room indefinitely, by repeatedly transferring him to the room, without intervals.

for the Prevention of Torture, according to which, the maximum period of placing a person in the de-escalation room should not exceed 24 hours<sup>55</sup> and in some cases may equal inhuman and degrading treatment.

The Public Defender/Special Preventive Group considers that the current practice of placing prisoners in the de-escalation rooms and solitary confinement (so-called safe) cells for a long time represents cruel, inhuman and degrading treatment.

**Prisoners with mental disorders:** Due to the lack of psycho-social support services and other management resources in the facilities, prisoners with mental health problems and at risk of harming others or themselves due to their psycho-emotional state are placed in the de-escalation room for a long time.

The Special Preventive Group believes that the increased statistics on the placement in the de-escalation room in Establishment No. 2 is directly related to the reduction of psycho-social support services.<sup>56</sup>

In addition, the de-escalation rooms in Establishment No. 2 are controlled by only one officer, who, during emergency, shall call another officer on duty and enter the de-escalation room only after the latter arrives. When entering the de-escalation room, the officer tries to eliminate risks mainly by using handcuffs. Several similar cases have occurred in Establishment No. 2. In particular, handcuffs were used in 41 cases in Establishment No. 2 from January 1, 2019 to July 15, 2019, mostly for 3-4 hours, and in some cases from 7 to 17 hours. In one case, handcuffs and excessive force were used against a prisoner with severe mental health problems for a long time (16 hours), which made the patient suffer.

It should be noted that the placement of a prisoner in the de-escalation room should inter alia serve the purpose of preventing the prisoner from harming himself. However, none of the de-escalation rooms is arranged so that to minimize the risk of self-harm,<sup>57</sup> while the conditions of detention in these rooms often result in the deteriorated psycho-emotional state of prisoners with mental disorders.

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<sup>55</sup> Report (CPT/Inf (2019)16) of the European Committee for the Prevention of Torture on the visit paid to Georgia on September 10-21, 2018, para. 94, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 07.02.2020].

<sup>56</sup> In Establishment No. 2, until February 22, 2019, adult prisoners had been served by 3 psychologists. As a result of the reorganization, only one psychologist was left in the facility, who was dismissed on May 14. Since then, the facility has been visited 2-3 times a month by the psychologist of Establishment No. 14, who is unable to provide individual psycho-therapeutic services and is limited to making descriptions of the convicts. As for a psychiatrist, until May 2019, one psychiatrist had been working full time in the facility, who quit in May; since then, the facility has been visited by a consultant psychiatrist for several hours 3 times a week.

<sup>57</sup> The de-escalation room is a standard empty cell with the cement floor and poorly painted, dirty walls. There is a solid leather mattress on the floor; the room has a little dirty window that cannot provide natural light; there is a lack of air in the room and the smell of dampness. In addition, the toilet is covered by the surveillance camera.

During the first 6 months of 2019, 8 cases of self-harm were reported in the de-escalation room of Establishment No. 2 and 31 - in Establishment No. 8; 2 cases of self-harm were reported in the de-escalation room of Establishment No. 3 during 3 months of 2019 (July, August, September). All this calls into question the effectiveness of the use of this measure for the prevention of infliction of harm to one's own or other's life or health.

It should be noted that during the visit paid to Establishment No. 2, the Special Preventive Group received information from several prisoners about the cases of ill-treatment of a prisoner with mental health problems in the de-escalation room. In one of the cases, the prisoner had no personal belongings in the de-escalation room and was given his warm clothes only in the evening of the second day. The prisoner had not been consulted by a psychiatrist before or after being placed in the de-escalation room.

The Special Preventive Group considers that the placement of prisoners with mental health problems in the de-escalation rooms should only be used as an extreme measure, and before using this measure, for achieving the goal of safety, prison staff should use other, less restrictive means, such as supervision by staff or electronic supervision. If the above turns out to be insufficient, placement in the de-escalation room should be used as an urgent measure, the duration of which should not exceed 24 hours and, at the same time, the patient should be served by a multidisciplinary team (psychologist, social worker, doctor and, if necessary, psychiatrist). If the 24-hour placement in the de-escalation room and the work of the multidisciplinary team are insufficient to achieve the safety of the prisoner with mental health problems, the prisoner should be transferred immediately to the psychiatric division of Medical Establishment for Pre-trial and Sentenced Inmates No. 18 or other psychiatric facility.

**In addition, the Public Defender considers that a long placement of prisoners with mental disorders in the de-escalation room, use of handcuffs against them and failure to provide adequate psychiatric care violate the requirements of Article 15 of the Convention on the Rights of Persons with Disabilities<sup>58</sup> and represent cruel, inhuman and degrading treatment.<sup>59</sup>**

**Placement in de-escalation rooms and solitary confinement (so-called safe) cells as an informal punishment:** According to the prisoners interviewed by the Special Preventive Group, the real reason for placing them in the above-mentioned cells/rooms is the violation of the regime requirements or verbal abuse of staff rather than the grounds provided by the statute.

It is worth noting that prisoners are in extremely difficult conditions in the de-escalation rooms and

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<sup>58</sup> According to Article 15 of the Convention on the Rights of Persons with Disabilities, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

<sup>59</sup> In the case of *Kucheruk v. Ukraine* (No. 2570/04), the repeated and lengthy placement of a handcuffed prisoner with mental health problems in a solitary confinement cell, due to the lack of resources to manage the prisoner's behavior and provide psychiatric care, was found by the European Court of Human Rights as a violation of Article 3 (prohibition of torture) of the European Convention, para. 131.

solitary confinement (so-called safe) cells compared to their living cells. In particular, in these cells/rooms, prisoners have limited access to personal hygiene items and dishwashing detergents; they have limited access to their own clothes; their rights to take a shower and to go for a walk are often restricted; they have limited access to the prison shop, telephone calls, personal correspondence and visits. The sanitary-hygienic conditions are also unsatisfactory. According to prisoners, all of their rights, including the right to call the Public Defender or the lawyer, are restricted in the de-escalation room. They are not given cigarettes either, the cell window is closed and there is a lack of air. Based on the above, prisoners perceive placement in the mentioned cells/rooms as a punishment. According to them, if the staff has a desire to punish any prisoner, they try their best to keep the prisoner in the de-escalation room in bad conditions (without water or hygiene items).

The monitoring revealed that disciplinary sanctions are also imposed on prisoners in the de-escalation room, which reinforces the prisoners' sense that the transfer to these rooms serves the purpose of punishment.<sup>60</sup> **It should be noted that in Penitentiary Establishment No. 8, disciplinary sanctions are sometimes imposed on prisoners for being noisy in the de-escalation room. It is unclear to the Special Preventive Group why disciplinary sanctions are imposed on prisoners for being noisy in the de-escalation room, whereas the de-escalation room is a place where a person is supposed to get free from negative emotions. Screaming and making noises can be regarded as one of the ways of achieving the above.**

***Video surveillance in the de-escalation room:*** According to the recommendation issued during the monitoring visits to Penitentiary Establishment No. 3 in 2016, 2017 and 2018, the visual surveillance cameras should be installed in the de-escalation rooms and solitary confinement cells so that the cameras do not cover the toilets.<sup>61</sup> The monitoring carried out in 2019 revealed that the cameras were still installed above the toilets. Accordingly, the location of the cameras failed to rule out the possibility of covering the toilet. According to the Deputy Director of the facility, toilets are not covered by the surveillance cameras, however, the Special Preventive Group was not given an opportunity to see the footage and verify the truth of what the Deputy Director had said.

**Improper use of internal classification cells:** During a visit to Penitentiary Establishment No. 8, the Special Preventive Group concluded that, similar to the practice of de-escalation rooms and solitary confinement (so-called safe) cells, there were cases of transferring and placing prisoners in internal

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<sup>60</sup> In 7 out of the 10 cases examined on the basis of random sampling in Establishment No. 2, the transfer to the de-escalation room coincided with the imposition of a disciplinary sanction. As for Establishment No. 8, disciplinary sanction was imposed along with placement in the de-escalation room in 42 cases and along with placement in a safe cell in 23 cases. In Establishment No. 3, from January to September 16, 2019, disciplinary sanction was used in 660 cases, 74 of which coincided with the placement in the de-escalation room.

<sup>61</sup> The report following the visits paid by the Georgian National Preventive Mechanism to Penitentiary Establishment No. 3 on May 23-25, 2016 and February 2-4, 2017, available at: <<http://www.ombudsman.ge/res/docs/2019032815021473858.pdf>> [last accessed: 17.02.2020]. <<http://www.ombudsman.ge/res/docs/2019032815021473858.pdf>>

classification cells (so-called quarantine rooms) for a long time,<sup>62</sup> which also serves the purpose of "teaching them a lesson" and punishing them. It should be noted that the conditions in the internal classification cells are uncomfortable, as there is humidity, insufficient ventilation and poor sanitary-hygienic situation. In addition, during their stay in the internal classification cells, prisoners have limited access to their right to go for a walk, take a shower, have contact with the outside world or use the prison shop.<sup>63</sup>

The Public Defender was informed by the Ministry of Justice of Georgia that the Special Penitentiary Service was drafting instructions for the introduction of **an effective practice of transferring prisoners from their living cells to internal classification cells.**<sup>64</sup> The Special Preventive Group believes that the transfer of prisoners to internal classification cells, as well as the regulation of this issue at the normative level, is categorically unacceptable, as it is highly likely that there will be conflicts among prisoners when a newly admitted prisoner, who is under penitentiary stress (and whose expected behavior is less known to the prison management), and a prisoner, who was transferred from his cell likely for his challenging behavior, are placed together. As for the practice of placing sentenced persons together with defendants, the above contradicts the Imprisonment Code<sup>65</sup> and the statute of Establishment No. 8.<sup>66</sup> The Public Defender considers that if it is necessary to transfer a prisoner from his cell for security reasons, he should be taken to alternative spaces rather than to internal classification cells, where newly admitted convicts or defendants are placed, or should be transferred to internal classification rooms only when there are no newly admitted convicts or defendants.<sup>67</sup>

## 2.2.2. Inter-prisoner violence

### Inter-prisoner physical violence

According to the information received by the Special Preventive Group, conflicts among prisoners occur frequently for various reasons. Conflicts mainly arise when some prisoners use other prisoners'

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<sup>62</sup> During the first 7 months of 2019, there were 551 cases of the transfer of the prisoner from the residential building to the internal classification cell.

<sup>63</sup> Detailed information on the use of internal classification cells for punishment can be found in the report of the National Preventive Mechanism on the visits to Establishments Nos. 2, 8, 14 and 15, available at: <<https://bit.ly/39dU8e2>> [last accessed: 16.01.2020].

<sup>64</sup> Letter No. 371652/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, December 13.

<sup>65</sup> According to Article 9 (2) of the Imprisonment Code, in a mixed-type facility, defendants shall be isolated from convicts at least through separate living spaces.

<sup>66</sup> According to Article 14 (2) of the Statute of Penitentiary Establishment No. 8, "Convicts and defendants shall be placed separately from each other."

<sup>67</sup> According to subparagraph 'k' of Article 2 of the Instructions for Organizing Legal Regime in Penitentiary Establishments approved by Order No. 200 of the Minister of Corrections of Georgia on August 1, 2013, an internal classification cell is intended for the placement of newly admitted defendants/convicts, where they are supervised for the purpose of allocating them to the cells, as well as for epidemiological purposes - to isolate persons suspected of being infected with various communicable diseases (before diagnosing them).

phone cards, request cigarettes or forcedly take other prisoners' cigarettes, or extort money. Other causes of conflicts may be religious beliefs, ethnicity and communication problems caused by the language barrier. The practice of transferring prisoners from one cell to another due to conflicts with cellmates is common in the facilities, which indicates that a certain number of prisoners do not feel safe in their cells.

According to prisoners, if prison staff do not personally witness inter-prisoner conflict in Establishment No. 15, they may never learn about it. Inter-prisoner conflicts are resolved by "watchers". In semi-open facilities, "watchers" are divided according to regions, floors, wings and other spaces. Accordingly, the so-called "zone" issues are resolved by an informal leader, while the issues of those employed in the penitentiary establishment are regulated by a brigadier. When a case is resolved by "watchers", certain prisoners may be physically abused, degraded, expelled from the prison community or forced to move to the category of prisoners, which they believe, have a lower status.

### **Inter-prisoner psychological violence**

In addition to physical violence, facilities are also characterized by forms of severe psychological violence. This problem is especially acute in semi-open institutions, where criminal subculture is quite strong. Due to the fear of repression, prisoners follow informal rules, as if they do not do so, they may be expelled from the prison community, communication with them may become unacceptable for other prisoners, which leads to the loss of dignity, status and respect.

There are cases in closed facilities, when certain prisoners try to control their cellmates and psychologically abuse them. One of the prisoners misappropriated items intended for common use in Establishment No. 8. The Special Preventive Group was informed that one prisoner in the same facility was trying to control his cellmates and impose his rules. Namely, he was trying to force others to give him their cards<sup>68</sup> so that he could decide what to buy and how to arrange the cell. As he had good contacts inside and outside the facility, prisoners were afraid of him. According to prisoners, those with limited finances are forced to be noisy in the cell in order to achieve they transfer to another cell. In similar cases, prisoners are usually first taken to an internal classification cell and then to another cell.

Prisoners often change thier cells as a result of conflicts. The above is the only resource of prison staff to prevent conflicts. The monitoring showed that prisoners with mental health disorders placed together with other prisoners in Establishment No. 8. are often harassed, humiliated, abused, denied food, forced to do degrading things or even hit in head, which results in conflicts, after which, they are transferred to the de-escalation room or the safe cell. The Special Preventive Group learned that

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<sup>68</sup> A card with nominal amount of money, which is individually handed over to each convict.

prisoners of Establishment No. 8 were extorting money from one of their cellmates and were threatening to kill them in case of refusal.

Under informal governance, prisoners are divided into categories and are stigmatized. The Public Defender has been pointing out for years that those employed in the penitentiary establishment and those responsible for cleaning are in a particularly vulnerable situation, are stigmatized and isolated from prison life. Those responsible for cleaning are not perceived as equal people. They are referred to by derogatory names, are placed separately, have a separate room for long visits, as well as a separate shower room; their food is cooked in a separate pot. In the event of any contact with them, prisoners are forced to harm themselves or those responsible for cleaning. Every prisoner is aware of this rule.

Even prisoners in charge of distributing food stay as far away as possible from prisoners in charge of cleaning. Prisoners note that their employment in the penitentiary establishment increases the likelihood of harassment and thus they avoid to be employed. Because of this, even prisoners with critical financial needs are forced to refuse to be employed and earn income.

### **2.3. Detection, documentation and investigation of cases of violence**

According to the rule established by Order No. 131 of the Minister of Corrections of Georgia (issued on October 26, 2016), if medical staff notices a suspicious physical injury or changes in prisoner's emotional state, they shall make every effort to obtain information about the above from the patient. It is essential that the doctor examining the detainee be able to determine the likelihood of infliction of injury through violence, even if the patient does not say it. He/she should also be able to document the psychological and psychiatric proof of violence and to determine the degree of consistency between the prisoner's narrative of ill-treatment and the results of medical examination.<sup>69</sup>

The monitoring of penitentiary facilities shows that the practice of identifying and documenting alleged ill-treatment by doctors is problematic. In particular, in case of detecting suspicious injuries on the body of a prisoner in a semi-open penitentiary facility, doctors do not document it in accordance with the rules approved by Order No. 131 of the Minister of Corrections of Georgia. As for closed facilities, according to the above rule, injuries shall be documented only if the prisoner indicates that he was ill-treated by police officers when he was admitted to the facility.<sup>70</sup>

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<sup>69</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (Istanbul Protocol) UN, 2004, para. 122, as well as Order No. 131 of the Minister of Corrections of Georgia of October 26, 2016.

<sup>70</sup> According to letter No. 367169/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia dated December 9, 2019, the bodily injuries of 15 prisoners were documented in Penitentiary Establishments Nos. 8 and 2 from January 1, 2019 to October 31, 2019, in accordance with Order No. 131 of the Minister of Corrections dated October 26, 2016. There were 12 cases of documentation in Penitentiary Establishment No. 8 - information provided by the untried person to the doctor served as the basis for the documentation. As for Penitentiary Establishment No. 2, the number of documented cases of bodily injuries was 3 at the stage of placement.



The Special Preventive Group considers that the location, quantity and quality of some bodily injuries described in the documents of the penitentiary facilities may indicate alleged violence.<sup>71</sup> It is worth noting that all of the above cases included signs of alleged violence against prisoners, although no document was filled out to register the injuries in accordance with the order of the Minister. According to the information provided by the Ministry of Justice of Georgia, from January 1 to November 30, 2019, there were 316 cases of infliction of bodily injuries to a prisoner by another person.<sup>72</sup>

**The Special Preventive Group believes that the faulty practice of detecting and documenting the cases of alleged violence in penitentiary facilities, inter alia,<sup>73</sup> is caused by inadequate qualifications of doctors; the lack of confidential environment for meeting a prisoner; the obligation to obtain informed consent from the prisoner for filling out the relevant document.**

**Doctors' qualifications:** The monitoring results show that if there are suspicious injuries, doctors do/can not make efforts to obtain information on alleged violence. In addition, it should be noted that one of the doctors on duty at Penitentiary Establishment No. 15 was not aware of the rules for documenting injuries under the Istanbul Protocol at all.<sup>74</sup>

As for the quality of documentation of alleged violence, the documents examined by the Special Preventive Group in Establishments Nos. 2 and 8 show that the injury description charts, developed in accordance with the Istanbul Protocol, are filled out incompletely and incorrectly. In most cases, the documents only indicate that the injury was received during or after arrest, but do not indicate the methods of receiving the injury; the graphic images do not indicate the location of the injury; they do not assess the degree of consistency between the information provided by the prisoner and the objective data.

**Confidential environment:** The lack of opportunity for a confidential meeting between doctors and prisoners hampers the detection of alleged violence. Although prison staff is allowed to attend the medical examination of a prisoner only in exceptional cases,<sup>75</sup> as the practice in prisons and closed

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Information provided by the untried persons to the medical staff served as the basis for the documentation in all 3 cases.

<sup>71</sup> See the report of the monitoring visits paid to Penitentiary Establishments Nos. 2, 8, 14 and 15, p. 13, available at: < <https://bit.ly/39dU8e2> > [last accessed: 27.02.2020].

<sup>72</sup> Letter N370709/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, December 12, 2019.

<sup>73</sup> For example, the influence of subculture (according to the informal rules established in the facilities, the victim of violence should not expose the infliction of injury and especially its causes) and distrust of victims of violence towards the investigative bodies.

<sup>74</sup> However, according to them, 3-day training was provided for all doctors in 2017.

<sup>75</sup> According to Article 3 (2) of the rules approved by Order No. 131 of the Minister of Corrections on October 26, 2016, "The presence of the third party at the examination is inadmissible. If the doctor deems the presence of prison staff necessary for his/her or patient's safety, the medical examination shall be conducted only under visual supervision of the relevant staff, without them being able to hear the content of the examination."

facilities shows, the meeting between prisoners and doctors is always attended by a legal regime and/or security officer, who can hear the conversation between prisoners and doctors.<sup>76</sup>

**Informed consent:** Order No. 131 of the Minister of Corrections of 26 October 2016 defines informed consent of a prisoner as a mandatory condition for filling out the injury chart. This hinders the effective use of this mechanism, as victims of torture or inhuman and degrading treatment are in more vulnerable position in the penitentiary facilities and avoid exposing the cases of violence, as they are afraid of revenge. The European Committee for the Prevention of Torture, in its report on the visit to Georgia, calls on the Government of Georgia to amend its regulations so that to oblige a doctor, when he/she suspects an alleged torture or ill-treatment towards a prisoner or among prisoners, to document the injuries by filling in charts and taking photos, and to send them to an investigative body, regardless of having the consent of the alleged victim.<sup>77</sup>

The Public Defender has been stressing for years that the investigation of alleged ill-treatment remains a major challenge for the investigative system.<sup>78</sup> It should be noted that in its 2018 report, the European Committee for the Prevention of Torture also highlights the issue of ineffective investigation, including the fact that initial investigatory steps were still as a rule performed by staff of investigative departments of the respective Ministries (i.e. by colleagues of incriminated/suspected officials, working for the same Ministry), with the Prosecutor's Office only becoming directly involved at a later stage (mostly in higher-profile cases, as from the moment the case had caused 'enough' stir in public opinion, the media and civil society). In addition, the Committee points out frequent delays in collecting and securing evidence, as well as the fact that investigations were initiated under inappropriate articles of the Criminal Code, e.g. Article 333 instead of Articles 144<sup>1</sup> and 144<sup>3</sup> and the short (5-day) term of keeping video recordings by the penitentiary facilities. Moreover, the report reads that the suspected law enforcement and prison officers were usually not suspended from their duties and no action was taken to protect potential victims from being pressured and intimidated, and forced to change their testimonies.<sup>79</sup>

According to the information provided by the Ministry of Justice of Georgia, if there is a suspicion that torture, other cruel, inhuman or degrading treatment of a prisoner was committed by a representative of the Ministry of Internal Affairs, penitentiary facility, escort group or other investigative body, the

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<sup>76</sup> The Special Preventive Group witnessed such incidents in closed facilities. It also received information about similar practices from prisoners.

<sup>77</sup> Report (CPT/Inf (2019) 16) of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, para. 80, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

<sup>78</sup> The special report of the Public Defender of Georgia on the effectiveness of investigation of criminal cases of ill-treatment, available at: <<http://www.ombudsman.ge/res/docs/2019062010290661060.pdf>> [last accessed: 17.02.2020].

<sup>79</sup> Report of the European Committee for the Prevention of Torture on its visit paid to Georgia in September, para. 13-15: <<https://rm.coe.int/1680945eca>> [last accessed: 30.01.20].

case is immediately sent from the Investigation Division of General Inspection Service of the Ministry of Justice and the Western Division of the Investigation Department to the Prosecutor's Office for further response<sup>80</sup> and from November 1, 2019 - to the State Inspector's Office.<sup>81</sup> The above is problematic since the Investigation Department of the Special Penitentiary Service, which is not an institutionally independent agency, acts as a mediator in this area.

It is important that information about alleged ill-treatment identified by doctors be sent immediately and directly to an independent investigative body and not to the Investigation Department of the Ministry of Justice, which is institutionally linked to the Special Penitentiary Service. With regard to this, shortcomings remain in paragraph 1 of Article 6 of Order No. 131 of the Minister of Corrections of Georgia, according to which, in case of a suspicion of torture and ill-treatment, the doctor shall report the case to the Investigation Department of the Ministry of Justice. This regulation needs to be amended. In particular, if the alleged perpetrator of torture or ill-treatment is an employee of the Ministry of Internal Affairs or a penitentiary facility, or a member of an escort group or a representative of another investigative body, the doctor should report the case directly to the State Inspector's Office.

According to the information provided by the Prosecutor General's Office of Georgia, from January 1, 2019 to October 31, 2019, 12 notifications were received from penitentiary facilities relating to the documentation of alleged torture and other cruel, inhuman or degrading treatment of prisoners by doctors in accordance with the above-mentioned rules. According to the same information, the inquiry found no development of injuries as a result of torture and ill-treatment by an employee of the Ministry of Internal Affairs or other investigative bodies, or by an employee of the penitentiary facility. Therefore, no investigation has been launched into any of the cases.<sup>82</sup> It is worth noting that according to the monitoring results of the Special Preventive Group, the investigation is not interested in obtaining the injury charts filled in by doctors. From 2017 to the period of the monitoring, the investigation had not obtained any documentation or photos taken in accordance with the Istanbul Protocol, while the cameras that were used to take photos of injuries were sealed on March 30, 2017 and remained so during the monitoring as well.<sup>83</sup> **Consequently, it is unclear to the Special Preventive Group how the Prosecutor's Office of Georgia established that the injuries had not been developed as a result of torture and ill-treatment committed by law enforcement officers without obtaining/reviewing the documentation filled in by doctors or photos taken by them.**

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<sup>80</sup> According to letter No. 13/974 of the Prosecutor's Office of Georgia of January 10, 2020, from January 1, 2019 to November 30, 2019, investigations were launched in 19 criminal cases of alleged ill-treatment of prisoners by the staff of penitentiary facilities. Investigation is pending in all the above cases and no prosecution has been launched against any individual.

<sup>81</sup> Letter No. 371652/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, December 13, 2019.

<sup>82</sup> Letter No. 13/3295 of the Prosecutor's Office of Georgia, January 20, 2019.

<sup>83</sup> July-August 2019.

The Special Preventive Group believes that once an alleged case of torture and other cruel, inhuman or degrading treatment is identified, documented and reported to an independent investigative body, it is essential to conduct a forensic examination in accordance with the Istanbul Protocol to ensure an effective investigation. It should be noted that the written findings of the forensic examination conducted by the Levan Samkharauli National Forensics Bureau relating to the allegations of torture and inhuman or degrading treatment do not comply with the requirements of Chapters V or VI of the Istanbul Protocol or Annex 1 to the Istanbul Protocol (the principles of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment).<sup>84</sup>

## 2.4. Administration of a protected, safe and orderly penitentiary establishment

### Overcrowding

In terms of overcrowding, it is worth noting that there are more prisoners<sup>85</sup> in the facilities than defined by Order No. 106 of the Minister of Corrections of Georgia of 27 August 2015, while the number of the staff of the Legal Regime and Security Department<sup>86</sup> is not sufficient to ensure a protected, safe and orderly environment.

The European Committee for the Prevention of Torture believes that the main guarantee for order and safety in the penitentiary facility shall be prison staff that properly exercises supervision.<sup>87</sup> The Special Preventive Group considers that no proper supervision is provided in the facilities due to the issues of overcrowding and the lack of staff.

Due to the lack of staff,<sup>88</sup> the safety of both prisoners and staff is at risk. There are cases when one officer is not able to defuse a conflict between prisoners in time, because he has to wait for the assistance from his colleague for a long time. Delay may pose a real threat to the health or life of prisoners.

Inter-prisoner violence in closed institutions is mainly caused by the growing number of prisoners and overcrowding, as a result of which, prisoners of different categories and views have to live in one and the same cell. When allocating prisoners to cells, the full attention of the administration is focused on

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<sup>84</sup> 2018 Report of the National Preventive Mechanism, p. 29-30.

<sup>85</sup> The issue of overcrowding is particularly acute in Establishment No. 15, where the number of prisoners during the visit exceeded the established limit (1,388) by 512, while in Establishment No. 2, where the limit is -1068, there were 1,080 prisoners during the visit.

<sup>86</sup> For example, according to letter No. 247826/25 received from Establishment No. 8 on August 20, 2019, 1-2 legal regime officers are on duty in each wing of the residential buildings, where 60 to 190 prisoners are accommodated.

<sup>87</sup> An extract from the 11<sup>th</sup> General Report (CPT/Inf (2001)16) of the European *Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT), available at: <<https://rm.coe.int/16806cd1fd>> [last accessed: 02.10.2019].

<sup>88</sup> In the European region, on average, there were about three inmates per member of custodial staff in 2013 (excluding health and other staff). The ratios ranged from 2.9 prisoners per guard in Scotland to 12.9 in the Slovak Republic.14, Penal Reform International, *Global Prison Trends 2016*, pages 2-3, available at: <<https://bit.ly/2xgEYYe>> [last accessed: 17.02. 2020].

ensuring that already opposing prisoners are placed in different cells or different wings. Because of this, other issues remain beyond attention, e.g. prisoner's personal qualities, habits, behavior, risks, etc, which often become the cause of disagreement between prisoners in closed space. Consideration of the above issues is important for the effective management of a penitentiary facility in terms of protecting prisoners' rights and safety.

The placement of defendants and convicts in one and the same cell is often the cause of conflicts. Thus, the international standards<sup>89</sup> and the requirement of the Imprisonment Code<sup>90</sup> to place untried persons in a special cell are violated.

It is difficult to identify the staff of the Legal Regime and Security Department in semi-open facilities and to apply to them, if necessary. This was mainly conditioned by two reasons. The staff spent most of their time in the yard, while the duty room was often empty. The second reason was the issue of equipping staff with uniforms. It is welcome that the latter problem has now been eliminated, as the Special Penitentiary Service has provided staff with new uniforms since December 2019.

Ultimately, it should be emphasized that due to the problem of overcrowding and staff shortage, prison staff are not able to properly perform their duties, which puts the safety of prisoners at risk.

### **Informal governance**

The Public Defender has emphasized over the years that informal governance poses a serious danger of ill-treatment of prisoners, often leading to violence and oppression among prisoners. In Georgia, as in other post-Soviet countries, the prison criminal subculture dates back to the early 20<sup>th</sup> century, when the above was widely used by the penitentiaries to control and manage prisoners.<sup>91</sup> **The Special Preventive Group considers that in the light of the problem of proper management of penitentiary facilities, the scale of informal governance is gradually increasing, which requires timely response.**

The influence of criminal subculture results in an informal division of prisoners. Some prisoners, who are in privileged position, exercise informal governance through repressive methods, which often leads to violence among prisoners and punishment of those who do not obey the rules of informal governance.

Despite the fact that prisoners<sup>92</sup> are in the cell for 23 hours, the Special Preventive Group received information in Establishment No. 2 that members of criminal subculture could move freely on the

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<sup>89</sup> According to United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by Resolution 70/175 of the UN General Assembly (Nelson Mandela Rules), Untried prisoners shall be kept separate from convicted prisoners (Rule No. 11 (b)).

<sup>90</sup> Imprisonment Code, Article 9, part 2.

<sup>91</sup> Judgment of the European Court of Human Rights in the case of Ashlarba v. Georgia (no. 45554/08) para. 22; M. Gelotti, Russian and Post-Soviet Organized Crime, 2002, p. 515.

<sup>92</sup> Except for convicts employed in the penitentiary establishment.

territory of the facility, control prisoners, collect the so-called „common funds”,<sup>93</sup> enter cells and physically assault disobedient prisoners; those who do not obey their demands are expelled from the prison community and transferred to another building; they also misappropriate the clothes sent to prisoners by their families. The so-called "prison watchers", with the help of prisoners employed in the penitentiary establishment, control the inmates' cards. To this end, they have a special notebook indicating the names of prisoners, the time of checking their cards and the amount of money deposited. Members of the Special Preventive Group found such notebooks in one of the buildings.

The monitoring revealed that there are privileged prisoners in Establishment No. 8, who are assisted by the administration in repairing their cells; they have various items that are not permitted for other prisoners; they receive timely medical care. In addition, the prison administration takes into account their desire to be placed together with their friends. The Special Preventive Group would welcome such efforts of the administration to improve the situation of prisoners if it were extended to all prisoners, if it were fair and did not create a threat of corruption or nepotism. Unfortunately, Establishment No. 8 does not provide the same conditions for the vast majority of prisoners.

According to several prisoners, some inmates of Establishment No. 8 are close to the administration and have influence on other prisoners and, if necessary, the administration uses them to “settle relations” with inmates (in case of hunger complaints, other forms of dissatisfaction or conflict situations).

Most of the convicts interviewed by the Special Preventive Group, as well as staff confirm that "watchers" keep order in the facility. Prisoners provided the first and last names, as well as nicknames of specific criminal leaders.

The Group was also informed that in Establishments Nos. 14 and 15, a representative of criminal subculture goes to a newly admitted convict and serves him with coffee/tea, chocolate and cigarettes. After moving to the residential building, the same convict is told that he must make a contribution to help newly admitted convicts who have nothing, like he was helped. Thus, informal leaders try their best to convince the newly admitted convicts of their "good intentions" and the need to participate in the collection of the so-called „common funds".

The analysis of the obtained information shows the following picture in Establishment No. 15: Coffee and cigarettes equivalent to the "membership fee" are given to the informal leaders by each cell, after which, prisoners buy cigarettes not in the prison shop, but from "watchers". The relatives of prisoners deposit money in the prisoners' bank accounts controlled by "watchers" or in a betting account opened for the above purpose. Making a contribution to the "common funds" is related to quite big amounts of

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<sup>93</sup> A combination of material benefits, donations, which is accumulated in the hands of the informal leader and is managed by the same informal leader.

money. Some convicts, considering their income, are able to make a contribution of only GEL 20 per month, but in some cases, the contribution of a cell reaches GEL 300-400. One of the convicts said that his cell collected GEL 200 every month and since he did not have finances, he was marginalized by other prisoners.

Due to the above, order was ensured in the facilities visited during the monitoring mainly by informal rulers, especially in semi-open facilities. The imaginary order in the facilities is based on violent methods and is in fact very fragile, which in the long run, or even in the short run, may pose an extremely high threat to the lives and safety of prisoners. In recent years, two convicts, Levan Kortava and Giga Partenadze, died as a result of inter-prisoner conflict in Establishment No. 14. The semi-open establishments fail to prevent similar cases due to safety risk factors. At the same time, it should be noted that the increasing influence of informal governance resulted in the decrease in the number of applications sent to the Public Defender from semi-open facilities.<sup>94</sup>

In order to prevent torture and other cruel, inhuman or degrading treatment or punishment, it is important to tackle criminal subculture without using violent and repressive methods and without endangering the rights and safety of prisoners.

### **High-risk facilities**

The management of high-risk facilities is still based on the principles of static security and implies maximum restrictions, prohibitions and unconditionally strict regime, which prevents positive changes in prisoners' behavior, as well as their rehabilitation.

Prisoners in high-risk facilities are idle in their cells for 23 hours and spend only one hour in the yard. In addition, some of the prisoners are in de facto isolation for months and years. Pursuant to the high-risk prison regulations,<sup>95</sup> the director of the facility, based on the application of the untried/convicted person or on his/her own initiative, may make a decision to separate the untried/convicted person from other untried/convicted persons for not more than 30 days. If necessary, the duration of placement of a prisoner separately from others may be increased by the director for a reasonable period of time, until the danger for which the untried/convicted person was isolated from others is eliminated.<sup>96</sup> Analysis of the above regulations shows that directors of penitentiary facilities are empowered to isolate prisoners and restrict their contact with other prisoners for an indefinite period of time on their own initiative. It should be noted that isolation of a prisoner for a long time may equal inhuman and degrading treatment. Consequently, the discretion given to the director to isolate a prisoner for an indefinite period of time increases the risks of ill-treatment associated with the use of this measure.

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<sup>94</sup> See the chapter on requests/complaints.

<sup>95</sup> Penitentiary Establishments Nos. 3, 6 and 7.

<sup>96</sup> On Approval of the Statute of Penitentiary Establishment No. 3 of the Ministry of Corrections of Georgia, Article 25.

The European Committee for the Prevention of Torture always pays special attention to the issue of isolation, as this measure can be extremely harmful to the mental, somatic and social well-being of a person. This harm may arise immediately and increase gradually. The longer the prisoner is isolated, the stronger the harm is. The Committee believes that the maximum period of isolation should not exceed 14 days and should preferably be shorter.

The restrictive regime is further exacerbated by the fact that the contact with the outside world is more limited for prisoners at high-risk facilities.<sup>97</sup> The situation is especially difficult for prisoners whose family members live far from the facilities and find it difficult to visit prisoners due to the long distance and additional costs.<sup>98</sup>

Prisoners lack conversation and communication with people. All of this impacts their emotional state and they get easily irritated by any, even seemingly insignificant issue, and in many cases, the above becomes one of the reasons for prisoner's protest, self-harm and conflict.

The Special Preventive Group believes that the facility should systematically examine the causes of each incident and develop a specific prevention plan, which should be oriented to positive changes in the prisoner's behavior and should be carried out in an atmosphere of communication and care.

Prisoners placed in high-risk facilities should be compensated for their strict detention regime by lighter day regime. In particular, they should be given the opportunity to meet with other prisoners of the facility and engage in various activities. The aim should be to establish positive relationship between staff and prisoners. This should be in the interest of the administration not only in terms of humane treatment of prisoners, but also in terms of effective control of the facility and safety of staff.<sup>99</sup>

## **2.5. Conditions of detention**

### **Physical environment**

The closure of Establishment No. 12<sup>100</sup> and the transfer of convicts placed there to a new building<sup>101</sup> should be praised, as it significantly improved the living conditions of inmates of Establishment No. 12. At the same time, Establishment No. 8 has been repaired.<sup>102</sup> However, conditions in some penitentiary facilities still need to be significantly improved and harmonized with international standards.

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<sup>97</sup> For example, convicts placed in a high-risk facility enjoy fewer visits (short and long visits), telephone calls, and unlike other facilities, they do not have the right to enjoy a video call. See the Imprisonment Code.

<sup>98</sup> See the detailed information in the chapter on contact with the outside world.

<sup>99</sup> European Committee for the Prevention of Torture (CPT), 11<sup>th</sup> General Report, CPT/Info (2001) 16, Strasbourg, Council of Europe, 2001, para. 32.

<sup>100</sup> February 12, 2019.

<sup>101</sup> On the territory of Penitentiary Establishment No. 16.

<sup>102</sup> The roof/drainage systems were repaired in the regime buildings of Establishment No. 8. Ceilings and floors were repaired in the shower rooms.



Compared to 2018,<sup>103</sup> living conditions have not changed significantly in penitentiary facilities in 2019. The sanitary-hygienic conditions, ventilation, lighting<sup>104</sup> and provision of minimum space of 4 sq.m.<sup>105</sup> for all convicts in accordance with Article 15 of the Imprisonment Code remained problematic in the reporting period.<sup>106</sup> In addition, the Public Defender's proposal, which was reflected in numerous reports, relating to the definition of 4 sq.m. as the minimum living space for prisoners has not been implemented. Unfortunately, the so-called "barracks" type building have not been closed either.<sup>107</sup> Despite the fact that the so-called "barracks" type buildings were closed in Establishment No. 14 and that the residential buildings of the mentioned facility were fully repaired, unfortunately, prisoners<sup>108</sup> have not been transferred to these buildings and they still had to stay in inadequate living conditions during 2019. The Special Preventive Group considers that the long-term placement<sup>109</sup> of prisoners in solitary confinement cells in Establishment No. 2<sup>110</sup> and narrow, 2-bed cells<sup>111</sup> in Establishment No. 8<sup>112</sup> has a negative impact on the health of prisoners due to unfavorable conditions there<sup>113</sup> and may equal inhuman and degrading treatment. Therefore, it is important to abolish similar cells.

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<sup>103</sup> For information on living conditions in penitentiary establishment in 2018, see the 2018 Report of the National Preventive Mechanism, available at: [At: <https://bit.ly/2wi9np7>](https://bit.ly/2wi9np7) pages 44-45 [last accessed 17.02.2020].

<sup>104</sup> Sanitary-hygienic conditions, proper ventilation and adequate lighting in Penitentiary Establishments Nos. 2, 8, 14 and 15 are reviewed in detail in the report on the visit paid to Penitentiary Establishment Nos. 2, 8, 14 and 15. The report is available at:  [< https://bit.ly/2Uq6pGY >](https://bit.ly/2Uq6pGY) p. 31-35; see also the report on the visit to Penitentiary Establishment No. 3, p.17-18, available at:

[< http://www.ombudsman.ge/res/docs/2020032321170591389.pdf >](http://www.ombudsman.ge/res/docs/2020032321170591389.pdf) [last accessed 24.03.2020].

<sup>105</sup> In Penitentiary Establishments Nos. 2, 8, 14, 15 [↻](#) 17.

<sup>106</sup> The issue of overcrowding is particularly acute in Establishment No. 15, where the number of inmates during the visit exceeded the established limit (1,388) by 512, while in Establishment No. 2, where the limit is -1068, there were 1,080 inmates during the visit.

<sup>107</sup> Convicts in the mentioned facility are not provided with a minimum living space of 4 sq.m., while air is saturated with tobacco smoke due to the large number of convicts and lack of proper ventilation; under similar circumstances, it is difficult to protect sanitary-hygienic conditions and there is a high risk of the spread of infectious diseases.

<sup>108</sup> Some of the convicts of Establishment No. 14, who are employed in the penitentiary establishment, live in cells separated by plasterboard walls, where there is no private environment; some cells have no doors and are separated from the corridor only by curtains; the cells have no artificial ventilation and it is difficult to protect sanitary-hygienic conditions there.

<sup>109</sup> Prisoners have to live for years in narrow 2-bed cells in Establishment No. 8, while in solitary confinement cells of Establishment No. 2 (except for solitary confinement cells in the building D) they may be held for up to 14 days.

<sup>110</sup> Except for solitary confinement cells in the building D. It is welcome that repairs have been launched in Establishment No. 8 in 2019.

<sup>111</sup> There are about 14 such cells in the facility, where up to 20 prisoners are accommodated.

<sup>112</sup> It is welcome that repairs have been launched in Establishment No. 8 in 2019.

<sup>113</sup> For information about conditions in these cells, see the report on the visit paid to Establishments Nos. 2, 8, 14 and 15. The report is available at:  [<http://www.ombudsman.ge/res/docs/2019121618092132463.pdf>](http://www.ombudsman.ge/res/docs/2019121618092132463.pdf) p. 31-35 [last accessed 17.02.2020].

### Day schedule and rehabilitation activities

No significant changes were made<sup>114</sup> in terms of rehabilitation-resocialization of prisoners in 2019. Rehabilitation-resocialization measures are still fragmentary and are not tailored to the individual needs of prisoners.<sup>115</sup> The situation is particularly difficult in high-risk facilities, the reason of which, like previous years, is the **lack of sufficient and properly qualified staff**.

For information on the ratio of adult prisoners to social workers and psychologists, who worked with them during the visits paid to Establishments Nos. 2, 8, 14 and 15, see the table below:<sup>116</sup>

	Number of adult prisoners during the visit	Number of social workers during the visit	Number of psychologists during the visit	Number of prisoners served by one social worker	Number of prisoners served by one psychologist
N2	1 073	7	1	153	1 073
N8	2 814	16	5	176	563
N14	911	5	1	182	911
N15	1 900	7	3	271	633

The data in the table makes it clear that the worst situation in terms of the ratio of social workers to prisoners is in Establishment No. 15, while the worst situation in terms of the number of psychologists is in Establishments Nos. 2 and 14. Adult prisoners in these two facilities were served by only one

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<sup>114</sup> Convicts opened a social enterprise in Establishment No. 16 (5 convicts were employed), more than 60 convicts studied leather work, enamelwork, clothes design, photography (launched in 2017 and still ongoing). In Establishment No. 8, 10 convicts were employed in public service (digitization of documents), 7 convicts sentenced to life imprisonment were engaged in gardening and horticulture. Cognitive and social skills programme was implemented in Establishment No. 6 and essential skills development training was provided in Establishment No. 11. The group rehabilitation programme Kalga was successfully piloted at Women's Establishment No. 5. In 2019, 278 prisoners were trained on the rights of untried/convicted persons in various facilities.

<sup>115</sup> The situation of rehabilitation and resocialization is reviewed in detail in the report on the visits paid to Establishments Nos. 2, 8, 14 and 15. p. 35–38

<sup>116</sup> Additionally, one psychologist and one social worker worked with juvenile prisoners in Establishments Nos. 2 and 8. The table does not include the number of juvenile inmates during visits to Establishments Nos. 2 and 8 either.

psychologist. The Special Preventive Group believes that along with increasing the number of social workers and psychologists, it is important to balance the ratio between them and prisoners.

In addition to the problem of the number of social workers and psychologists, it should be noted that none of the social workers employed in Establishment No. 3 and only few social workers employed in Establishments Nos. 2, 8, 14 and 15 had the qualifications required by law.<sup>117</sup> The Special Preventive Group considers that given the qualifications and number of social workers, as well as the number of psychologists in the facilities, it is not surprising that individual sentence planning had been suspended in Establishments Nos. 2, 8, 14 and 15 from January 1 to August 2019.

According to the amendments made to the Imprisonment Code,<sup>118</sup> from January 1, 2020, the vocational training and retraining of convicts will be carried out by the Convicts' Vocational Training and Retraining Centre, which should be praised. The National Preventive Mechanism/Public Defender of Georgia hopes that with the help of the Centre, convicts will be offered a wide range of opportunities to engage in a variety of trainings/vocational programmes.

Participation of prisoners in rehabilitation activities, *inter alia*,<sup>119</sup> is hampered by factors such as criminal subculture and lack of motivation.<sup>120</sup> It is unfortunate that prisoners in closed and high-risk facilities are still not allowed to walk for more than an hour, like previous years. In addition, it is problematic for prisoners of Establishments Nos. 2 and 8 to take a walk according to the day schedule.<sup>121</sup> There are problems with the arrangement of yards and sports equipment as well.<sup>122</sup>

It is important to increase the number of social workers and psychologists in the penitentiary facilities in 2020, in order to use their resources for the rehabilitation activities as much as possible. It is important to actively attract the external sector in order to carry out diverse and systematic rehabilitation activities and to ensure that rehabilitation programmes cover more prisoners in each

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<sup>117</sup> According to the reply (No. 371652/01) sent by the Special Penitentiary Service on December 13, 2019, a total of 13 employees participated in the social work certification in 2019 and it is planned to involve 13 social workers in the certification process in 2020.

<sup>118</sup> On December 31, 2019, the statute of the Centre for Vocational Training and Retraining of Convicts, a legal entity of public law, was approved by Order No. 492 of the Minister of Justice of Georgia. The aim of the Centre is to promote re-socialization/rehabilitation of convicts through their education, vocational training/retraining and employment.

<sup>119</sup> For detailed information, see the 2018 Report of the National Preventive Mechanism, available at: <http://www.ombudsman.ge/res/docs/2020011615511256803.pdf> p. 43-44 [last accessed: 22.01.2020].

<sup>120</sup> See the 2018 Report of the National Preventive Mechanism, available at: <http://www.ombudsman.ge/res/docs/2020011615511256803.pdf> p. 44 [last accessed: 22.01.2020].

<sup>121</sup> Prisoners often refuse to go for a walk because they are offered the above at 7-8:00 in the morning, contrary to the day schedule.

<sup>122</sup> Detailed information is available in the report on the visits paid to Establishments Nos. 2, 8, 14 and 15. The report is available at: <http://www.ombudsman.ge/res/docs/2019121618092132463.pdf> p. 33-34 [last accessed: 22.01.2020].

facility. Efforts should also be strengthened to encourage prisoners to get engaged in a variety of activities.

Although parole or commutation of the unserved part of the sentence is not a basic constitutional right of the convict, it is an important opportunity to motivate convicts to be fully focused on resocialization in the post-conviction period and be hopeful of effective enjoyment of this mechanism.<sup>123</sup>

## **2.6. Contact with the outside world**

Prisoners should be given the opportunity to have contact with the outside world as often as possible, including by sending letters, making phone calls and meeting family members.<sup>124</sup> The Handbook of the United Nations Office on Drugs and Crime (UNODC) emphasize that prisoners' outside contacts must be seen as entitlements rather than privileges. They should, therefore, not be used as either rewards or punishments.<sup>125</sup>

***Telephone communication:*** In all the facilities visited by the Special Preventive Group in 2019, there was a lack of telephones. In addition, prisoners in Establishments Nos. 2, 3 and 8 complained about the violation of privacy while using the telephone. In Establishments Nos. 2 and 8, telephones are placed in the waiting rooms and prisoners have to speak in the presence of a prison officer. It is welcome that telephone booths were installed in Establishment No. 3 in 2019, however, the booths need to be equipped with additional isolation materials to create a confidential environment. According to the letter<sup>126</sup> sent to the Public Defender's Office, the administration of the facility is ready to take steps to eliminate this problem, which is welcomed by the Public Defender/Special Preventive Group. It should also be noted that prisoners do not have the opportunity to make phone calls in the very first days of their detention, as it takes 10 days to prepare a card for them.

The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.<sup>127</sup> According to the information available to the Public Defender at this time, glass barriers in the rooms intended for short visits have not been removed yet.<sup>128</sup>

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<sup>123</sup> See the Special Report of the Public Defender of Georgia on the practice of early conditional release and commutation of the unserved part of the sentence in Georgia. The report is available at: <<https://bit.ly/2WztLN5>>; p. 3-4 [last accessed:17.02.2020].

<sup>124</sup> European Prison Rules 24.1.

<sup>125</sup> United Nations Office on Drugs and Crime (UNODC), Handbook on Dynamic Security, New York, 2015, p. 22, available at: <<https://bit.ly/2U7MgXk>> [last accessed: 19.02.2020].

<sup>126</sup> Letter No. 354931/21 27 of the Director of the high-risk facility No. 3, November 27, 2019.

<sup>127</sup> European Prison Rules 24.4.

<sup>128</sup> According to the letter sent by the Ministry of Justice of Georgia to the European Committee for the Prevention of Torture on November 21, 2019, the glass barriers in some rooms of Establishments Nos. 5, 6 and 12 were removed, while the arrangement of meeting rooms without barriers was to be completed in Establishment No. 2 by the end of 2019. P. 53.

The Imprisonment Code<sup>129</sup> provides for the possibility of exchanging a short visit for a telephone call at the written request of the untried or convicted person, but does not provide for the same possibility in relation to long visits. The European Committee for the Prevention of Torture emphasizes the need for a preferential approach in terms of visits and telephone calls for prisoners whose family members live far from the penitentiary facility (which makes regular visits virtually impossible). Such prisoners should be allowed to accumulate visit times and/or should be provided with improved conditions for telephone communication with their families.<sup>130</sup> In contrast, the Special Preventive Group found during a visit to Establishment No. 3<sup>131</sup> that there were instances when detainees transferred from eastern Georgia were restricted from making calls as a disciplinary sanction.

## **2.7. Requests/complaints**

Effective grievance and inspection procedures are fundamental safeguards against illtreatment in prisons.<sup>132</sup> Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority.<sup>133</sup>

The Special Preventive Group, as a result of the monitoring carried out in Establishment Nos. 2, 8, 14 and 15 in 2019, found that prisoners face obstacles in the realization of their right to requests/complaints.

The convicted/untried person has the right to send a sealed, confidential complaint to a desired addressee, while the penitentiary facility is obliged to ensure the protection of confidentiality of the complaint.<sup>134</sup> However, facilities fail to ensure the above. During visits to Establishments Nos. 2 and 8, members of the Special Preventive Group received numerous reports about the censorship of confidential complaints sent to the Public Defender. According to them, in many cases, complaints are

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<sup>129</sup> Imprisonment Code, Article 17, parts 11 and 12.

<sup>130</sup> Report (CPT/Inf (2019) 16) of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, para. 51, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 17.02.2020].

<sup>131</sup> September 16-17, 2019, visit of the Special Preventive Group to Establishment No. 3.

<sup>132</sup> Excerpt from the 27<sup>th</sup> General Report of the European Committee for the Prevention of Torture. Section: 1/8 | 19/04/2018, available at: <<https://rm.coe.int/16807bc668>> [last accessed: 17.02.2020]

<sup>133</sup> European Committee for the Prevention of Torture, Standards, para. 54, available at: <<https://rm.coe.int/16806ce96b>> [last accessed: 17.02.2020].

<sup>134</sup> Article 104 of the Imprisonment Code of Georgia. According to Article 15 of the Organic Law of Georgia on the Public Defender of Georgia, "Applications, complaints and letters sent to the Public Defender of Georgia by persons placed in penitentiary establishments, places of detention and other places of restriction of liberty shall be confidential. They may not be opened or censored. They shall be sent to the Public Defender of Georgia immediately."

not sent to the addressees.<sup>135</sup> It also happens frequently that the administration does not provide the prisoner with confidential envelopes. Unfortunately, some of the complaints boxes in Establishment No. 8 are under video surveillance, which makes it possible to identify the author of a confidential complaint.

The violation of confidentiality was witnessed by the Special Preventive Group as well. While visiting Establishment No. 2, members of the Group noticed an open envelope of a confidential complaint at the chancellery, the addressee of which was the Public Defender. A day earlier, the envelope (sealed) was handed over by one of the prisoners to the Special Preventive Group, which was asked to help in sending the complaint. To this end the envelope was handed over to the social worker. The Public Defender addressed the Minister of Justice of Georgia<sup>136</sup> with a proposal to respond to the above case. According to the information provided by the Special Penitentiary Service, the Monitoring Department conducted an official inquiry and disciplinary sanctions were imposed on the social worker and the employee of the chancellery of Establishment No. 2 for failing to check the improperly sealed envelope (with a toothpaste). The Special Preventive Group disagrees with the conclusion made by the Monitoring Department and is confident that the envelope was handed over to the social worker in a properly sealed condition, as members of the Special Preventive Group carefully checked the envelope before handing it to the social worker.

It should be noted that unrestricted contact with the Public Defender is an important safeguard against ill-treatment, especially for prisoners whose presence in social isolation carries a high risk of ill-treatment. It is important that the Imprisonment Code be amended and high-risk prisoners be given the opportunity to contact the Public Defender and other inspection bodies anytime.

According to the regulations of the penitentiary facilities, prisoners can contact the Public Defender via hotline only at certain hours and at their own expense. On August 15, 2019, the Public Defender of Georgia appealed against the norms, which subject communication with the Public Defender's Office to special regulation, to the Constitutional Court of Georgia.

***Prisoner's rights/responsibilities:*** It is important for the prison administration to promptly provide every prisoner with written information about his or her rights and responsibilities upon admission to the facility, as well as all other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.<sup>137</sup> During monitoring, most of the detainees interviewed in Establishments Nos. 2, 8, 14 and 15 were not informed about their rights, complaints mechanism, disciplinary punishment or

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<sup>135</sup> According to one of the prisoners, one of the doctors seized a complaint drawn up by him against medical staff. Two prisoners mentioned that they had sent letters to the Public Defender's Office, however, it turned out that their letters have not been received by our Office.

<sup>136</sup> Letter No. 03-2/ 0583 of the Public Defender, October 1, 2019.

<sup>137</sup> Nelson Mandela Rules, Rule 54.

incentives. According to the prisoners, some information is provided to them orally upon admission, but it is difficult for them to remember it. In addition, excerpts from the legislation are constantly broadcast by one of the TV channels in the facilities. The Special Preventive Group considers it important that prisoners be provided with information about their rights and responsibilities in writing, in a consistent manner and in a language they understand, as soon as they enter the penitentiary facility.

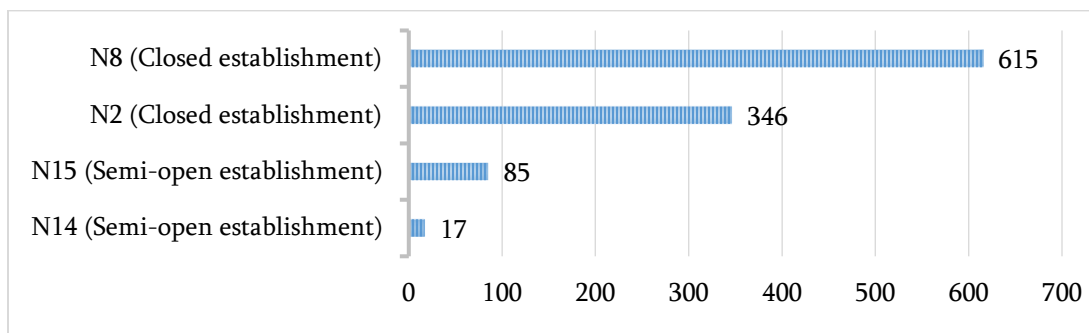
It is welcome that according to the information provided by the Special Penitentiary Service, computer stands of LEPL Legislative Herald of Georgia were placed in two penitentiary facilities, which made all the normative acts published by the Legislative Herald available for prisoners.

Some prisoners at Establishment No. 15 say that after being placed in the cell, informal leaders informed them of “prison rules” and their rights and responsibilities and warned them of the expected consequences in case of violation of the rules. In particular, "watchers" warn new prisoners that if there is a problem, they should contact them and not the administration.

Prisoners also noted that it was not recommended to file a complaint as it was against the informal rules, as sooner or later the author would be identified and punished. Several prisoners in semi-open facilities told the Special Preventive Group that they had received permission from "influential people" to talk to them. In addition, the Special Preventive Group witnessed a fact when one of the prisoners was going to talk about his health problems, but other prisoners did not allow him to speak.

**The fact that prisoners in semi-open facilities refrain from complaining due to the influence of informal leaders is also proved by the number of applications sent to the Public Defender.** The diagram below shows a fairly large difference between the applications received from closed and semi-open facilities.

**Number of applications sent to the Public Defender in 2019**



The Special Preventive Group assumes that the violation of the rules of sending confidential complaints, influence of informal governance (for which sending a complaint is inadmissible) and the

lack of information about prisoners' own rights are the main factors that prevent the proper realization of the right to requests/complaints.

## **2.8. Special categories of prisoners**

### **2.8.1. Foreign nationals and religious-cultural minorities**

It is important that prisoners of all religious and cultural backgrounds be able to enjoy all the resources and benefits available in the penitentiary facilities on an equal basis. In addition, the State is obliged to take positive measures, if necessary, so that foreign nationals can serve their sentences in a proper and non-discriminatory environment.<sup>138</sup>

***Placement in cells:*** The linguistic needs and desires of foreign prisoners, as well as religious and cultural needs, are not sometimes taken into account when allocating prisoners to cells, which would reduce stress related to the detention, provide socialization of prisoners at the minimal level and create conditions for the prevention of conflicts.

***Cultural needs:*** No space (except for Orthodox chapels) is allocated in the facilities, where followers of one and the same religion would be able to hold group gatherings and rituals in a quiet environment. The cultural and religious characteristics<sup>139</sup> of foreign nationals are not taken into account when preparing food either. It is important for the State to have a uniform approach to consideration of cultural and religious issues,<sup>140</sup> in order not to make prisoners think that the needs of the minorities are insignificant to the State.

***Language barrier:*** The problem of language barrier is acute in the facilities, both for foreign and some of the Georgian citizens.<sup>141</sup> Respondents reported lack of communication. Their emotional state was changeable during interviews and some of them even cried. Prisoners are deprived of the opportunity to be informed of their rights.<sup>142</sup> There is a lack of foreign language literature in the libraries of the penitentiary facilities. The TV channels available in the facilities are mostly Georgian and Russian. As

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<sup>138</sup> Recommendation of the Committee of Ministers of the Council of Europe CM/Rec (2012) 12.

<sup>139</sup> For example, an animal slaughtered according to the halal rule.

<sup>140</sup> The research conducted in the penitentiary facilities of England and Wales showed that religious sentiments strengthen under conditions of deprivation of liberty. Therefore, fair and equitable approaches are essential for the protection of human rights, as well as the effective administration of the facilities. Beckford and Gilliat (1998, 8).

<sup>141</sup> Georgian language courses are rarely provided in the facilities. In Establishments Nos. 2, 3, 8 and 14, language courses were not held at all in 2018-2019, while the 6-month Georgian language course in Establishment No. 15 ended in April 2019 and it is unknown when it will be offered again to the currently registered convicts.

<sup>142</sup> According to Nelson Mandela Rules (No. 55), information about the rights and obligations of prisoners shall be translated into the most commonly used languages. If a prisoner does not understand any of those languages, interpretation assistance should be provided.



a result, prisoners, who do not speak Georgian or Russian, are in a vacuum of information. The language barrier, in turn, creates barriers in terms of accessing quality medical, legal or other services.

The Special Preventive Group believes that a long-term solution to the problem would be to offer regular language courses to prisoners, while the short-term solution would be to provide an interpreter's service, translate necessary documents, fill the library with foreign language literature and add some foreign TV channels. It is to be welcomed that the Special Penitentiary Service plans to publish some of the most demanded legal acts in Russian and English languages in order to provide legal assistance to prisoners.

***Contact with family members:*** Telephone communication is the main opportunity for foreign prisoners to communicate with the outside world. An obstacle in Establishment No. 8 is the fact that prisoners are given the opportunity to make a call once every 10 days, in accordance with the queue of the cells. International calls can be made only on two fixed days a week. Consequently, if the day intended for international calls does not coincide with the day when a particular cell can make a call, the foreign prisoner is not be able to exercise this right.<sup>143</sup> Georgian convicts allow foreign prisoners to use only 1 out of 60 telephones available in Establishment No. 15.

Family members of foreign prisoners, in most cases, live abroad, which is why prisoners cannot exercise their right to long and short visits. As video calls with convicts is organized outside the penitentiary facility by the National Probation Agency, foreign convicts are unable to be compensated for the above-mentioned shortage by video calls either.<sup>144</sup> International practice shows that one of the main ideas<sup>145</sup> of video calls is to facilitate communication between the convict and his relatives without movement.<sup>146</sup>

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<sup>143</sup> For example, if a foreign prisoner is allowed to make a call on the 1<sup>st</sup> day of each month according to the queue (and if Mondays and Thursdays are designated for international calls) and if the 1<sup>st</sup> day of the month coincides with Tuesday, the foreign prisoner will only be able to call within Georgia.

<sup>144</sup> Imprisonment Code, Article 17<sup>1</sup>, part 3.

<sup>145</sup> In some European countries (for example, the Netherlands, Switzerland), the mechanism of video calls has been adapted to the very foreign convicts. In Britain and France, the video call system is being implemented only in some of the penitentiary facilities in a pilot mode, but the above has been actively considered in the context of foreign prisoners. Accordingly, this mechanism will become useless if prisoners' relatives have to arrive at certain institutions for making video calls.

<sup>146</sup> Italy, where the mechanism of video calls was introduced in January 2019, has an interesting practice. The procedure is as follows: The prisoner provides his/her family member's e-mail address, who is then contacted and requested by the penitentiary service to present a document certifying his/her kinship with the prisoner, as well as to sign a document confirming that only he/she will take part in the call. During a Skype call, the screen and the prisoner are visually monitored. The text is available in Italian at: <<https://tinyurl.com/y5xma24q>> [last accessed: 19.02.2020].

## 2.8.2. Juveniles

In addition to the lack of appropriate services intended for juveniles, there are cases of placement of juveniles in the de-escalation room.<sup>147</sup> From January 1 to July 14, 2019, there were 5 cases of placing a juvenile in the de-escalation room in Establishment No. 2.<sup>148</sup> In all 5 cases, the juveniles spent 3 days in the de-escalation room. The Special Preventive Group considers it inadmissible to place a juvenile in the de-escalation room and believes that the above may equal inhuman and degrading treatment. In case the life or health of a juvenile or another person are endangered due to the juvenile's psycho-emotional state, instead of placing him/her in the de-escalation room, the prison administration should immediately ensure the involvement of a multidisciplinary team (psychologist, social worker, doctor and, if necessary, psychiatrist) and eliminate the dangers with verbal de-escalation methods.

According to the Juvenile Justice Code,<sup>149</sup> a juvenile defendant/convict shall have better living and nutritional conditions compared to other defendants/convicts. The nutrition of prisoners (including juveniles) in penitentiary facilities is regulated by the joint order (N388 – N01-18/n) of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, which was approved on March 6, 2019. According to Article 4 (1) of the said order, meals shall be provided to the untried/convicted persons three times a day. It should also be noted that according to the Technical Regulation - Child Care Standard,<sup>150</sup> when providing 24-hour service, the service provider shall be obliged to provide beneficiaries with four healthy meals, one of which must be a three-component dinner. Juvenile prisoners and child beneficiaries under state care are in a substantially similar situation. Due to the fact that the juvenile is adolescent and needs proper nutrition, the State established that 4 meals a day are necessary for the health and full development of juveniles placed under 24-hour care. Accordingly, it is necessary to amend Article 4 (1) of the joint order (N388 - N01-18/N) of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs so that to extend the above approach to the juvenile prisoners as well.

In Establishment No. 2, juveniles are served breakfast between 7:30 a.m. and 8:00 a.m., dinner - at 1:00 p.m. and supper between 4:30 p.m. and 5:00 p.m., which does not correspond to the day schedule of the facility.<sup>151</sup> Therefore, it is important to provide food to minors according to the schedule.

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<sup>147</sup> For details about conditions in de-escalation rooms, see the chapter on ill-treatment.

<sup>148</sup> 3 juveniles have been placed in the indicated room, 1 juvenile has been placed twice.

<sup>149</sup> Article 83, paragraph 1.

<sup>150</sup> Approved by Resolution No. 66 of the Government of Georgia, January 14, 2014.

<sup>151</sup> Breakfast: 08:30-09:00, dinner: 13:00-14:00, supper: 18:00-19:00.

## 2.9. Penitentiary health care

### Somatic (physical) health

In 2019, the number<sup>152</sup> and qualifications<sup>153</sup> of medical staff, production of medical documentation,<sup>154</sup> protection of medical confidentiality, periodic screening for non-communicable diseases, timely implementation of medical referrals and preventive health were still problematic in the penitentiary facilities.

For timely medical care, it is important to ensure access to the primary health care at the facilities. It is less difficult for convicts in semi-open institutions to see a primary care doctor, because they go to the doctor themselves, although they often have to stand in line. As for the closed facilities, the problem is both the high demand and the fact that prisoners are taken to the doctor by prison staff.<sup>155</sup> The problem of access to a family doctor was pointed out by both prisoners and doctors.<sup>156</sup>

Considering the work schedule of the medical staff,<sup>157</sup> it can be said that doctors and nurses on duty have heavy workload,<sup>158</sup> which in turn creates problems in terms of providing timely medical services. In addition, in some cases, the medical staff have to perform several functions.<sup>159</sup> Working under such

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<sup>152</sup> The report of the European Committee for the Prevention of Torture (CPT) on its 2007 visit to Greece reads that there should be no more than 300 prisoners per doctor and 50 prisoners per nurse. For example, Establishment No. 15 has a high ratio of day doctors to convicts (about 475 convicts per family doctor). The ratio of nurses to prisoners is high in all facilities. See the report on the visit paid to Establishments Nos. 2, 8, 14 and 15, p. 51.

<sup>153</sup> Problems in the direction of continuous medical education can still be observed. Trainings provided for medical staff focus mainly on prisoners' mental health and rights, which is welcome, but it is also important to raise the professional level and qualifications of medical staff, by conducting relevant trainings immediately in their specialty.

<sup>154</sup> No. chronology is observed, no dynamics of treatment or the results of the prescribed treatment are reflected. There are also shortcomings in the production of prescriptions; in some cases, the medication is changed or withdrawn so that there is no record of this in the outpatient medical card.

<sup>155</sup> The problem of access to a primary medical service is particularly acute in Establishment No. 8.

<sup>156</sup> According to doctors, they are very busy, as they have to produce medical documentation in addition to examining prisoners, which takes a lot of time. They also point out that prisoners are brought to them by prison staff, who also have to have to find time for the above.

<sup>157</sup> Establishments Nos. 2, 14 and 15 are provided with 4 primary health care services during the day, while Establishment No. 8 is provided with 10 primary health care services. Establishment No. 3 did not have a primary care doctor or a nurse during the visit of the Special Preventive Group. In all penitentiary facilities, family doctors and nurses serve patients from 10 a.m. to 6 p.m, on working days.

<sup>158</sup> Doctors and nurses are on duty once every 4 days. For example, Establishment No. 2 is served by 1 doctor on duty and 2 nurses on duty on weekends and non-working hours, Establishment No. 3 - 1 doctor on duty and 1 nurse on duty, Establishment No. 8 - 2 doctors on duty and 8 nurses on duty, Establishment No. 14 - 1 doctor on duty and 1 nurse on duty, Establishment No. 15 - 1 doctor on duty and 2 nurses on duty.

<sup>159</sup> For example, in Establishment No. 2, some nurses have to perform several tasks, including the function of a sanitation worker, for which they do not receive additional remuneration. The chief doctor of Establishment No. 3 was performing the functions of a primary care doctor, doctor on duty and person responsible for sterilization.

a busy schedule poses a threat of professional burnout, which in turn may affect the quality of medical care. The European Committee for the Prevention of Torture, in a report following its visit paid to Georgia in 2018, emphasizes the need to increase the number of nurses in Establishment Nos. 8 and 15.

The lack of nurses in the facilities affects the delivery of dental services as well. In particular, dentists do not have a sterilization nurse, who would assist them in sterilizing dental tools. Therefore, dentists themselves have to wash and sterilize tools, which increases the waiting time for prisoners. It should be noted that the equipment in the dental offices is old and needs to be changed.

In order to provide timely and adequate medical care, it is important to refer prisoners to relevant specialists, as well as to timely take them to a medical facility. Examination of registers of medical consultations shows that in some cases, doctor-specialists are very busy<sup>160</sup> and consultations are provided late.<sup>161</sup> In addition, sometimes consultations are superficial, which may complicate the patient's health condition.<sup>162</sup>

Examination of the unified electronic database revealed that the deadlines of medical referrals were better met in the penitentiary establishments located in western Georgia, however, there were delays as well. There are significant problems with medical referrals in the establishments located in eastern Georgia. There are patients in the penitentiary facilities, who have been waiting for the medical referral since 2016. In addition, deadlines are not observed in urgent cases either.<sup>163</sup> According to the information published on the official website of the Special Penitentiary Service,<sup>164</sup> a project aimed at annulling the so-called medical waiting list accumulated since 2016 was launched in December 2019. The Public Defender hopes that the list will be unloaded in the near future. According to the reply received from the Ministry, the Medical Department has been actively working on satisfying the accumulated requests in the electronic referral programme since December 2019 and as of today, in addition to the current referrals, additional 25 referrals have been made to civil medical facilities for inpatient treatment. We hope that this process will continue and will help both to reduce the waiting list in the referral electronic programme and to meet the referral deadlines according to the penitentiary health care standard.

Assessing the adequacy of treatment in the facilities is complicated by the inconsistency of medical cards and the lack of information about the results of treatment. Based on the medical cards, it can be

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<sup>160</sup> For example, the maximum number of patients consulted in Establishment No. 2 is 26 (by dermatologist, cardiologist). There are also cases when 20-21 patients are consulted during one visit.

<sup>161</sup> This problem is mostly pointed out in Establishments Nos. 8 and 15. For example, on December 4, 2018, one of the prisoners placed in Establishment No. 8 was recommended in the outpatient medical card, on the basis of the diagnosis of ischemic heart disease, to get a consultation of the cardiologist and an electrocardiographic examination. The patient was consulted by the cardiologist on February 8, 2019.

<sup>162</sup> See the report on the visits paid to Establishments Nos. 2, 8, 14 and 15, p. 54.

<sup>163</sup> In case of the need for urgent service, the prisoner shall be released within 5 days.

<sup>164</sup> See the link <<https://bit.ly/39cECPw>> [last accessed: 18.02.2020]

said that in some cases the treatment of patients is inconsistent and intermittent.<sup>165</sup> In some cases, the patient's condition is neglected by the medical staff or no examinations are provided in accordance with the patient's complaints.<sup>166</sup> That's why epicrisis are necessary,<sup>167</sup> so that to prevent that important information about the prisoner's health is left beyond the attention of medical staff. In addition, it is important to ensure the supply of medicines in the process of treatment, which was a significant problem in Establishment No. 8.<sup>168</sup>

## **Mental health care**

### *Adequate psychiatric care*

Managing mental health problems remains a significant challenge for the penitentiary health care system. Early detection and diagnosis are of particular importance for the management of mental health problems. It should be noted that mental health screening tools<sup>169</sup> have been integrated in prisoners' outpatient medical cards in Establishments Nos. 2 and 8 since the 4<sup>th</sup> quarter of 2018. This part of the medical card is already filled in when prisoners are placed in other penitentiary facilities, so their mental health is not re-assessed.

In order to ensure that patients receive adequate psychiatric care, it is important to refer them to a specialist in a timely manner. During initial placement in Establishments Nos. 2 and 8, mental health screening is limited to filling in the above questionnaire just once, which is insufficient and fails to provide timely detection of mental health problems. During placement in the facility, prisoners are referred to a psychiatrist by a family doctor, doctor on duty, or, in rare cases, psychologist. Family doctors do not have necessary tools to objectively assess the mental health condition of prisoners. According to the reply received from the Special Penitentiary Service,<sup>170</sup> the Medical Department is developing a mental health permanent screening document, which should be welcomed.

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<sup>165</sup> For example, pauses were observed in the document showing the times of providing the prescribed medicine to one of the patients suffering from arterial hypertension in Establishment No. 14. The same problem was observed in the treatment of one of the patients.

<sup>166</sup> See the report on the visit paid to Establishments Nos. 2, 8, 14 and 15, p. 57;

<sup>167</sup> Doctor's report, comprehensive written explanations about the origin, development and course of the disease and the nature and results of the treatment.

<sup>168</sup> During the visits, the acute problem of supply of medicines was revealed only in Establishment No. 8. No similar problem has been detected in other facilities. This problem was also indicated by medical staff and was proved by the documentation as well. See the report on the visit paid to Establishments Nos. 2, 8, 14 and 15; See the link: <<http://www.ombudsman.ge/res/docs/2019121618092132463.pdf>> [last accessed: 18.02.2020].

<sup>169</sup> The tool includes questions about psychiatric history, suicide, stress, addiction to psychoactive substances, traumatic experiences and the need for psychiatrist or other specialists' consultations.

<sup>170</sup> Reply No. 371652/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, December 13, 2019.

The full-time position of a psychiatrist could be found only in Establishment No. 8, while other facilities have visiting specialists. Both prisoners and medical staff refer to the workload of psychiatrists and note that they often have to wait to consult a psychiatrist.<sup>171</sup>

Psychiatric care in the facilities is limited to a one-time or a repeated consultation of the psychiatrist and treatment with drugs, which does not comply with the principles of modern *biopsychosocial* approach or evidence-based health care. Psychiatric cases are not subject to multidisciplinary assessment or management in the facilities. It is important that a psychologist and a social worker be involved in the processes of psychiatric assessment and management, and that communication between a psychiatrist and the institution's social service be increased. It is also important that the basics of psychiatric care be detailed at the normative level, like the suicide prevention programme, by indicating the functions and responsibilities of each member of the multidisciplinary team.

The Special Preventive Group believes that certain services being introduced in the community could be made available in the penitentiary facilities as well, through inter-agency coordination.<sup>172</sup> It should be welcomed that three mobile groups staffed with civil sector specialists<sup>173</sup> in accordance with the civic model have started functioning in Establishment No. 8 from November 2019. In order to ensure that prisoners with mental health problems have access to appropriate psycho-social rehabilitation programmes, it is advisable to attract service providers and encourage civic intervention, in addition to mobilizing the necessary staff.

#### *Management of critical cases*

The penitentiary staff, including medical staff, do not have skills necessary for the management of psychiatric critical cases or verbal methods of de-escalation. In case of emergency in Establishments Nos. 14 and 15, the patient is placed in a solitary confinement cell, under video surveillance, and then is transferred to the psychiatric unit of Establishment No. 18 as an urgent case.<sup>174</sup> As for Establishments

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<sup>171</sup> In Establishment No. 2, the psychiatrist provides consultations three times a week; an average of 12 prisoners are consulted per visit. Establishment No. 3 is visited by the psychiatrist once a week; an average of 5 prisoners are consulted during one visit. Establishment No 14 is also visited by the psychiatrist once a week; an average of 11 prisoners are consulted. In Establishment No. 8, the psychiatrist consults about 7-8 prisoners a day. The psychiatrist's workload is especially heavy in Establishment No. 15, where the psychiatrist consults about 35-40 convicts during one visit, which in turn affects the quality of consultations.

<sup>172</sup> Report on the Impact of Conditions of Detention on Prisoners' Health, p. 81.

<sup>173</sup> According to the civil sector model, mobile groups are staffed by a psychiatrist, psychologist and a nurse.

<sup>174</sup> It was found out during the visit that one of the convicts in Establishment No. 14 was diagnosed with an unclear psychiatric disorder and due to the aggravation of his mental health condition, he was placed in a solitary confinement cell before being transferred to Establishment No. 18, where the doctor on duty injected him with Tisercin in combination with Magnesia twice, causing a drop in his blood pressure, after which, it became necessary to inject the patient with another medication to increase his blood pressure. It should also be noted that the convict's condition started to complicate on July 7, 2019 and he was seen by a psychiatrist on July 10.

Nos. 2, 3 and 8, management of critical cases is limited to placement of prisoners in the de-escalation room, which is often repetitive and permanent.

In case of severe psychotic condition, the prisoner is taken to the psychiatric unit of Establishment No. 18 as an urgent case, however, the transfer may be delayed due to the lack of availability of beds in Establishment No. 18.<sup>175</sup> According to the reply received from the Special Penitentiary Service, a "crisis management" framework document<sup>176</sup> has been developed with the support of the Council of Europe. It is important to develop crisis management guidelines in a timely manner and to train staff of the penitentiary facilities in the management of critical cases, as well as in the use of verbal de-escalation methods. Due to the lack of relevant services, psychiatric cases are not properly managed, which is why prisoners are often placed in the de-escalation room when their mental health problems get complicated.<sup>177</sup> The environment in de-escalation rooms is not therapeutic and placement there is often perceived as a punishment by prisoners. It is important for the facilities to maintain statistics on prisoners with mental health problems, identify their needs and develop psychosocial rehabilitation programmes based on the above, which in turn may reduce the frequency of placement of these prisoners in the de-escalation room. Penitentiary staff should be able to identify triggers<sup>178</sup> and warning signs to avoid aggravation of the situation.

#### *Monitoring of main and side effects of medicines*

Penitentiary facilities do not provide clinical-laboratory examinations or doctor-specialists' consultations in order to manage the side effects of antipsychotic drug treatment.

The Special Preventive Group considers that particular attention should be paid to the use of Zopin<sup>179</sup> (active substance Clozapine) in combination with other antipsychotic drugs or psychotropic drugs of

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This case is a clear example of the fact that the medical staff of penitentiary facilities are not prepared for emergencies.

<sup>175</sup> For example, transfer from Establishment No. 8 to the psychiatric ward of Establishment No. 18 may take 1-1.5 months in some cases.

<sup>176</sup> In addition, with the support of the Council of Europe, a three-stage training was provided for trainers on the following theme: „Crisis Management in the Penitentiary System". 40 staff members were retrained within the framework of the training.

<sup>177</sup> See the chapter on misuse of security measures.

<sup>178</sup> "Situations or stimuli that cause suffering, frustration, anger and agitation, which in turn may turn into a potentially tense and challenging situation". For details, see the WHO Course Guide: Creating mental health and related services free from coercion, violence and abuse, p. 34.

<sup>179</sup> Treatment with Clozapine requires adherence to the prescription procedure and management of side effects. During treatment with Clozapine, it is not recommended to prescribe 12.5 mg as an initial dose and to increase the dose gradually. The drug should be prescribed in the doses of 50, 100 or 300 mg from the very beginning of treatment. For example, one of the patients was prescribed 50 mg of Zopin (Clozapine) twice a day in combination with Pzysin (Trifluoperazine). Another patient was prescribed 0.3 mg of Zopin in combination with 30 mg of Haloperidol three times a day.

different groups, as well as in monotherapy.<sup>180</sup> In its report,<sup>181</sup> the European Committee for the Prevention of Torture refers to the need of performing regular blood tests when prescribing Clozapine.<sup>182</sup> In addition, it was found during visits that in many cases, Zopin was prescribed inappropriately, during insomnia, neurotic disorders or personality disorders.

The monitoring results show that there are cases in the facilities when benzodiazepine drugs<sup>183</sup> are prescribed in high doses and for a long time, which poses a risk of developing addiction syndrome, especially among prisoners with personality disorders and prisoners with a history of addiction to psychoactive substances. It should be noted that some of the patients at Establishment No. 8 request the prescription of benzodiazepine drugs, otherwise they threaten to harm themselves. It is a common practice that a document should be drawn up in order to extend the use of drugs desired by prisoners for a long time. In addition, one of the convicts in Establishment No. 14 takes several drugs subject to special control without intervals, in a powdered form, regardless of the time prescribed, and the above is done under video surveillance, in the presence of a nurse and prison staff. In addition, other psychotropic drugs are dispensed all together, in the first half of the day, which makes it impossible to check whether the convict himself/herself took the drug, gave it to others or accumulated and drank several of them together. Taking medications without intervals, for an inappropriate purpose, may complicate the patient's health.

## **Recommendations**

### *Implementation of the mandate of the National Preventive Mechanism*

#### **Recommendation to the Minister of Justice:**

- Ensure the fulfillment of commitments under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and eliminate all the restrictions and obstacles faced by the National Preventive Mechanism in terms of accessing particular categories of personal data. In addition, brief penitentiary staff on the mandate and powers of the National Preventive Mechanism

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<sup>180</sup> The use only one drug, one substance for treatment.

<sup>181</sup> Report of the European Committee for the Prevention of Torture on the visit paid to Georgia on September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 17.02.2020].

<sup>182</sup> Report of the European Committee for the Prevention of Torture on the visit paid to Georgia on September 10-21, 2018 (CPT/Inf (2019) 16), para. 124. The report is available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 17.02.2020].

<sup>183</sup> Any compound from the group of aromatic lipophilic amines having a characteristic cyclic structure, which impacts the gamma- Aminobutyric acid (GABA) receptors and is used in clinical practice as an anxiolytic, sleeping agent and anticonvulsant. Nearly 50% of patients develop withdrawal syndrome after 6 months or more of treatment with benzodiazepines (even in therapeutic doses).



### Violence-free environment

#### **Recommendation to the Minister of Justice:**

- Ensure in 2020 that all the facilities gradually train the staff of Security and Legal Regime Department on issues such as conflict prevention, mediation and principles of ethics for penitentiary staff
- Take all measures to protect the victims of domestic violence placed in penitentiary establishment, including by transferring them to other facilities or preventing their contact with followers of criminal subculture

### Placement in the de-escalation room

#### **Recommendation to the Minister of Justice:**

- In 2020, set the maximum period of placement in the de-escalation room at 24 hours; provide joint, multidisciplinary work of a psychologist, psychiatrist, social worker, doctor and other staff when placing a prisoner in the de-escalation room, in order to reduce/eliminate risks; create a safe environment in de-escalation rooms, including by covering walls and floors with soft material

### Response to violence

#### **Recommendation to the Government of Georgia:**

- Develop a plan aimed at timely conduct of forensic examination and practical implementation of the Istanbul Protocol guidelines during the above procedure

#### **Recommendations to the Minister of Justice:**

- Amend Order No. 131 of the Minister of Corrections of Georgia of October 26, 2016 so that to define the obligation of the doctor employed in a penitentiary establishment to report alleged ill-treatment of a prisoner to an independent investigative body - State Inspector's Office
- Amend Order No. 131 of the Minister of Corrections of Georgia of October 26, 2016 so that to define the obligation of the doctor employed in a penitentiary establishment to describe and photograph injuries on the prisoner's body and send the above to the independent investigative bodies in each case when the he/she suspects that the prisoner was ill-treated or tortured, regardless of whether or not the doctor has the informed consent of the prisoner
- In 2020, provide trainings relating to the documentation of injuries, as well as taking photographs of injuries, for all doctors employed in penitentiary establishments, who shall document injuries in accordance with the rules for documenting the injuries of untried/convicted persons, who were allegedly subjected to torture and other cruel, inhuman or degrading treatment, under Order No. 131 of the Minister of Corrections of Georgia

### Administration of a protected, safe and orderly penitentiary establishment

#### **Recommendation to the Minister of Justice:**

- In the plan for combating overcrowding in penitentiary establishments, increase the number of regime staff working in the prison residential buildings so that to ensure that at least one officer protects the order and safety of 15 prisoners
- In order to tackle the issues of criminal subculture and informal governance in the penitentiary establishments, develop a strategy for combating criminal subculture and submit it to the Public Defender's Office in order to enable the latter to present its opinion

### Conditions of detention

#### **Proposal to the Parliament of Georgia:**

- Ensure in 2020 that the obligation to provide convicts with a minimum living space of 4 sq.m. is provided for by the Imprisonment Code

#### **Recommendations to the Minister of Justice:**

- Enable the Public Defender's Office to have access to the concept of the Ministry relating to small facilities and to submit its opinions
- In order to provide 4 sq.m. of living space for each prisoner, ensure that prisoners of Establishments Nos. 2, 8, 14, 15 and 17 are equally allocated to the cells or transferred to other facilities of the same type, considering their place of residence
- Abolish the so-called "barracks" type buildings
- Ensure in 2020 that the deficiencies relating to physical environment<sup>184</sup> that were described in the report on the monitoring carried out by the National Preventive Mechanism in Penitentiary Establishments Nos. 2, 8, 14 and 15 and in the report on the visit to Establishment No. 3 are examined and appropriately responded

### Day schedule and rehabilitation

#### **Recommendations to the Minister of Justice:**

- In 2020, allow prisoners in closed and high-risk facilities to stay in the open air for more than an hour

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<sup>184</sup> Report on the monitoring visit to Establishments Nos. 2, 8, 14 and 15, p. 34-35, available at: < <http://www.ombudsman.ge/res/docs/2019121618092132463.pdf> > [last accessed: 24.03.2020]. Report on the monitoring visit to Establishment No. 3, p. 17-18, available at: < <http://www.ombudsman.ge/res/docs/2020032321170591389.pdf> > [last accessed: 24.03.2020]

- Take all necessary measures to enable prisoners in Establishments Nos. 2 and 8 to exercise their right to walk as it is provided by day schedule
- In 2020, by increasing the number of social workers and psychologists, balance the ratio of social workers and psychologists to prisoners in Establishments Nos. 2, 8, 14 and 15
- In 2020, retrain social workers, who do not have a bachelor's, master's/equivalent, or doctor's degree in the field of social work
- In 2020, introduce new and diverse rehabilitation activities in Establishments Nos. 2, 8, 14 and 15. Increase opportunities for engaging convicts in the rehabilitation activities. Introduce rehabilitation activities in Establishment No. 3 and ensure the involvement of convicts in these activities
- In 2020, start working on introduction of a mechanism directly reducing the unserved part of the sentence or changing the type of sentence, in order to motivate prisoners to take part in various rehabilitation activities

### Contact with the outside world

#### **Proposal to the Parliament of Georgia:**

- Amend parts 11 and 12 of Article 17 of the Imprisonment Code to make it possible to exchange a long visit to a telephone conversation or a video call
- Amend the Imprisonment Code so that to increase the number of visits and telephone calls for prisoners placed in high-risk facilities, as well as to allow them to enjoy video calls
- Amend the Imprisonment Code and abolish restrictions on contact with the outside world as a form of disciplinary action or security measure, unless such a contact is linked to an offence
- Amend the Imprisonment Code so that to allow prisoners to contact the Public Defender of Georgia and other inspection bodies without any hindrance

#### **Recommendations to the Minister of Justice:**

- Install telephone booths in Establishments Nos. 2 and 8 to allow prisoners to have telephone conversations in a confidential environment
- Provide additional isolation for spaces intended for telephone conversations in Establishment No. 3 so that the convict's conversation cannot be heard by another person
- Ensure short visits without a glass barrier in all penitentiary establishments by the end of 2020
- When allocating prisoners to cells, consider the place of residence of prisoners' families in order to ensure the unimpeded enjoyment of the prisoner's right to receive visits

### Requests/complaints

#### **Recommendation to the Minister of Justice:**

- Increase the role of social workers by obliging them to inform in detail the newly admitted prisoners of their rights and responsibilities, requests/complaints mechanisms and review procedures, as well as to periodically work with prisoners, individually or in group, in relation to their rights and responsibilities, requests/complaints mechanisms and review procedure, including by providing the above information to the untried/convicted persons through brochures, or by posting it on the walls in areas accessible to all prisoners
- In order to ensure that prisoners can send complaints confidentially, put confidential complaint envelopes so that the receipt of the envelope is not dependent on prison staff and the recipient of the envelope is not identified. In addition, ensure that all prisoners have free access to material-technical stuff (paper, pen, envelope) and are allowed to keep a certain number of envelopes in their cells
- Ensure that the General Inspectorate of the Ministry of Justice, through systematic inspection and appropriate response, identifies and investigates the cases of violation of the rules of sending confidential complaints in Penitentiary Establishment Nos. 2, 8, 14 and 15, as well as the cases of exerting pressure on prisoners due to filing complaints, and punishes the perpetrators

### Foreign prisoners

#### **Proposal to the Parliament of Georgia:**

- Amend the Imprisonment Code and allow foreign convicts, whose families cannot enjoy short and long visits due to living abroad, to enjoy video calls

#### **Recommendations to the Minister of Justice:**

- Consider linguistic, religious and cultural characteristics of prisoners when allocating them to cells, as well as the needs of various religious confessions when preparing food
- Provide interpretation for all foreign language prisoners, if necessary; inter alia, provide information about services and regulations applied in the facility in a language the understand
- Ensure that the monitoring service studies the obstacles faced by prisoners at Establishment No. 8 in terms of calling abroad and takes measures to enable prisoners to enjoy the right to telephone communication without any obstacle, in accordance with the rules established by law

### Juveniles

#### **Recommendations to the Minister of Justice:**

- Provide rehabilitation activities tailored to the individual needs of juveniles placed Establishments Nos. 2 and 8

- Eliminate the practice of placing juveniles in the de-escalation room and ensure immediate involvement of the multidisciplinary team (psychologist, social worker, doctor and psychiatrist, if necessary) during emergency in order to avoid threats by using verbal de-escalation methods
- Amend Article 4 (4) of the joint order (N388–N01-18/n) of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia so that to provide juveniles with four meals a day, including a three-component dinner
- Prior to ensuring healthy four-time meal, provide food for juveniles in Establishment No. 2 in accordance with their day schedule

### *Defendants*

#### **Proposal to the Parliament of Georgia:**

- Amend the Imprisonment Code and allow defendants to enjoy long visits, considering the interests of the investigation

#### **Recommendation to the Minister of Justice:**

- In 2020, ensure the isolation of defendants from convicts in Establishments Nos. 2 and 8, at least by placing them in separate cells

### *Somatic health*

#### **Recommendations to the Minister of Justice:**

- In 2020, at least double the number of support medical staff, nurses, including nurses on duty
- Ensure direct contact between prisoners and doctors without the involvement of non-medical staff as much as possible, including by installing call buttons in Establishments Nos. 2, 3 and 8 and/or by requiring the medical staff to check on cells on a daily basis
- Provide at least one meal for the day-time medical staff
- Employ dental nurses
- Provide professional trainings for medical staff within the framework of continuous medical education
- Ensure that doctor-specialist pay visits to Establishments Nos. 8 and 15 frequently enough, considering the number of patients on the waiting list, so that the waiting time does not exceed 2 weeks
- In order to eliminate deficiencies related to the supply of sufficient quantity of medicines to Establishment No. 8, consider data analysis of prescribed medicines, which have been demanded and used in the recent period, when purchasing new medicines
- In order to correct deficiencies in outpatient medical cards:
  - Ensure that annual epicrisis are written at the end of each year to briefly describe the

dynamics of prisoner's health condition during the year, as well as his/her consultations, referrals, examinations, diagnoses, treatment and its results

- Introduce an electronic information system for medical staff and the penitentiary system in general in order to eliminate deficiencies related to medical documentation
- Take all measures to ensure that the term of regular outpatient referral does not exceed one month, the term of regular inpatient referral does not exceed 4 months<sup>185</sup> and urgent referral does not exceed - 5 days<sup>186</sup>

### Mental health care

#### **Recommendations to the Minister of Justice:**

- Develop a strategy for attracting mental health service providers
- Introduce periodic mental health screening in penitentiary facilities
- Ensure that the number of patients consulted per day does not exceed 15, by increasing the number of full-time and visiting psychiatrists
- Ensure adequate frequency of psychiatrists' visits to the facilities in accordance with the number of patients on the waiting list so that the waiting time does not exceed 2 weeks
- Due to the peculiarities of penitentiary facilities, specify at the normative level the composition of a psychiatric multidisciplinary team, the functions of each member and the procedure for organizing and delivering psychiatric care
- Develop crisis prevention and management guidelines and train the facilities' medical staff in crisis prevention and management
- Ensure that the multidisciplinary team assesses the needs of patients with mental health problems who do not need inpatient treatment, develop an individual plan of biopsychosocial assistance based on the needs identified by them and provide appropriate assistance
- Ensure clinical-laboratory dynamic assessment and control of the risks of developing agranulocytosis,<sup>187</sup> metabolic processes and especially hyperglycemia,<sup>188</sup> in order to manage drug side effects
- Ensure that the practice of dispensing psychotropic drugs is studied by the Medical Services Quality Management Division of the General Inspectorate and measures are taken to prevent the misuse of psychotropic drugs.

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<sup>185</sup> Medical service standards for penitentiary facilities, approved by Order No. 381 of February 15, 2019 of the Minister of Justice of Georgia, additional medical care standards for persons with special needs, list of essential medicines and preventive health service package for the penitentiary system, Article 8, subparagraph 4.

<sup>186</sup> The rules of transfer of untried/convicted persons to a civil sector hospital, Medical Facility for Untried and Convicted Persons and Tuberculosis Treatment and Rehabilitation Centre, approved by Order No. 55 of April 10, 2014 of the Minister of Corrections of Georgia, Article 2<sup>1</sup>, subparagraph 8.

<sup>187</sup> To reduce the number of leukocytes (white blood cells) in the blood, see the link <<http://www.medgeo.net/2009/06/30/agranulocytosis/>> [last accessed 17.02.2020].

<sup>188</sup> High blood sugar, see the link <<http://gh.ge/ka/disease/900/>> [last accessed 17.02.2020].

### 3. Ministry of Internal Affairs

#### 3.1. Monitoring methodology

The present document represents a report on the monitoring of the system of the Ministry of Internal Affairs carried out by the Special Preventive Group in 2019. The Special Preventive Group updated its monitoring tools and methodology in 2019 and received information about the system of the Ministry of Internal Affairs from more diversified sources. The data and assessments provided in the report are based on the following sources: interviews of members of the Special Preventive Group with detainees,<sup>189</sup> staff of temporary detention isolators<sup>190</sup> and lawyers;<sup>191</sup> statistical information provided by temporary detention isolators and administration of the Ministry of Internal Affairs of Georgia and written and verbal communication with the Public Defender's Office; online questionnaires filled in by lawyers;<sup>192</sup> information provided by non-governmental organizations; data available in the Public Defender's Office; information officially published by the Ministry of Internal Affairs, on-site observation in the facilities and documentation of the facilities, including medical information.

In November and December 2019, the Special Preventive Group conducted monitoring visits to 26 police divisions, 4 police departments and 14 temporary placement isolators. The monitoring visits were carried out in Kakheti region, Imereti, Racha Lechkhumi and Kvemo Svaneti regions; Guria region and Autonomous Republic of Adjara.

The monitoring also involved observation of situation and work process in police facilities and temporary placement isolators.

The report describes facts and circumstances in full compliance with the principle of confidentiality. The documents obtained within the framework of the monitoring, as well as the reports of the members of the monitoring group are kept in the Public Defender's Office.

#### 3.2. Implementation of recommendations

The National Preventive Mechanism offered 17 recommendations in its 2018 report, which were aimed at improving the conditions of detention and preventing torture and other cruel, inhuman or degrading

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<sup>189</sup> Interviews were conducted with 38 detainees.

<sup>190</sup> Interviews were conducted with 3 staff members of the temporary detention isolator.

<sup>191</sup> Interviews were conducted with 4 focus groups of lawyers (Kakheti, Imereti, Guria and Adjara).

<sup>192</sup> **The Public Defender's Office had fruitful communication with the Georgian Bar Association and NGOs working in the field of human rights. In particular, with the technical assistance of the Georgian Bar Association, a special online questionnaire was sent to the members of the Association. In addition, NGOs, such as the Georgian Young Lawyers' Association and the Human Rights Education and Monitoring Centre (EMC), provided information about the cases of alleged ill-treatment committed under police control to the Special Preventive Group. The Public Defender of Georgia thanks the Georgian Bar Association and NGOs for their cooperation.**

treatment or punishment in the system of the Ministry of Internal Affairs. 9 out of the 17 recommendations have been endorsed in the resolution of the Parliament of Georgia.<sup>193</sup> **One proposal issued to the Parliament of Georgia has not been implemented. 2 out of 16 recommendations made to the Ministry of Internal Affairs of Georgia have been implemented, 6 recommendations have been partially implemented, 8 have not been implemented.**

The purpose of the present chapter is to review in detail the recommendations offered in the report of the National Preventive Mechanism and their implementation. Information on the above issues is additionally presented in the relevant thematic chapters.

### **Proposal to the Parliament of Georgia**

In 2019, the National Preventive Mechanism drew up a **proposal to the Parliament of Georgia**, in which the Public Defender requested amendments to the Administrative Offences Code to determine the obligation of the judge to apply to the relevant investigative body in case he/she suspects that a person under administrative detention was subjected to torture, degrading or inhuman treatment or punishment, or if the person under administrative detention himself/herself tells the court about the above. This recommendation has not been implemented. It should be noted that despite increasing the role of a judge at the stage of criminal proceedings, the authority of the latter to address the investigative body does not apply to alleged violence committed by law enforcement officers against persons arrested for administrative offences. The cases studied by the National Preventive Mechanism show that the cases of alleged ill-treatment of persons arrested for administrative offences are frequent,<sup>194</sup> which makes it important to extend the above power of the judge to similar cases.

### **Recommendations of the Ministry of Internal Affairs of Georgia**

One recommendation to the Ministry of Internal Affairs of Georgia concerned **access to a lawyer and provision of information to the family**. In particular, the Public Defender called on the Ministry of Internal Affairs to examine whether the detainees' right to contact his/her family members/relatives/lawyers and to inform them about his/her detention was protected and to develop a mechanism that would make it possible to monitor the realization of this right, as well as to provide information on the results of the examination to the Public Defender's Office. The recommendation has been partially implemented. The recommendation has been endorsed by the Parliament of Georgia

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<sup>193</sup> Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018, available at: < <https://www.matsne.gov.ge/ka/document/view/4659391?publication=0> > [last accessed: 15.01.20].

<sup>194</sup> According to the data processed by the Special Preventive Group by using a statistical programme (SPSS), the number of persons under administrative detention, who had complaints, increased by 5.2% in 2019 compared to 2018. As for criminal cases, the percentage of those who had complaints against the police decreased by 5.2% compared to 2018. In addition, in 2019, higher percentage of persons under administrative detention indicated that they were harmed during or after arrest (42.8%), compared to those detained on criminal charges (28.3%).



and has been reflected in its resolution.<sup>195</sup> According to the reply received from the Ministry, the Human Rights and Investigation Quality Monitoring Department of the Ministry of Internal Affairs of Georgia examined documents on arrest and provision of information on arrest<sup>196</sup> throughout Georgia and found no significant violations of the requirements of procedural law. In addition, the Ministry's letter reads that the Department prepared a recommendation on the methodology of drawing up an arrest document, as well as a separate form of a document on the provision of information about arrest, which shall be filled in by persons authorized to detain. As for the mechanism of controlling the realization of the right, the letter reads that the Department conducts daily monitoring of criminal cases and checks the protection of the detainees' rights within the framework of the monitoring. The Public Defender welcomes the development of a recommendation on the methodology of drawing up an arrest document and a separate form of the document on the provision of information about arrest, and hopes that they will be approved and put into practice soon. At the same time, the Public Defender/Special Preventive Group will actively monitor the practical enforcement of the detainees' contact with family members/relatives/lawyers.

6 recommendations issued to the Ministry of Internal Affairs of Georgia concerned **audio-video recording as one of the safeguards against ill-treatment**.<sup>197</sup> In particular, in the *first recommendation*, the Public Defender called on the Ministry to record with electronic equipment (audio-video) the provision of information to the detainees about their rights by police officers in several police facilities, in a pilot mode. The recommendation has not been implemented. According to the reply received from the Ministry, they do not agree with the recommendation. Interviews conducted by the Special Preventive Group showed that, like previous years, informing detainees about their rights by police remains problematic.<sup>198</sup> Therefore, in order to facilitate the realization of the fundamental right of the detainee and monitoring of this process, it is important to record (audio-video) the process of informing detainees of their rights. It should be noted that the above should be in the interests of the Ministry of Internal Affairs as well, as the recordings can be used to protect police officers from false allegations and to assess and further enhance the professional skills.

In *the second recommendation*, the Public Defender called on the Ministry to ensure continuous audio-video recording of interviews in several police facilities, in a pilot mode. The recommendation has not been implemented. According to the reply received from the Ministry, they do not agree with the recommendation. In addition, according to the reply, the recommendation can be implemented only by amending the criminal procedure law, which is beyond the competence of the Ministry. It should

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<sup>195</sup> Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018.

<sup>196</sup> The reply received from the Ministry reads that up to 800 detention documents were examined from January 1, 2018 to June 20, 2019.

<sup>197</sup> For more information, see the chapter on audio and video recording/documentation.

<sup>198</sup> For more information, see the chapter on safeguards against torture and other cruel, inhuman or degrading treatment or punishment; Informing detainees of their rights.

be noted that the criminal procedure law allows the use of electronic equipment of sound and/or image recording during interviews.<sup>199</sup> Accordingly, there is no impediment to the pilot implementation of this recommendation. The European Committee for the Prevention of Torture recommends to introduce continuous electronic (audio and/or video) recording of police interviews, which is an important additional safeguard against torture and ill-treatment.<sup>200</sup>

In *the third recommendation*, the Public Defender called on the Ministry to install surveillance cameras in all parts of police departments, divisions and stations, where witnesses and persons voluntarily invited to an interview may be present. This recommendation has not been implemented. The monitoring conducted by the Special Preventive Group showed that surveillance cameras in police departments, divisions and stations do not fully cover all the areas where citizens or detainees may be present.<sup>201</sup>

In the *fourth recommendation*, the Public Defender requested the continuation of the process of equipping police officers with upgraded body cameras and gradual equipment of officers of territorial bodies with upgraded body cameras like patrol police officers. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has not been implemented. The monitoring carried out by the Special Preventive Group showed that officers of the territorial bodies had not been equipped with upgraded body cameras.<sup>202</sup> According to the reply received from the Ministry, steps are being taken to improve the technological capacities of the territorial bodies of the Ministry of Internal Affairs of Georgia, including in terms of equipping police officers with body cameras, which is welcomed by the Public Defender.

In the *fifth recommendation*, the Public Defender requested that the obligation of patrol inspectors to record (video) their communication with citizens, as well as the procedure and period of keeping the recordings, be specified in a subordinate normative act. The recommendation has not been implemented. The Ministry's reply reads that the patrol inspectors of Patrol Police record their communication with citizens by their body cameras in a standard situation, although it would not be relevant to specify such an obligation of the patrol inspector in legislation, as the above may prevent the latter from quickly responding to an offence due to specific circumstances in certain cases. The Public Defender believes that when determining the obligation of patrol inspectors to record their communication with citizens, it is possible to indicate exceptional cases, such as urgent response to an offence, provided that the patrol inspector will later justify the non-use of the body camera.

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<sup>199</sup> Criminal Procedure Code of Georgia, Article 113, part 9.

<sup>200</sup> Report to the Government of Cyprus, European Committee for the Prevention of Torture, CPT/Inf (2018) 16, 26.04.2018, para.16, available at: <<https://rm.coe.int/16807bf7b4>> [last accessed: 03.01.20]. See also the Annual Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the United Nations General Assembly, E/CN.4 / 2003/68, 17 December 2002, para. 26 (g).

<sup>201</sup> For more information, see the chapter audio and video recordings/documentation.

<sup>202</sup> For more information, see the chapter on audio and video recording/documentation.

In the *sixth recommendation*, the Special Preventive Group requested that 14 days be set as a minimum period for keeping the recordings of video surveillance systems installed in police departments, divisions and stations. The Public Defender/Special Preventive Group welcomes the implementation of this recommendation.<sup>203</sup>

One of the recommendations to the Ministry of Internal Affairs of Georgia was to pilot the **immediate transfer of detainees to a temporary detention facility as soon as they are detained, as a safeguard against torture and ill-treatment**. The recommendation has not been implemented. According to the information received from the Ministry, the Ministry of Internal Affairs of Georgia does not agree with the recommendation, as it is related to a lot of logistical, infrastructural, procedural problems. In addition, according to the Ministry, a number of investigative activities are carried out in the police stations, which cannot be carried out in a temporary isolator. The purpose of the mentioned recommendation was to reduce the cases of detainee's long presence under police control, as the above involves high risks of physical violence and psychological pressure by police.<sup>204</sup> In addition, this recommendation is particularly relevant given that the Public Defender's very important recommendations concerning safeguards against torture and ill-treatment have not been implemented. It should be noted that in addition to the minimum safeguards provided for the detainees in legislation, the safeguards against ill-treatment also include the registration of all the detainees transferred to police facilities, audio and video recording, including during interrogations, etc.

One recommendation to the Ministry of Internal Affairs of Georgia concerned the **documentation of administrative detention**. In particular, the Special Preventive Group requested that changes be made so that to add the following information to the administrative detention chart: the time of drawing up the document; description of the injuries on the body of the detainee; circumstances of the detention; whether there was resistance; whether the measure of coercion was used and in what form. The recommendation has not been implemented. The Ministry's reply reads that they do not consider it relevant to implement this recommendation as an independent mechanism has been established and is being developed in the Ministry of Internal Affairs, which aims to add medical rooms in temporary placement isolators.

The Public Defender considers that the above reply does not correspond to the content of the recommendation. It should be noted that during the entire period of the detainee's presence under police control, the police officer has an obligation to prove that his/her treatment of the detainee complied with the requirements of law. Accordingly, documenting legal measures taken against the detainee, especially in case of the use of force or special equipment, would help to strengthen the sense of responsibility among police officers and to monitor the fulfillment of statutory obligations by them.

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<sup>203</sup> Order No. 53 of the Minister of Internal Affairs of Georgia on the file systems of the Ministry of Internal Affairs of Georgia and the term of keeping the data, January 23, 2015.

<sup>204</sup> For more information, see the chapter on ill-treatment.

3 recommendations issued to the Ministry of Internal Affairs of Georgia concerned **provision of information to the detainees about their rights**. In the *first recommendation*, the Public Defender/Special Preventive Group called on the Ministry to develop guidelines/instructions for police officers on how to inform detainees of their rights. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has been partially implemented. According to the reply received from the Ministry,<sup>205</sup> the Human Rights and Investigation Quality Monitoring Department of the Ministry of Internal Affairs drew up a recommendation on the methodology of drawing up an arrest document, which is intended for the law enforcement officers who have to authority to arrest. The recommendation emphasizes the importance of informing detainees of their rights. According to the reply received, the recommendation is currently undergoing final editing and will be sent to the relevant territorial bodies of the Ministry in the near future, the implementation of which will be monitored by the Department. The reply also reads that the Ministry drafted a document on the detention standard procedures, which provides instructions on the provision of information to the detainee about his/her rights. According to the reply, the document is being legally examined and amended at this stage.

In the *second recommendation*, the Special Preventive Group called on the Ministry to provide police departments, divisions and stations with written booklets on the rights of the detainee for the purpose of handing them over to the detainees, as well as to make the contact details of the Public Defender's hotline available on the walls of the police buildings. This recommendation has been partially endorsed by the Parliament of Georgia and has been reflected in its resolution. In particular, the Parliament did not endorse the first part of the recommendation, which concerned the provision of written booklets on the rights of the detainee to the police departments, divisions and stations for their further provision to the detainees. The recommendation had not been implemented during the reporting period.<sup>206</sup> Nevertheless, it should be welcomed that communication was held with the Public Defender's Office on the initiative of the Ministry of Internal Affairs in 2020, during which, the Ministry was provided with information about the Public Defender's contact details to be posted up on the walls of the police buildings. In addition, the Public Defender/Special Preventive Group was promised that the second part of the recommendation relating to the development of written booklets on the rights of the detainee and their provision to police departments, divisions and stations would be implemented.

3 recommendations issued to the Ministry of Internal Affairs of Georgia concerned the **documentation of injuries in isolators**. In particular, in the *first recommendation*, the Special Preventive Group requested an increase in the number of isolators that had medical rooms and the documentation of bodily injuries of persons placed in these isolators in accordance with the rules established by Order No. 691 of the Minister of Internal Affairs of Georgia. The recommendation has been endorsed by the

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<sup>205</sup> Reply MIA 8 20 00380695 received from the Ministry of Internal Affairs of Georgia on February 12, 2020.

<sup>206</sup> See the chapter on safeguards against torture and other cruel, inhuman or degrading treatment or punishment, Informing detainees of their rights.

Parliament of Georgia and has been reflected in its resolution. The recommendation has not been implemented. According to the reply received from the Ministry, medical rooms were opened in 4 isolators (Marneuli, Samtredia, Kobuleti, Tsalka) in 2019,<sup>207</sup> which is welcomed by the Public Defender.

In the *second recommendation*, the Special Preventive Group called on the Ministry to develop detailed instructions for doctors employed in temporary placement isolators relating to thorough documentation of bodily injuries of persons placed in isolators. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has been partially implemented. According to the reply received from the Ministry, in 2019, the Temporary Detention Department of the Ministry of Internal Affairs drafted detailed instructions for conducting a medical examination, which is planned to be approved in the near future. The draft instructions were provided to the Public Defender's Office, which is welcomed by the Public Defender.

In the *third recommendation*, the Special Preventive Group called on the Ministry to develop technical instructions for doctors employed in temporary detention facilities in relation to taking photos, detailing the procedures that ensure quality photographs. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has been partially implemented. According to the reply received from the Ministry, one of the chapters in the detailed instructions for conducting a medical examination drafted in 2019 is dedicated to the detailed rules for taking and saving photos of bodily injuries, which is welcomed by the Public Defender.

In the *fourth recommendation*, the Special Preventive Group recommended to develop a uniform, systematized rules for keeping photos taken by doctors employed in temporary detention isolators. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has been partially implemented. According to the reply received from the Ministry, one of the chapters in the detailed instructions for conducting a medical examination drafted in 2019 is dedicated to the uniform, systematized storage of photos, which is welcomed by the Public Defender.

In the *fifth recommendation*, the Special Preventive Group called on the Ministry to provide trainings for doctors employed in temporary detention isolators in photographing the bodily injuries of persons placed in isolators and the procedure for saving the photographs. The recommendation has been partially implemented. The recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. According to the reply received from the Ministry, in 2019, two trainings were conducted within the framework of the Council of Europe project, which covered the issues of photographing the bodily injuries of the detainees. 30 doctors were retrained within the

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<sup>207</sup> As of today, 19 out of 29 temporary detention isolators operating in the country have medical rooms, where doctors document prisoners' bodily injuries in accordance with a special form drawn up in accordance with the Istanbul Protocol.

framework of the mentioned trainings.<sup>208</sup> The monitoring carried out by the Special Preventive Group showed that the quality of photos taken was still problematic. In addition, one of the doctors was assisted by non-medical staff of a temporary detention isolator, which constitutes the violation of medical confidentiality.

### **3.3. Ill-treatment**

During monitoring, the Special Preventive Group received a number of reports of disproportionate, apparently excessive use of force by police officers during detention, as well as alleged torture and other ill-treatment after detention.<sup>209</sup> For example:

- After detention, patrol police officers pulled the person into a police car and were periodically hitting him in his face for several minutes. After being left alone in the car for some time, the detainee opened the door from the inside and tried to escape, but police officers made him fall to the ground and started to beat him. They were hitting and kicking the handcuffed detainee in his head, on his sides and all over the body.
- Officers of Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department, before formally arresting a person, took the latter to the Police Department and handcuffed him in one of the chiefs's rooms. Four officers entered the room and told the person to admit to murder and, without waiting for an answer, three of them made him fall to the floor and started to beat him (by kicking and hitting him). Then they put a cellophane over his head to make it difficult for him to breathe and continued to beat him for about 10-15 minutes in such a state. He was also threatened that his relative would be arrested if he did not plead guilty. The detainee then agreed to testify and signed the pre-prepared document without reading it.
- One of the persons, before being arrested, was taken to the Vani District Division. In a few minutes, four police officers entered the room and started to abuse him. One of the officers pressed his foot hard on the detainee's genitals. Then he was thrown to the floor and beaten. He was requested to plead guilty. Then he was dragged to another room and was forced to look at dead person's photos in the police officer's phone. One of the police officers, while demanding admission of guilt, slapped him with his hands in both of his temples simultaneously.

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<sup>208</sup> Namely: On June 12-15, 2019, 15 participants were trained on injury documentation, and from October 28 to November 1, 15 more participants were trained on the same issue. The Ministry's reply reads that in 2020, the trained trainers will gradually train doctors on the rules of photographing and keeping photographs, in accordance with the instructions.

<sup>209</sup> As a result of the examination, the Special Preventive Group received a total of 13 complaints from 38 respondents about alleged torture and other ill-treatment by the police.

- In another case, police officers were hitting, kicking and verbally abusing a detainee when dragging him in a car. Physical violence continued in the car as well. The person had been beaten for about 10 minutes, causing his severe pain. As a result, the detainee sustained injuries, namely bruises. The detainee was taken to the Kakheti Police Department two hours later, where police officers started swearing at him and threatened to falsify evidence in case he did not cooperate with the investigation and confess to the crime.

In addition to the alleged cases of ill-treatment described above, attention should be paid to the cases examined by the Department of Criminal Justice of the Public Defender's Office relating to alleged torture and other cruel, inhuman and degrading treatment of detainees by the employees of the Ministry of Internal Affairs in 2019. In the indicated cases, the applicants accuse police officers of verbal and physical abuse, including during transportation. In one of the cases, a person died at the hospital, as a result of multiple head injuries allegedly inflicted by police officers. One lawyer also reported physical abuse by police officers at his home. The cases of ill-treatment of juveniles should be paid particular attention. In 2019, the Department of Criminal Justice examined two cases of juveniles. In one of the cases, the police officer spat at the juvenile, slapped him in the face and kicked him in his abdomen, causing the juvenile to fall off the chair and break his arm. The juvenile was also threatened with rape. In another case, police officers physically abused a juvenile in the car, while after being taken to the police station, they threatened him to kill him in case he did not confess to the crime. Moreover, the juvenile was interrogated at night, without the presence of a legal representative or a lawyer.

When monitoring a temporary detention facility, members of the Special Preventive Group check the personal files of all the detainees placed there. As a result, the monitoring group, taking into account the circumstances of the detention, as well as location, number and nature of injuries, may suspect ill-treatment.

The Special Preventive Group identified 449 suspicious cases<sup>210</sup> on the basis of the above principle in 2019. The cases included both administrative detentions and arrests on criminal charges. As a result of the data processing, the Special Preventive Group found that in 143 (31.8%) out of 449 cases mentioned above, persons under administrative detention sustained injuries during and/or after detention. As for the dynamics according to years, in 2016, administrative detainees received bodily injuries during and/or after detention in 12.8% of suspicious cases studied by the Special Preventive Group, in 2017 the same indicator was - 26.4% and in 2018 - 26.8 %, while the statistical indicator of 2019 has not changed significantly (31.8%). Accordingly, there has been a worsening tendency in terms of the treatment of persons under administrative detention since 2017.

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<sup>210</sup> The inspection was carried out in the territorial police bodies and temporary detention isolators in Kakheti, Imereti, Racha-Lechkhumi and Kvemo Svaneti, Guria and Adjara regions.

It is noteworthy that the official statistics of the Ministry of Internal Affairs on the injuries on the bodies of persons placed in temporary detention isolators did not change significantly in 2019 compared to 2018.<sup>211</sup> In 2019, a total of 15,191 persons were placed in temporary detention isolators, 10,348 of which had injuries. 155 of them received injuries after detention, i.e. 1.5% of the total number of injured persons.<sup>212</sup> As for 2018, this indicator was 1.4%.<sup>213</sup> At the same time, 656 persons placed in temporary detention facilities in 2019 received injuries during and/or after detention, accounting for 6.3% of the total number of injured persons placed in the isolator. In 2018 this statistical figure was 5.6% (467 cases). In addition, in 2019, 429 persons placed in temporary detention facilities had complaints against the police, 343 of which complained about physical abuse, representing 2.8% and 2.3% of the total number of persons placed in isolators respectively. In 2018, these statistical data were 2.3% (303 cases) and 2% (256 cases).

As in previous years, the tendency that in about one third of the cases examined by the Special Preventive Group (2019 - 30.7%, 2018 - 27.6%, 2017 - 30.1%, 2016 - 31.3%), no injury described in the medical records of the isolators are indicated in the detention documents, has been maintained. In 138 out of the 449 cases examined in 2019, the injuries described in the isolator were not indicated in the detention documents.

In addition, in 285 cases (63.8%) studied as part of the monitoring, the detention documents indicated disobedience/resistance to the police, which makes us think that the police likely used force/coercion; however, the detention documents indicate the use of force only in 64 (14%) cases. Accordingly, police officers likely used force in the above cases, although this has not been indicated in the detention documents. This circumstance additionally proves that the documents are filled in improperly.

It would be fair to note that the discrepancy between the documents may in part be caused by the general practice of checking for injuries. In particular, checking for injuries by police officers is superficial and does not involve a full examination of the body, as it is done in isolators. In addition, the difference between the documents relating to administrative detentions may in part be caused by the inaccuracy in the description of bodily injuries by police officers. In particular, the administrative detention forms have no injury graph at all, which contributes to the formation of different practices - some police officers describe injuries in the notes' graph and some do not.

125 of the 138 cases mentioned above (when the injuries described in the isolator were not indicated in the detention documents) were administrative detentions, while in 13 cases, persons were arrested

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<sup>211</sup> Information is available at: <<https://info.police.ge/page?id=233>> [last accessed: 05.02.2020].

<sup>212</sup> After arrest - 34; before arrest-after arrest - 64; during arrest-after arrest - 18; before arrest-during arrest -after arrest - 39. The sum of these data is 155.

<sup>213</sup> A total of 12,995 people were placed in temporary detention isolators in 2018, of which 8,320 had injuries. 116 of them received injuries after arrest.



on charges. When a person is arrested on charges, the police officer shall describe the physical condition of the detainee (bodily injuries) at the time of the arrest, in a special graph. Although in the above 13 cases, the detainees had injuries when they were placed in the isolator, it was indicated in the relevant graph that they did not have any injury. Accordingly, in the above 13 cases, it is unlikely that the persons, who filled in the form, could not notice visible injuries. There is a more firm presumption that the persons were subjected to ill-treatment after arrest, before being placed in the isolator.

The Special Preventive Group pays particular attention to the cases when the detainees brought to the temporary detention facility have injuries in their face, while police officers indicate in the detention document that the detainees have no injuries. Out of 449 cases studied by the Special Preventive Group in 2019, 13 similar cases have been detected.<sup>214</sup> There were also 44 cases,<sup>215</sup> in which, unlike the documents available in the isolators, the detention document did not contain any indication of facial injury. Clearly, if a detainee had injuries in his face during arrest, police officers should have noticed the above and describe it in the relevant document.

As for the forms of physical violence committed by police officers against detainees, the interviews held as part of the monitoring in 2019 and the examination of suspicious cases in the isolators revealed tight handcuffing and hitting-kicking as the most frequently used practices.

In view of all the above, the Public Defender and the Special Preventive Group believe that the situation of treatment of detainees by police has not changed significantly in 2019 compared to 2018, although it should be noted that, like 2017 and 2018, the worsening tendency of treatment of persons under administrative detention was maintained in 2019 as well. In addition, the data processed by the Special Preventive Group and the interviews with detainees indicate that the use of excessive force during detention, physical and psychological violence after detention, as well as incomplete documentation of bodily injuries and use of force remain to be unresolved challenges. Thus, the Public Defender and the Special Preventive Group believe that it is especially important to establish strict control over the actions of police officers and increase their accountability. It is essential that a clear message be sent by senior officials to police officers that human rights violations will not go unpunished.

#### **3.4. Safeguards against torture and ill-treatment**

Georgian legislation provides the detainees with minimum safeguards, such as: the right to receive information about the reasons for the detention, as well as about procedural rights, in a language they understand; the right to have a legal representative; access to medical care; the right to inform family

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<sup>214</sup> In 9 of these 13 cases, the persons were under administrative detention, while 4 were arrested on criminal charges.

<sup>215</sup> In these 44 cases, the persons were under administrative detention.

members/relatives about the detention.<sup>216</sup> In addition to the above, the following also serve as safeguards for the detainees: the obligation to register all the detainees transferred to police facilities, the obligation to bring detainees before the court, the obligation to record certain procedures (audio and video), including interrogations, etc. The assessment of the Special Preventive Group regarding the practical realization of the above rights is given below:

**Informing detainees of their rights** - Under criminal procedure law, a person shall be informed of his/her rights and the charges against him/her, in a language he/she understands. Interviews with the detainees conducted by the Special Preventive Group showed that, in most cases, detainees were either not informed of their rights at all, either during detention or before interrogation, or were only partially informed. During interviews with the Special Preventive Group, lawyers also focused on this issue, noting that detainees received information about their rights from them. The monitoring of police departments and divisions conducted by the Special Preventive Group in 2019 made it clear that in most police divisions and departments, posters were placed in shared workspaces and provided information only about domestic violence, but did not contain information on the detainees' procedural rights.

As for the temporary detention isolators, it is welcome that the list of procedural rights is provided to the detainees in writing, which is translated into different languages<sup>217</sup> and, if desired, the detainees can have the above document in their cells.<sup>218</sup> According to the Ministry of Internal Affairs, the detainees are given a reasonable period of time to read the document and only after that, they sign it.<sup>219</sup> Nevertheless, the issue of informing detainees of their rights remains a challenge at this stage and the detainees sign the document on the rights so that they are not aware of its content. During interviews conducted with the detainees by the Special Preventive Group, half of the respondents stated that they were informed of their rights when being placed in the isolator. The rest said they had not been informed of their rights.

Detainees have to spend an average of four hours under police control<sup>220</sup> before being transferred to the temporary detention facility. A number of investigative activities can be carried out during the mentioned period. Therefore, it is important to verbally inform detainees of their rights during detention and to provide the same information in writing as soon as possible.<sup>221</sup> In recent years, the European Committee for the Prevention of Torture has been requesting in its recommendations to

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<sup>216</sup> Criminal Procedure Code of Georgia, Article: 38 (2) and Article 174 (1).

<sup>217</sup> In the Georgian, Russian, English, Azerbaijani, Armenian, German, French, Arabic and Turkish languages.

<sup>218</sup> Response of the Government of Georgia to the report of the European Committee for the Prevention of Torture following its visit paid to Georgia on November 21, 2019, available in English: <<https://rm.coe.int/168098e29c>>, [last accessed: 30.01.2020].

<sup>219</sup> Ibid.

<sup>220</sup> See the sub-chapter on the duration of presence under police control.

<sup>221</sup> 28<sup>th</sup> General Report of the European Committee for the Prevention of Torture, 2019, paragraph: 66, available in English at: <<https://rm.coe.int/16809420e3>> [last accessed: 30.01.2020].

various countries to ensure more procedural guarantees in order to ensure provision of information to the detainee of his/her rights as much as possible.<sup>222</sup>

**Access to a lawyer and provision of information to the family** - The most important safeguard against ill-treatment of the detainee by the police is timely access to a lawyer, as it is in the first hours of detention that the person is in the most vulnerable position. It should be praised that according to the data processed by the Special Preventive Group by using a statistical programme, the rate of lawyer's involvement in the first 24 hours significantly improved in 2019. In particular, in 24.6% of criminal cases, the lawyer was involved in the case in the first 24 hours, in 14% of cases - in the first 48 hours, and in 33% of cases - in the first 72 hours.<sup>223</sup> According to alternative sources, lawyers mostly meet the detainees for the first time in a temporary detention isolator.<sup>224</sup> During interviews with the Special Preventive Group, most of the detainees, as well as most of the lawyers said that police officers advised detainees not to request lawyers, as they do not need them and it is related to serious costs. At the same time, they persuade detainees that if they cooperate with the police, agree to admit to the offence and choose plea bargaining, a public lawyer will serve them free of charge. According to the information provided by the lawyers, there are cases when a lawyer is artificially obstructed to meet a detainee in a police facility<sup>225</sup> by being told that they do not know whether exactly the detainee is in the building

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<sup>222</sup> For example, the European Committee for the Prevention of Torture calls on the Lithuanian authorities to ensure without further delay that all persons detained by the police are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the very moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information upon apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out the detained person's rights in a straightforward manner. This form should be made available in an appropriate range of languages. Moreover, particular care should be taken to ensure that detained persons are actually able to understand their rights. Report to the Lithuanian Government, European Committee for the Prevention of Torture, CPT/Inf (2018) 2, 01.02.2018, para.23, available at: <<https://rm.coe.int/pdf/16807843ca>>, [last accessed: 30.01.2020]. The European Committee for the Prevention of Torture calls on the Danish authorities to ensure that detained persons are asked to certify with their signature that information about their rights has been provided to them. The absence of a signature should be explained by the law enforcement agency. Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture, CPT/Inf (2019) 35, 28.11.2019, available at: <<https://rm.coe.int/1680996859>>, [last accessed: 30.01.2020].

<sup>223</sup> Statistics on the involvement of the lawyer during the first 24 hours according to years: 2017 -15%, 2018 - 11.9%.

<sup>224</sup> Out of the 38 detainees interviewed, the lawyer met with the detainee at the police department/station - in 3 cases; in the isolator - 17 cases; in the penitentiary facility - 6 cases; at trial - 4 cases. We have no information about 3 cases. The detainee had no lawyer in 5 cases. This trend was confirmed by 52% of the lawyers interviewed online and the lawyers interviewed by the Special Preventive Group in person.

<sup>225</sup> The control of entry into the building of the Police Department of the Autonomous Republic of Adjara by the officers of the Facilities Protection Department of the Ministry of Internal Affairs also creates an artificial barrier.

or that they do not know whether the detainee really wants to meet with a lawyer.<sup>226</sup> In 2019, the Public Defender's Office had a similar case, when, according to the detainee's wife, the detainee's lawyer and the Public Defender's representative were not allowed to enter the administrative building of the Kvemo Kartli Police Department of the Ministry of Internal Affairs. It should also be noted that the time allocated for the detainee to request or contact a lawyer is still not prescribed.<sup>227</sup>

As for the provision of information to the family about the detention of a person, according to the data processed by the Special Preventive Group, families were informed of the above within statutory three hours<sup>228</sup> in 94.4% of cases. It is welcome that positive dynamics has been maintained in this regard.<sup>229</sup> At the same time, it is important to ensure that progress does not stop, as the exercise of the right to inform the family is directly related to the detainee's access to a lawyer. In their interviews with the Special Preventive Group, detainees, as well as lawyers, said that lawyers were mainly contacted by a family member/relative and not by a police officer.

**Access to a doctor, medical examination** – The monitoring results show that detainees, during their presence under police control, were mostly provided with medical care in time, except for few cases. For example:

- The detainee indicated that he was suffering from pains due to the injuries received during a car accident, was bleeding from the head and face and had bruises on various parts of the body, although he received medical care four hours later, in the temporary detention facility. After examining the medical records of the temporary detention facility, the Special Preventive Group assumed that the detainee needed urgent medical assistance.
- The detainee says he was in need of medical assistance, due to his bleeding wound, from the moment of the detention. He received medical treatment late, after the isolator refused to admit him and referred him to a medical facility. The same detainee was prescribed medicines, which he could receive only after being placed in the penitentiary facility.
- The interview with the detainee, as well as the examination of the medical records of the temporary placement isolator, made it clear that the detainee needed medical assistance due to the concussion and trauma sustained as a result of beating after his detention. However, despite his request, he could not receive assistance at the police facility. After being placed in a temporary placement isolator, the detainee was taken to a clinic, where he was examined and diagnosed with concussion.

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<sup>226</sup> 52.8% of the lawyers interviewed online reported cases when the detainee had requested a lawyer but no one contacted them in 2019. 55.9% said that their first meeting with the detainee was delayed and the detainee had already been questioned, had been threatened or had suspicious bodily injuries when they arrived.

<sup>227</sup> Facilities do not have documentation, which would have provided the details of requesting and accessing the lawyer. Interviews with the detainees show that their request to have a lawyer was not documented.

<sup>228</sup> Part 1 of Article 177 of the Criminal Procedure Code of Georgia.

<sup>229</sup> The dynamics according to years: 2017 - 71%, 2018 - 86.8%.

In terms of timely medical examination, a positive trend has been maintained in the temporary placement isolator. It is also welcome that the number of medical rooms in temporary detention facilities increased from 15 to 19 in 2019.

In their interviews with the Special Preventive Group, half of the detainees said that medical examination was conducted in the temporary detention facility in a private environment, while the rest of the detainees indicated that the staff of the temporary placement isolator were present at the medical examination, or stood near the door and could hear the conversation. The Special Preventive Group considers that conducting a medical examination in such a non-confidential environment pushes the detainee, due to some fears, to hide the real origin of the injury. The above has a negative impact on the thorough documentation of alleged injuries and timely provision of information to the relevant agency.

The monitoring revealed that the notes made by the ambulance doctors are attached to the detainee's personal files, even in the facilities where there is a medical room. In order to protect the confidentiality of the medical information, it is important that in the facilities that have medical rooms, the documents drawn up by ambulance doctors be kept with doctors of the temporary placement isolator.

In order to detect the cases of ill-treatment, it is important for the doctor to establish a connection between the injury on the detainee's body and the method of receiving the injury according to the detainee.<sup>230</sup> Doctors should make efforts to obtain detailed and credible information in order to assess more accurately whether the circumstances indicated by the detainee could cause the injury.

As in previous years, there are still cases when the detainee has injuries, but the above is not reported to the Prosecutor's Office/State Inspector's Office. In 2019, out of 449 cases processed by the Special Preventive Group, information was provided to the above agency only in 98 (21.8%) cases.<sup>231</sup> The cases involved injuries in the detainee's face and eye area.

The practice of documenting injuries by doctors of temporary placement isolators is still faulty. Based on the analysis of the processed information, it can be said that, in most cases, the circumstances of receiving the injuries (situation and method) are incompletely described or not described at all.<sup>232</sup> It is of particular concern to the Preventive Group that doctors assess the consistency between the injury received and the circumstances of receiving the injury without describing or incompletely describing

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<sup>230</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, para. 104. "In formulating a clinical impression for the purpose of reporting physical and psychological evidence of torture, there are six important questions to ask: [...] Are the physical and psychological findings consistent with the alleged report of torture? [...], Does the clinical picture suggest a false allegation of torture?"

<sup>231</sup> 110 (21.6%) out of 508 cases examined in 2018 had not been reported.

<sup>232</sup> Circumstances were not fully described in 275 (78%) out of 351 cases. The circumstances were fully described only in 76 cases.

the circumstances of receiving the injury. In contrast, there are cases when a doctor does not establish the correspondence between the injury received and the circumstances of receiving the injury even when the circumstances of receiving the injury are fully described.<sup>233</sup>

Out of 351 cases documented under the Istanbul Protocol and examined by the Special Preventive Group, photos were taken in 56 cases. The Special Preventive Group examined 40 photos. The quality of 36 of them was unsatisfactory, while in 4 cases the quality was satisfactory. In many cases, the light is not regulated or the object is not in focus. In several cases, photos were taken with a cell phone. It should also be noted that the isolators monitored by the Special Preventive Group did not have a uniform rule for keeping photos taken in accordance with the Istanbul Protocol.<sup>234</sup>

**Audio and video recording** - Citizens/detainees' first contact with the law enforcement agency may begin with communication with a patrol/inspector-police officer. For years, the Public Defender has been urging the Ministry of Internal Affairs to define, in a subordinate normative act, the obligation of the police to videotape their communication with citizens, as well as the rules and terms of keeping the recorded video footage. According to legislation, the patrol inspectors shall upload the footage obtained through their body cameras attached to their uniform to a special server, where the data shall be kept for 30 days.<sup>235</sup> As for their obligation to record (audio and video) their communication with citizens, the above depends on the discretion of the patrol inspector. It should also be noted that apart from patrol inspectors, officers of the Central Criminal Police Department and territorial bodies also have communication with citizens due to their official functions. Consequently, apart from the fact that they do not have the obligation to videotape their communication with citizens and that the above depends on their personal opinion, the rules and terms for keeping the video footage recorded by them are not defined either.

The results of the monitoring carried out by the Special Preventive Group show that the body cameras are barely used in practice.<sup>236</sup> According to lawyers, cameras are not used properly and sometimes short recordings showing only part of the communication between the police and citizens (which do not show the whole picture and are biased towards police officers) are attached to the case as evidence.<sup>237</sup>

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<sup>233</sup> Circumstances of the injuries were not fully described or were not described at all in 177 out of 275 cases, however, the doctor established consistence. In 6 cases, the circumstances were thoroughly described, however the doctor did not establish consistence.

<sup>234</sup> Most of the photos were kept in a folder on the computer desktop. Many photo documents did not have a name, surname or date. There were also cases when doctors could not find photos.

<sup>235</sup> Order No. 1310 of the Minister of Internal Affairs of December 15, 2005 on the approval of the instruction on the rules of patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia, Article 12<sup>1</sup>.

<sup>236</sup> During interviews with the Special Preventive Group, only 2 out of 38 detainees said that a body camera was used during arrest.

<sup>237</sup> Results of the interviews with lawyers working in the regions. 65.4% of the lawyers interviewed online say that if there were body camera recordings as evidence, it would have a high impact on the case.

In addition to the fact that there is no statutory obligation for patrol inspectors to use body cameras, according to the information provided by police officers, technical malfunction of body cameras is also an obstacle. During the monitoring carried out by the Special Preventive Group in regions, officers of the police departments and divisions noted that they had low-quality and malfunctioning body cameras, which created obstacles for them.

The situation is similar in police facilities, where audio/video recording of the interrogation of detainees is not mandatory and depends on the personal opinion of the police officer. The European Committee for the Prevention of Torture stresses the importance of accurate recording of all police interviews (including the start and end times and the names of all persons present during the interview). The electronic recording of police interviews has also become an effective means of preventing ill-treatment during police interviews whilst presenting significant advantages for the police officers involved. Electronic recordings should be kept securely for a reasonable period, be made available to the detained persons concerned, and/or their lawyers, and be accessible to representatives of international and national monitoring bodies, as well as to any officials responsible for investigating allegations or reports of police ill-treatment.<sup>238</sup>

In addition, the Public Defender believes that any space, where a detainee or a citizen may be present, should be fully covered by a video surveillance system. The UN Committee against Torture considers that all internal and external perimeters of police facilities, where a detainee may be present, should be equipped with a video surveillance system. Exceptions to this rule are cases where the detainee's right to privacy or the confidentiality of a meeting with a lawyer or a doctor may be violated.<sup>239</sup>

According to the information provided by the Ministry of Internal Affairs,<sup>240</sup> all territorial units were equipped with internal and external surveillance cameras in 2019, except for three police facilities.<sup>241</sup> At the same time, according to the Ministry, only entrances and common spaces can be monitored through the video surveillance system installed in the buildings.

It is worth noting that the police facilities have varied infrastructure and may include the following spaces: the entrance to the building – the so-called duty area; common workspace, i.e. workplaces of detective-investigators and/or district inspector-investigators; individual work rooms; isolated

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<sup>238</sup> 28<sup>th</sup> General Report of the European Committee for the Prevention of Torture, 2019, para. 81, available in English at: <<https://rm.coe.int/16809420e3>>, [last accessed: 01.02.2020]. Report of the UN Subcommittee on Prevention of Torture to the Government of Poland, CAT/OP/POL/ROSP/1, 09.01.2020, para. 47, available in English at: <<https://bit.ly/2xXKrn7>> [last accessed: 04.02.2020].

<sup>239</sup> Final report to the Russian Federation, Committee against Torture, CAT/C/RUS/CO/6, 28.08.2018, available at: <<https://goo.gl/JYvzY2>> [last accessed 04.02.2020].

<sup>240</sup> Letter MIA 3 19 03339730 of the Ministry of Internal Affairs of December 12, 2019.

<sup>241</sup> Video cameras are not installed in the following police stations: Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; Akhagori District Division of Mtskheta-Mtianeti Police Department of the Ministry of Internal Affairs; Jakhunderi Police Station of Lentekhi District Division.

interrogation room; identification room; lounge; kitchen; commandant’s room; corridors and staircases. According to the information received from the employees of the divisions inspected by the Special Preventive Group, citizens or detainees may be present in any space except for the lounge, commandant’s room and kitchen. Monitoring carried out by the Special Preventive Group showed that not all areas where detainees or citizens may be present, according to police officers, are covered by video cameras. In terms of the coverage of the video surveillance system, the situation is relatively better in the Kobuleti, Chokhatauri, Ozurgeti, Ambrolauri and Kvareli district divisions, as well as in the Imereti, Racha-Lechkhumi and Kvemo Svaneti police departments. Most part of the buildings in these police facilities are equipped with video surveillance systems. The situation is radically different in the Khoni, Tkibuli and Terjola district divisions, where there is only one video camera inside the building and it only covers the front door. The table below shows how various spaces are covered by video surveillance cameras in the buildings visited.

	Fully equipped	Partially equipped	Not equipped
Corridors	14	3	6
Staircases	3	6	13
Workspaces*	19	8	3
Interrogation room	6	0	4

\* *Common workplaces for detective-investigators and/or district inspector-investigators; individual work rooms;*

The presence of detainees in the rooms of police chiefs or their deputies and video surveillance of these rooms is an issue that needs to be discussed separately. In 30 divisions visited by the Special Preventive Group, none of such rooms was under audio-video surveillance, whereas these rooms are quite actively used to interview detainees or other persons in the facility.<sup>242</sup> During interviews with the Special Preventive Group, detainees and lawyers indicated that the above areas belong to risk groups. According to them, there have been cases of ill-treatment. Therefore, we may assume that the presence of detainees and persons with other status in the rooms of police chiefs or their deputies, which are not under video surveillance, creates the risk of ill-treatment. Therefore, if due to the infrastructure of the facilities, it is necessary to question the above-mentioned persons in the rooms of police chiefs and their deputies, the rooms must be necessarily equipped with a video-surveillance system.<sup>243</sup>

<sup>242</sup> According to the information provided by the police officers, in 30 police facilities, detainees are brought to the room of the police chief or deputy chief in 17 cases and persons with other status - in 25 cases.

<sup>243</sup> According to the Public Defender, installation of video cameras in the police facilities, specifically in areas where detainees, witnesses or persons voluntarily invited to an interview may be present, including in working



In order to guarantee the presence and movement of a person only in spaces covered by video surveillance, it is important that the corridors and connecting areas of all police facilities be equipped with a video surveillance system. This will make it possible to know whether a person entered an area that is not covered by cameras, who accompanied that person and how long he/she stayed there.

**Duration of presence under police control** – Given that the risk of ill-treatment of the detainees is still high at police facilities, it is important to transfer detainees to a temporary detention facility immediately after detention. According to Article 174 (2) of the Criminal Code of Georgia, after detention, the police officer shall immediately take the detainee to the nearest police facility or other law enforcement agency. In case of the transfer of the detainee to the police facility, the law does not specify the period that the detainee may spend there before being transferred to a temporary detention facility. The monitoring revealed that in rare cases, detainees spent 13 to 20 hours under police control, while the average time was 4 hours.

If a person is under police control for a long time, there are high risks of physical violence and psychological pressure. The Public Defender believes that the transfer of the detainees directly to temporary detention facilities is justified on the following grounds as well: Upon entering the detention facility, the detainee undergoes a medical examination in accordance with the Istanbul Protocol; in the temporary detention facility, the detainee is more likely to disclose alleged ill-treatment by the police; the time of placement of the detainee in the temporary placement isolator is accurately recorded; there are better material conditions in the temporary placement isolators.<sup>244</sup>

According to Article 21 of the Organic Law of Georgia on Police, the police have the right to invite a person to an interview at the police facility. From the legal point of view, the person invited to an interview does not have any status and arriving at/leaving the police facility is formally voluntary. They are not provided with procedural safeguards against ill-treatment, abuse of power, pressure and physical violence by police. Moreover, no document is drawn up when a person enters or leaves the police facility, which would have made it possible to prove that the person indeed entered the police facility.

During interviews with the Special Preventive Group, several detainees noted that they had voluntarily arrived at the police facilities prior to their arrest. Interviews with lawyers revealed that their clients,

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rooms, is not against law and cannot be considered a violation of police officers' right to privacy. In particular, according to Article 12 (3) of the Law of Georgia on Personal Data Protection: "A video surveillance system may be installed in the workplace only in exceptional cases, if it is necessary to protect human security and property, or to protect secret information, or for the purposes of an exam/test and if these goals may not be reached by other means." Clearly, the safety of the detainee – his/her protection from torture and ill-treatment - is a legitimate aim that would justify the installation of a video surveillance system in such places.

<sup>244</sup> For more information, see: 2018 Report of the National Preventive Mechanism of the Public Defender of Georgia, available at: < <https://bit.ly/2J3y0Zr> >, [last accessed: 03.02.2020].

who did not have the status of the detainee, were not allowed to move freely. Consequently, it can be said that these individuals were de facto detainees.

The Public Defender believes that any person in the police facility should enjoy procedural safeguards regardless of his or her status.<sup>245</sup> To this end, it is important to establish a mechanism that would enable monitoring bodies to obtain reliable information about the person's status, the time of his/her arrival at the police building and the time when he/she left the building.

**Maintenance of documentation in police facilities** - The UN Subcommittee on Prevention of Torture recommends that the registration and filing systems relating to detainees be standardized. Information related to a particular detainee should include the following information: The exact date and time of apprehension; The exact time of arrival at the facility; The reasons for the arrest; The authority ordering the arrest; The identity of the arresting officer or officers; The date and time of and the reasons for a detainee's transfer or release; The precise information about where the person was held during the whole period of detention; The date, time and identity of the person notified of the detention, including the signature of the officer who processed the notification; The date and time of a family visit; The date and time of the request for a meeting with a lawyer and the date and time of that meeting; The date and time of the request for a visit of a health professional and the date and time of that visit; The date and time of the detained person's first appearance before a judicial or other authority. The UN Subcommittee on Prevention of Torture also notes that police should be properly trained in the maintenance of registers and should enter the information promptly, from the moment of the arrival of the detainee. Registries should be regularly inspected by prosecutors and by internal oversight bodies of the police and the penitentiary system, as well as be made available for examination by the national preventive mechanism. Failure to comply with provisions concerning the proper keeping of accurate registers should result in disciplinary measures. The Subcommittee also recommends the Government of Cyprus to create a harmonized database, which would enable the authorities to track each detainee throughout the system more effectively.<sup>246</sup>

As in previous years, the maintenance of documents on detainees is faulty in the territorial bodies of the police. Police facilities have a book of registration of persons detained in the bodies of internal affairs<sup>247</sup> and a register of persons transferred to prison (temporary detention isolator);<sup>248</sup> some territorial bodies have a register of citizens. Monitoring of police facilities shows that the police

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<sup>245</sup> Report to the Government of Ukraine, European Committee for the Prevention of Torture, CPT/Inf (2018)41, 06.09.2018, para. 29, available at: < <https://rm.coe.int/16808d2c2a>> [last accessed: 03.02.2020].

<sup>246</sup> Report on the visit paid by the UN Subcommittee on Prevention of Torture to Cyprus on January 25-29, 2016, CAT/OP/CYP/1, para: 21, available in English at: <<https://bit.ly/3dkjevd>> [last accessed: 03.02. 2020].

<sup>247</sup> The register of persons arrested in the bodies of internal affairs has the following graphs: first name/last name/father's name/year and place of birth/; workplace; date and time when the detainee was brought in the building/when he left the building; results of the examination; date and time of arrest; reason and place of arrest; arresting person; article of the Criminal Code; case number.

<sup>248</sup> The date and time of placement of the detainee in the temporary detention facility shall be recorded in the register of persons transferred to prison (temporary detention isolator).

departments do not produce accurate data on persons requesting or meeting a lawyer, provision of medical services, etc. The production of documentation is not harmonious or unified and fails to provide complete information about the detainee. In 17 of the 30 police facilities visited by the Special Preventive Group, shortcomings were detected in the registers. In particular, in some cases, the date/time of arrest is unavailable, the date/time when the detainee left the police division is unclear, the time of taking the person to the temporary detention isolator precedes the time of the arrest, or the time of bringing the person to the division precedes the time of the arrest, the date/time of the detainee's transfer to prison/isolator is not specified.

It is important for the Ministry of Internal Affairs, at least in a pilot mode, to begin producing systematized registers of detainees in police facilities, which would create additional safeguards against torture and ill-treatment.

In terms of documentation, it is still problematic to properly fill in the detention documents. First of all, the problem is that, unlike the document on the detention of a defendant on charges, the document on administrative detention does not include a graph, where police officers would describe the injuries on the body of the detainee. Therefore, some police officers try to describe injuries in some free space of the paper. In 30.7% of the cases examined in 2019, the detention documents did not indicate the injuries described in the examination report of the temporary detention isolator.<sup>249</sup> Of these, in 125 (38.1%) of the 328 administrative cases examined, information of detention documents did not match with information of documents produced by the isolator.

Documentation of disobedience/resistance and use of force is also faulty. Disobedience/resistance was reported in 285 (63.8%) out of 447 cases in 2019.<sup>250</sup> The use of force was indicated in 64 (14%) arrest documents in 2019. The use of force was described in 12 of them. In one of these 12 cases, the use of force was fully described and in 11 cases –partially described. Documentation on the legal measures taken against the detainee by the police, especially in case of the use of force or special equipment, would encourage higher sense of responsibility among police officers and help implementation of control over the fulfillment of statutory obligations by them.

Overall, it should be taken into account that body cameras are in fact not used and the spaces in police facilities, where detainees or persons with other status may be present, are not covered by a video surveillance system. Consequently, if the detention document does not indicate an injury, resistance, disobedience or use of force, a strong presumption arises that the detainee was subjected to physical violence under police control. When a detainee is brought to a police facility in good health and leaves

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<sup>249</sup> About one-third of the cases reported in 2018, similar to 2017, does not indicate the injury described in the external examination report (2018 - 27.6%, 2017 - 30.1%, 2016 - 31.3).

<sup>250</sup> Compared to 2018, the percentage of resistance/disobedience increased.

it with injuries, it is the responsibility of the State to explain and justify where the detainee sustained these injuries.<sup>251</sup>

Therefore, in order to provide more safeguards against ill-treatment and prevent false presumptions of ill-treatment by police officers, the Public Defender believes it is necessary to accurately produce documents and bring them in line with international standards.

**The role of a judge** - Judges can play an important role in the prevention of ill-treatment by police. This role is recognized by Article 2 (1) of the UN Convention against Torture, which indicates the importance of taking judicial measures to prevent torture.<sup>252</sup>

A positive addition was made to Article 191<sup>1</sup> of the Criminal Procedure Code in July 2019. According to the amendment, if at any stage of criminal proceedings, the judge suspects that the untried/convicted person was tortured, degraded and/or treated inhumanely, or if the untried/convicted person himself/herself tells the court about the above, the judge shall apply to the relevant body for response. Nevertheless, according to the information provided by the lawyers specialized in criminal law, judges do not properly consider the cases of alleged ill-treatment by police officers. Some of the defendants interviewed by the Special Preventive Group said that they had visible multiple injuries (including in the face area), but the judge did not pay attention to it.

The Public Defender considers it important to amend the Administrative Offences Code of Georgia and to stipulate that if a judge suspects that a person under administrative detention was subjected to torture, degrading and/or inhuman treatment, or if a person himself/herself tells the court about the above, the judge shall apply to the relevant investigative body for response.

### **3.5. Conditions in temporary detention isolators**

The Public Defender of Georgia/National Preventive Mechanism welcomes the repairs carried out in 2019 to improve the infrastructure and living conditions in temporary detention isolators.<sup>253</sup> Despite the above, conditions in a number of temporary placement isolators still need to be improved and brought in line with international standards.

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<sup>251</sup> Judgment of the European Court of Human Rights in the case of Selmoun v. France, para: 87.

<sup>252</sup> "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction," UN Convention against Torture, Art. 2 (1).

<sup>253</sup> Baghdati, Samtredia, Senaki, Poti, Signagi, Lanchkhuti, Ozurgeti and Kobuleti temporary placement isolators have been repaired.

During visits made in 2019,<sup>254</sup> it was found that a number of temporary placement isolators were not provided with proper natural<sup>255</sup> or artificial ventilation<sup>256</sup> or lighting, while some of the isolators were in need of refurbishment.<sup>257</sup> The environment was not adapted for people with disabilities in any of the temporary detention isolators inspected by the Special Preventive Group in 2019. The semi-isolated sanitary facilities<sup>258</sup> is particularly problematic in the cells intended for two or more people, where prisoners have to meet their natural needs in the presence of another person/persons. The toilets are not provided with flushing system and the water pipe located a few centimeters above the sewer hole is used instead.<sup>259</sup> Unfortunately, this pipe is also used by some detainees to get drinking water, which is unhygienic due to the location of the pipe, causing fair dissatisfaction of the detainees.

Persons placed in the temporary detention facilities inspected in 2019 are provided with only dry food,<sup>260</sup> which is not proper food. Unfortunately, the persons held under administrative detention have to eat dry food for up to 15 days, which can be detrimental to their health. The lack of dietary food is also a problem in the isolators.

#### **Proposal to the Parliament of Georgia:**

- Amend the Administrative Offences Code of Georgia and stipulate that if a judge suspects that a person under administrative detention was subjected to torture, degrading and/or inhuman treatment, or if a person himself/herself tells the court about the above, the judge shall apply to the relevant investigative body for response.

#### **To the Minister of Internal Affairs of Georgia:**

- Ensure in several police facilities, in a pilot mode, that the provision of information to the detainees of their rights by police officers is recorded by technical equipment (audio-video)

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<sup>254</sup> Isolators located in Kakheti, Imereti, Racha-Lechkhumi, Kvemo Svaneti, Adjara and Guria regions.

<sup>255</sup> Due to small windows, there is a problem of natural lighting and ventilation in the cells of Adjara and Guria regional, Chiatura, Imereti Racha-Lechkhumi and Kvemo Svaneti regional, Samtredia, Zestaponi, Baghdati, Sagarejo, Kakheti regional, Kvareli and Lanchkhuti temporary placement isolators.

<sup>256</sup> Artificial ventilation is insufficient in the cells of Adjara and Guria regional and Baghdati temporary placement isolators.

<sup>257</sup> Moisture and dirt could be noticed on the walls and the paint is fallen off in some places in the cells of Adjara and Guria regional, Imereti Racha-Lechkhumi, Kvemo Svaneti regional, as well as Sagarejo temporary placement isolators.

<sup>258</sup> The cells have semi-isolated sanitary facilities in the following temporary placement isolators: Adjara and Guria regional, Imereti, Racha-Lechkhumi and Kvemo Svaneti regional, Lanchkhuti, Kobuleti, Ozurgeti, Zestaponi, Samtredia and Ambrolauri temporary placement isolators. The water pipe located a few centimeters above the sewer hole is used in these isolators instead of a flush toilet system.

<sup>259</sup> Which fails to properly flush the toilet.

<sup>260</sup> Canned beef, dry soup, pate and bread.

- Install surveillance cameras in all places of police departments, divisions and stations, where detainees and persons voluntarily invited to an interview may be present
- In 2020, gradually equip officers of the territorial bodies with upgraded body cameras and define, by a subordinate normative act, the obligation to videotape the communication with citizens, as well as the rules and term of keeping the recordings
- Define, by a subordinate normative act, the obligation to videotape the communication between patrol inspectors and citizens
- Amend order No. 625 of the Minister of Internal Affairs of Georgia of August 15, 2014 and add the following graphs to the administrative detention form approved by Annex No. 9: The time of drawing up the document; description of the injuries on the body of the detainee; under what circumstances the arrest took place; whether there was resistance; whether the measure of coercion was used and in what form
- In 2020, increase the number of isolators that have medical rooms; in addition, employ doctors on the basis of employment contracts in the isolators, where it is not planned to open medical rooms due to the low number of detainees
- Ensure continuous audio-video recording of interrogations in several police facilities
- Ensure that detainees are transferred directly to the temporary detention isolator as soon as they are arrested
- Train doctors employed in the temporary detention isolators in photographing injuries on the body of persons placed in isolators and the procedure for keeping the photographs
- Produce a register on all persons brought to the police departments, divisions and stations, by indicating their status, the time when they were brought to the building and the time when they left the building
- In 2020, eliminate the problems relating to the living conditions in the temporary placement isolators that are described in the present report
- Introduce systematized, standardized and unified databases in police facilities to replace the registers produced in the facilities.

## 4. Psychiatric institutions

### 4.1. Implementation of recommendations

In the 2018 Report of the National Preventive Mechanism, the Public Defender of Georgia offered 19 recommendations for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in psychiatric institutions. 7 of the recommendations have been endorsed in the resolution of the Parliament of Georgia.<sup>261</sup>

**None of the 5 proposals issued to the Parliament of Georgia has been implemented. Out of 3 recommendations made to the Government of Georgia, 1 was implemented and 2 were not implemented. Out of 11 recommendations made to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (hereinafter - the Ministry), 2 were implemented, 8 were not implemented, while the implementation of one recommendation could not be assessed.**<sup>262</sup>

In 2019, the Public Defender's Office/National Preventive Mechanism had active communication and dialogue with the Ministry. We positively assess the practice of timely submission of various data by the Ministry. The readiness of the Ministry to conduct a constructive dialogue is welcome. A number of working meetings were held to discuss the situation in psychiatric institutions.

The purpose of the present chapter is to review the recommendations offered in the report of the National Preventive Mechanism and their implementation. Information on these issues is additionally presented in the relevant thematic chapters.

#### **Proposals to the Parliament of Georgia**

None of the 5 proposals issued by the National Preventive Mechanism to the Parliament of Georgia was implemented in 2019. The reply received from the Ministry says that measures are being taken to carry out the mentioned changes.<sup>263</sup>

*One proposal* to the Parliament of Georgia concerned the establishment of **complaints system and external state oversight/control mechanism**. In particular, the Public Defender demanded to explicitly define at the legislative level the procedure for reviewing complaints, as well as the grounds for

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<sup>261</sup> Resolution of the Parliament of Georgia of September 20, 2019 on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018.

<sup>262</sup> We have not received information on the implementation of two recommendations in response to our letter N 03-3/12528 sent to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on November 19, 2019.

<sup>263</sup> Letter No. 01/20057 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of November 27, 2019.

carrying out external oversight of the monitoring of the protection of patients' rights and the provision of psychiatric care.

*Four proposals* to the Parliament of Georgia concerned the **legislative regulation of physical and chemical restraints**. In particular, the *first proposal* concerned the definition of alternative (de-escalation) methods of physical and chemical restraint at the legislative level. The *second proposal* concerned the definition of chemical restraint at the legislative level and the determination of legal grounds and procedures for its application in exceptional cases, as well as the obligation of psychiatric institutions to approve detailed instructions for the application of chemical restraint. The *third proposal* concerned the determination of the duration of physical restraint at the legislative level, the obligation to record the use of physical restraint in a special register and the determination of the requirements to be met by a specialized isolation ward at the legislative level. In addition, the proposal addressed issues, such as the use of video surveillance system in the process of application of physical restraint, interviewing patients after the end of application of physical restraint and informing them of their right to appeal. The European Committee for the Prevention of Torture also refers to the importance of making changes in the regulations on physical restraint in its 2019 report on Georgia.<sup>264</sup>

The *fourth proposal* demanded to stipulate at the legislative level that physical restraint, as a rule, shall not be used towards formally voluntary patients, and that in the event of an urgent need for physical restraint, a procedure for reviewing the status of the patient (voluntary/involuntary) shall be initiated immediately. A recommendation similar to this has been issued by the European Committee for the Prevention of Torture as well.<sup>265</sup>

### **Recommendations to the Government of Georgia**

The *first recommendation* to the Government of Georgia demanded to make the daily expenses of an asylum beneficiary equal to at least the daily cost of a bed in a long-term inpatient service.<sup>266</sup> The Public Defender/Special Preventive Group welcomes the implementation of this recommendation. In particular, according to the State Health Programme 2020, the daily expenses of a beneficiary was set at GEL 23.<sup>267</sup>

The *second recommendation* to the Government of Georgia concerned the approval of a special rule for the unimpeded purchase of quality medicines, according to which, the psychiatric institutions,

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<sup>264</sup> Report of the European Committee for the Prevention of Torture on the visit to Georgia (CPT/Inf (2019) 16), para. 134, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

<sup>265</sup> Report of the European Committee for the Prevention of Torture on the visit to Georgia (CPT/Inf (2019) 16), para. 139, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

<sup>266</sup> In 2019, the daily cost of the shelter was GEL 17.

<sup>267</sup> Resolution No. 674 of the Government of Georgia of December 31, 2020 on the approval of state health care programmes.



where the State owns more than 50% of shares, would be able to purchase medicines under simplified procedure. The recommendation has not been implemented. According to the reply received from the Ministry, consultations have begun on the above issue with the State Procurement Agency and other parties concerned.<sup>268</sup>

The *third recommendation* to the Government of Georgia concerned **changes to the mental health programme** to manage the side effects of medicines through appropriate examinations and consultations, in accordance with the guidelines in place in the country. The European Committee for the Prevention of Torture also refers to the management of drug side effects in its 2019 report on Georgia.<sup>269</sup> The reply received from the Ministry reads that the Ministry does not acknowledge this problem and believes that the treatment in institutions providing mental services is carried out according to the guidelines applied in the country.<sup>270</sup> This recommendation has not been implemented. In particular, the State Health Plan 2020<sup>271</sup> does not provide for the management of side effects, which leads to the non-obligation to manage side effects.<sup>272</sup>

#### **Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Labour, Health and Social Affairs**

One recommendation to the Ministry concerned the **elimination of threats to the provision of smooth medical care** at Bediani Psychiatric Hospital. The issuance of this recommendation is related to the violations identified by the Internal Audit Department of the Ministry at East Georgia Mental Health Centre Ltd,<sup>273</sup> which posed a threat to the smooth provision of mental care. According to the information received from the Ministry, most of the patients of Bediani Hospital were transferred to the newly renovated building of Acad. B. Naneishvili National Mental Health Centre, while the remaining 30 patients are placed in the women's unit, where conditions are relatively better.

It should be noted that the State is taking some steps towards the deinstitutionalization of large psychiatric institutions. The Public Defender welcomes all practical decisions aimed at improving

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<sup>268</sup> Letter No. 01/20057 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, November 27, 2019.

<sup>269</sup> Report of the European Committee for the Prevention of Torture on the visit to Georgia (CPT/Inf (2019) 16), para. 124, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

<sup>270</sup> Letter No. 01/20057 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, November 27, 2019.

<sup>271</sup> Resolution of the Government of Georgia on Approval of State Health Care Programmes 2020, available at: <<https://bit.ly/2U7JHVC>> [last accessed: 27.01.20].

<sup>272</sup> For more information, see the chapter on somatic health.

<sup>273</sup> For information on violations, see the 2018 Report of the National Preventive Mechanism, p. 97-99, available at: <<https://bit.ly/2QBMRhM>> [last accessed: 27.01.2020].

conditions and developing modern, community-based services in the country, although without a specific strategy, the process runs the risk of developing deinstitutionalization in the wrong direction.

The placement of people with mental health problems in large institutions does not comply with Article 19 of the UN Convention on the Rights of Persons with Disabilities. Therefore, the state policy-making agencies should take effective steps as soon as possible to facilitate the deinstitutionalization process and the development of community-based services.

One recommendation to the Ministry concerned the **inspection of all psychiatric institutions by the Internal Audit Department** of the Ministry. The reply received from the Ministry reads that the Audit Department, which is a part of the system of the Ministry, is not authorized to inspect private psychiatric institutions. This recommendation has not been implemented. It should be noted that the State owns 100% of shares in 6 out of 11 psychiatric institutions implementing the state health programme. Therefore, all 6 of the institutions fall under the competence of the Internal Audit Department.<sup>274</sup> The Ministry has not provided information on whether monitoring was carried out in the mentioned institutions or not.

One recommendation to the Ministry concerned the issue of **referring patients to community-based services**. In particular, the Public Defender/Special Preventive Group requested an assessment of the needs of patients placed in psychiatric facilities for more than 6 months for the purpose of discharging them from the facility and referring them to the community-based services, as well as development of a plan for the establishment of shelters in accordance with the number of future beneficiaries of the shelter.<sup>275</sup> This recommendation has not been implemented. The recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution.<sup>276</sup> The European Committee for the Prevention of Torture also talks about the development of community-based services in its 2019 report on Georgia.<sup>277</sup> The reply received from the Ministry shows that measures are being taken to develop mental health care standards and effective evaluation mechanisms.

One recommendation to the Ministry concerned the **evaluation of the state oversight and patients' rights monitoring system by independent experts for the purpose of increasing its effectiveness**. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its

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<sup>274</sup> Article 4 (2) of the Law of Georgia on Public Internal Financial Control. Resolution No. 473 of the Government of Georgia on Approval of the Statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, Article 10.

<sup>275</sup> Detailed information can be found in the following report on the visit to Acad B. Naneishvili National Mental Health Centre, p.21, see the link <<https://bit.ly/399X6Ag>> [last accessed: 28.01.2020].

<sup>276</sup> Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018.

<sup>277</sup> Report of the European Committee for the Prevention of Torture on the visit to Georgia (CPT/Inf (2019) 16), para. 106, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

resolution.<sup>278</sup> The recommendation has not been implemented. The reply received from the Ministry indicates that an independent expert is examining the state oversight and patients' rights monitoring system and drawing up relevant recommendations, which we welcome.

One of the recommendations made to the Ministry concerned **regular, systemic and proactive monitoring of psychiatric institutions by the Social Service Agency and LEPL State Regulation Agency for Medical Activities and the assessment of the compliance between the conditions in psychiatric institutions and the standards set by the regulations on the issuance of medical license and permit for inpatient facilities**. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has not been implemented. According to the Public Defender, the existing external (outside hospital) control mechanisms fail to ensure the required degree of state control.<sup>279</sup>

Two recommendations issued to the Ministry concerned the **introduction of complaints review procedures in psychiatric institutions**. In particular, the *first recommendation* concerned the determination of a unified internal complaints review and feedback procedure for all institutions at the normative act. The recommendation has not been implemented. The recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The *second recommendation* concerned the introduction of a simple and accessible procedure for complaining about issues relating to outpatient psychiatric care and human rights violations. The recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The reply received from the Ministry reads that the mental health legislation is now being reviewed, updated and harmonized with the EU legislation and it is planned to carry out relevant changes. Consequently, this recommendation has not been implemented so far.

One recommendation to the Ministry was aimed at **preventing inter-patient violence and ensuring their safety**. In particular, the Public Defender/Special Preventive Group demanded the introduction of a proper system for assessing and reducing the risks coming from patients and to document responses to the incidents of violence. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has not been implemented so far. The European Committee for the Prevention of Torture also refers to the need for taking measures to prevent inter-patient violence and to ensure safety in its 2019 report on Georgia.<sup>280</sup> The reply received from the Ministry reads that they plan to make relevant changes in this direction.

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<sup>278</sup> Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018.

<sup>279</sup> See detailed information in the chapter on state oversight and control.

<sup>280</sup> Report of the European Committee for the Prevention of Torture on the visit to Georgia (CPT/Inf (2019) 16), para. 107, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 15.01.20].

One recommendation to the Ministry concerned **changes to the regulation of physical restraint**. In particular, the Public Defender/Special Preventive Group requested amendments to the Instructions on the Rules and Procedures for the Use of Physical Restraint Methods towards Patients with Mental Disorders approved by a subordinate normative act,<sup>281</sup> in order determine: the maximum duration of physical restraint; the obligation to record the bodily injuries sustained by a patient and/or staff during application of physical restraint in a special register; the form of a special register; detailed instructions for the application of physical restraint; specific characteristics of special equipment used during physical restraint; where physical restraint shall be used and who may be present; what requirements shall be met by a specialized isolation ward; issues related to the use of video surveillance system during the application of physical restraint and the obligation of the staff to talk to patients after the use of physical restraint and to inform them of their right to appeal. This recommendation has been endorsed by the Parliament of Georgia and has been reflected in its resolution. The recommendation has not been implemented so far. According to the reply received from the Ministry, changes are planned to be carried out in this direction.

One recommendation issued to the Ministry concerned the **introduction of multidisciplinary work in psychiatric institutions**. In particular, the Public Defender/Special Preventive Group requested that the factors hindering multidisciplinary work be identified in all psychiatric institutions and a plan be devised for their elimination. This recommendation has not been implemented. The reply received from the Ministry reads that the Ministry plans to identify the factors hindering the application of a multidisciplinary approach in the fall of this year, with the technical and financial assistance of the French Development Agency.

One of the recommendations issued to the Ministry called on the Ministry to study the **issue of proper performance of duties of the supporter in psychiatric institutions**. In particular, the Public Defender/Special Preventive Group demanded to study the proper performance of the duties of the supporter by former and current staff at Bediani Psychiatric Hospital, Acad. B. Naneishvili National Mental Health Centre (hereinafter referred to as the National Mental Health Centre) and Batumi Medical Centre and in the event of detecting improper performance of duties, to apply to the court with a request to dismiss the above persons and to assign the duties of the supporter to an authorized representative of the guardianship and custody authorities. We have not received a reply on the implementation of the recommendation even though the National Preventive Mechanism requested the relevant information. Consequently, it is impossible to assess the implementation of the recommendation.

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<sup>281</sup> Order No. 92/N of the Minister of Labour, Health and Social Affairs of Georgia, March 20, 2007.

## 4.2. Ill-treatment

### Treatment of patients by staff

During a visit to the Psychiatric Hospital of Batumi Medical Centre,<sup>282</sup> the monitoring team found that, as in previous years, the rude treatment by staff was still taking place in the facility.<sup>283</sup> The above was confirmed by the director of the facility and was noticed by the monitoring team as well.

As for the National Mental Health Centre, the Special Preventive Group did not receive any information about physical or verbal abuse by staff during its visit to the facility.<sup>284</sup> It should be emphasized that the administration and medical staff of the facility are indifferent towards patients/beneficiaries. The Special Preventive Group describes conditions in the 2<sup>nd</sup> and 7<sup>th</sup> wards, as well as in the shelter, as extremely degrading. In addition, the patients' needs, including relating to somatic health, are neglected. These issues are discussed in detail in the relevant chapters of the report.<sup>285</sup>

**In addition to the above, the Special Preventive Group found that the staff of the National Mental Health Centre used the labour of patients/beneficiaries in exchange for giving them cigarettes or extra portions of food. Some patients/beneficiaries clean toilets, yards, bring food from the kitchen, help staff to care for other patients or to physically restrain an agitated patient. The Special Preventive Group assesses this practice as an exploitation of patients/beneficiaries's labour,<sup>286</sup> because on the one hand, patients are unable to engage in other meaningful and therapeutic activities as an alternative, and on the other hand, they are forced to agree to the above in order to satisfy their needs relating to food and cigarette.**

Visits to both facilities revealed that formally voluntary patients<sup>287</sup> could not leave the facility voluntarily, as in previous years. Patients sign a written informed consent form without having adequate information.<sup>288</sup> Sometimes psychological pressure is exerted on patients in order to persuade

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<sup>282</sup> September 18-19, 2019.

<sup>283</sup> Manifested in verbal and physical abuse.

<sup>284</sup> 22-25 April, 2019.

<sup>285</sup> See chapters on physical Environment and somatic health.

<sup>286</sup> Abuse of position of vulnerability, United Nations Office on Drugs and Crime (UNODC), Concept of Exploitation in the Trafficking in Persons, p. 21, available at: <<https://bit.ly/3118bRo>> [last accessed: 20.01.2020].

<sup>287</sup> It should be noted that during the visit of the Special Preventive Group, only one patient was involuntarily placed in the Psychiatric Hospital of Batumi Medical Centre and three patients - in the four divisions of the National Mental Health Centre.

<sup>288</sup> For example, there was a case when the informed consent was signed by one of the patients of the National Mental Health Centre, even though the patient could not read or write. In addition, the patient says he was against the placement at the hospital when the relevant decision was made and still remains against the inpatient treatment.

them to sign the document.<sup>289</sup> It is important to obtain informed written consent from the patient at all stages of starting, continuing and changing treatment.

### **Inter-patient violence**

The European Committee for the Prevention of Torture says in its report that the duty of care which is owed by staff in a psychiatric establishment to those in their charge includes the responsibility to protect them from other patients/residents who might cause them harm. This requires not only adequate staff presence and supervision at all times, but also that staff be properly trained in handling challenging situations/behaviour by patients. The European Committee calls on the Georgian authorities to remedy the above problem.<sup>290</sup>

As in previous years, inter-patient violence and conflicts still occur at the National Mental Health Centre and Batumi Medical Centre, which is caused by the insufficient supervision by staff. In some cases, patients sustain serious physical injuries. The Group found that conflicts mainly arise after one patient grabs or steals the personal belongings of another patient (e.g., cigarettes or coffee). In addition, the Special Preventive Group believes that one of the most important risk factors of inter-patient violence at the National Mental Health Centre is the fact that acute<sup>291</sup> and long-term<sup>292</sup> inpatients, as well as persons with mental retardation and other patients are placed together in the 2<sup>nd</sup> and 7<sup>th</sup> wards.

### **Safeguards against ill-treatment**

The system of assessing and reducing the risks posed by patients, the existing practice of documenting and responding to the incidents of violence, the system of controlling the performance of staff and reviewing complaints, as well as provision of information to patients about legal protection mechanisms and their accessibility, represent challenges in the psychiatric institutions.

It should be noted that the National Mental Health Centre and Batumi Medical Centre have not developed a conflict prevention strategy or detailed instructions for staff. The medical staff of the institutions have not been trained in handling an agitated patient, protection of human rights, use of non-violent de-escalation methods or physical restraint.

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<sup>289</sup> For example, one of the patients at the National Mental Health Centre confirmed in an interview that he had signed the informed consent form, but according to him, he signed it after doctors told him they would apply to court in case of his refusal and would leave him at the facility for six months.

<sup>290</sup> Report (CPT/Inf (2019) 16) of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, para. 108, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 17.02.2020].

<sup>291</sup> "Inpatient care for acute cases involves relieving acute psychotic symptoms or treating behavioral or affective symptoms that endanger the life and health of the patient or others."

<sup>292</sup> Long-term inpatient care includes inpatient treatment of persons with chronic mental disorders who suffer from severe psychosocial dysfunction and/or prolonged psychotic symptoms (including continuation of treatment of acute cases after inpatient care).

It is welcome that since March 2019, a patient risk assessment system has been introduced in all the units of the National Mental Health Centre. Nevertheless, during psycho-diagnostic examination, no triggers<sup>293</sup> of patients posing a danger of violence are identified along with assessing their risks, which would have enabled staff to be aware of the patients' provocative factors and help them avoid violence. The documentation produced by the institution shows that no psychotherapy is provided for the management of the behavior of patients who pose a high risk of violence and only pharmacotherapy is used, in particular, the doses of medication are increased.

The National Mental Health Centre documents the cases of violence against patients and responses to such cases only in the patient's medical cards and the patient monitoring journals and, in most cases, they do not indicate the time of violence, the persons involved in the incident, or the causes of violence.<sup>294</sup> Batumi Medical Centre has a special journal for the above, which provides more or less accurate information about the cases of violence.

As for the documentation of responses to the cases of violence, according to the practice of the National Mental Health Centre and Batumi Medical Centre, victims of violence do not receive psychotherapeutic support or legal aid. When patients suffer physical injuries as a result of violence, only medical intervention is provided, which involves treatment for bodily injuries. In response to the inter-patient conflict, patients are sometimes separated from each other by being transferred to different wards. The legal documents of the institutions do not specify in what cases and by whom the incident of violence should be reported to an investigative body and no relevant statistics are maintained.

In order to protect the rights of patients and provide quality services to them, the National Mental Health Centre and Batumi Medical Centre have internal complaints mechanisms, which is welcome. However, the Special Preventive Group considers that the internal rights protection mechanism is faulty and cannot properly ensure the protection of patients' rights. Another problem is that the institutions do not provide patients with adequate information about their rights or external complaints mechanisms. The obligation to provide information is not regulated by any normative act.

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<sup>293</sup> Situations or stimuli which can lead to a range of emotions, including distress, frustration, anger or agitation, which may escalate into a potentially tense and challenging situation. For details, see the WHO Course Guide: Creating mental health and related services free from coercion, violence and abuse, p.34.

<sup>294</sup> For example, the document on one of the incidents contains only the following information: "Beneficiary A. during verbal confrontation, punched B in the eye area sustained a small bruise" (punctuation unchanged). No time or circumstances of the incident, causes of conflict or response measures are described in the document.

### 4.3. Physical and chemical restraints

The Public Defender shares the spirit of the UN Convention on the Rights of Persons with Disabilities<sup>295</sup> and the approach of the World Health Organization in relation to mental health, which are based on a model promoting rights and recovery,<sup>296</sup> and believes that the State should promote the reduction and ultimate elimination of the use of physical<sup>297</sup> and chemical<sup>298</sup> restraints. The Special Preventive Group considers that the approaches of the State and the institutions are not directed towards the above-mentioned goal.

The Law of Georgia on Psychiatric Care does not clearly indicate the institution's obligation to prevent crises, identify or manage potential triggers and warning signs.<sup>299</sup> It is important for the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs, as required by law, to develop a general standard to oblige all psychiatric institutions to develop a mandatory internal document for crisis prevention and management in order to minimize the risks of escalation of the situation and consequently, to avoid the use of extreme measures.

The Public Defender and the Special Preventive Group welcome the approval of verbal de-escalation methods<sup>300</sup> at the National Mental Health Centre and Batumi Medical Centre. However, the institutions do not use verbal (non-violent) de-escalation methods in practice, because the staff interviewed by the Special Preventive Group did not have information about the above methods. They try to handle crises with wrong methods.<sup>301</sup> The use of restraint methods requires special knowledge and special caution, which makes it necessary to train staff and equip them with necessary skills in order to ensure the

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<sup>295</sup> Guidelines for the definition of Article 14 of the Convention on the Rights of Persons with Disabilities.

<sup>296</sup> WHO QualityRights initiative – Improving quality, promoting human rights of people with psychosocial disabilities, 2017, available at: <[http://www.who.int/mental\\_health/policy/quality\\_rights/en/](http://www.who.int/mental_health/policy/quality_rights/en/)> [last accessed: 19.02.2020].

<sup>297</sup> According to Article 16 (2) of the Law of Georgia on Psychiatric Care, "Methods of physical restraint are the isolation of a person in a specialized ward and/or physical binding of a patient."

<sup>298</sup> According to the European Committee for the Prevention of Torture, chemical restraint is forcible administration of medication for the purpose of controlling a patient's behaviour. See the CPT Standards, Introduction, p. 2, available at: <<https://rm.coe.int/16807001c3>>, [last accessed: 03.01.2020].

<sup>299</sup> Triggers – Situations or stimuli which can lead to a range of emotions, including distress, frustration, anger or agitation, which may escalate into a potentially tense and challenging situation.

Warning signs – Changes in the mood, thoughts or behavior that indicate that something is not in order. Identification of such signs is important as far as timely measures may prevent a crisis.

For details, see WHO Course Guide - Creating mental health and related services free from coercion, violence and abuse.

<sup>300</sup> Order No. 058/2 of the Director General of Ltd. Academician B. Naneishvili National Mental Health Centre on the approval of methods of verbal de-escalation, March 3, 2019.

<sup>301</sup> For example, there are so-called surveillance/isolation wards at Batumi Medical Centre for the patients that need strict supervision. The wards are overcrowded, uncomfortable and patients are at higher risk of self-harm.



safety of both patients and staff.<sup>302</sup> The process of application of restraint should not be degrading and should not be attended by other patients. The supervisor staff continue to be involved in the process of the use of chemical and physical restraints at the National Mental Health Centre. There are also cases of the use of physical restraint in the presence of other patients, which is contrary to the instructions approved by the order on the use of methods of physical restraint.<sup>303</sup>

It is important to continue the use of de-escalation methods during physical restraint in order to minimize the duration of the restraint and ensure continuity of the therapy.<sup>304</sup>

According to the standard proposed by the European Committee for the Prevention of Torture (CPT), the decision on the use of the restraint method shall be made only by a psychiatrist, who shall individually assess the patient's condition and circumstances. This decision shall be made in writing and shall be duly (not only formally) substantiated,<sup>305</sup> shall be attached to the patient's personal medical records and shall be reflected in a special register.<sup>306</sup> Proper documentation is important not only for the purposes of the monitoring, but for doctors as well, who should take into account the previous experience, if the use of restraint will be needed again. Examination of the documentation produced by the National Mental Health Centre shows that the institution **does not provide adequate justification (complete description of causes and circumstances) for the use of physical restraint**, thus violating the instructions for the use of physical restraint methods approved by the minister's order.<sup>307</sup> The cases of isolation are not documented and the documentation of the use of chemical restraint is also faulty.

The recommendation issued by the European Committee for the Prevention of Torture to Georgia stresses that if it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status should be initiated immediately.<sup>308</sup> The monitoring visits to the National Mental

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<sup>302</sup> Revised Standards of the European Committee for the Prevention of Torture on Means of restraint in psychiatric establishments for adults, paragraphs 3.1. and 3.2.

<sup>303</sup> Order No. 92/N of the Minister of Labour, Health and Social Affairs of Georgia on the approval of instructions on the rules and procedures for the use of methods of physical restraint towards patients with mental disorders.

<sup>304</sup> Revised Standards of the European Committee for the Prevention of Torture on Means of restraint in psychiatric establishments for adults, para.3.3.

<sup>305</sup> Recommendation REC 2004 (10) of the Committee of Ministers of the Council of Europe on the protection of human rights and persons with mental health problems, Article 27, available at: < <https://bit.ly/2vFPiIS> > [last accessed: 17.02.2020].

<sup>306</sup> The report of the European Committee for the Prevention of Torture on its visit paid to Georgia on September, 10-21 2018, para: 134, available at <<https://rm.coe.int/1680945eca>> [last accessed 22.01.20].

<sup>307</sup> Order No. 92/N of the Minister of Labour, Health and Social Affairs of Georgia on the approval of instructions on the rules and procedures for the use of methods of physical restraint towards patients with mental disorders, para. 6, Tbilisi, March 20, 2007, available at: <<https://matsne.gov.ge/ka/document/view/69838?publication=0>> [last accessed: 22.01.20].

<sup>308</sup> The report of the European Committee for the Prevention of Torture on its visit paid to Georgia on September, 10-21 2018, para: 136.

Health Centre and Batumi Medical Centre made it clear that forced injections, as well the use of physical restraint against formally voluntary patients, still occur in the institutions.<sup>309</sup>

It is important for the institutions, when using the restraint method, to provide the patient with information on complaints mechanisms. The patient should be able to appeal against the use of physical and chemical restraint personally or through his/her representative, in order to ensure the realization of his/her right to a fair trial enshrined in Article 6 of the European Convention on Human Rights.<sup>310</sup>

#### 4.4. Psychiatric care

##### Treatment with antipsychotic drugs

Psychiatric care at National Mental Health Centre and Batumi Medical Centre is not biopsychosocial in nature and is mainly limited to pharmacotherapy. The Special Preventive Group believes that it is impossible to ensure proper psychiatric care without biopsychosocial approach, which, in addition to pharmacotherapy, implies psycho-social rehabilitation of the patient, taking into account his/her individual needs.

One of the problems at the National Mental Health Centre and Batumi Medical Centre is the prescription of several antipsychotic drugs to be taken together. Examination of medical records reveals that in several cases, patients were prescribed two, three, or more antipsychotic drugs,<sup>311</sup> including, in some cases, in combination with Zopin (Clozapine).<sup>312</sup> According to national clinical practice guidelines, for the majority of patients, except for extraordinary cases, it is recommended to prescribe one antipsychotic drug. It is important to avoid polypharmacy<sup>313</sup> in order to prolong the QT interval<sup>314</sup> and reduce the risk of sudden cardiac death.

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<sup>309</sup> The examination of documents made it clear that physical and chemical restraints were applied towards a total of 4 patients at Batumi Medical Centre in 2019, and all 4 of them were under formally voluntary treatment. As for the Mental Health Centre, from April 2018 to April 24, 2019, in the vast majority of cases, physical and chemical restraints were applied towards formally voluntary patients in the civic part of the facility.

<sup>310</sup> Judgment of the European Court of Human Rights in the case of M.S. V. Croatia (no. 75450/12) para. 152.

<sup>311</sup> The following drugs were prescribed for some patients: Patient 1 - Soliani 400 mg (antipsychotic); Tryptazine 10 mg (antipsychotic); Tisercin 1 amp. (antipsychotic); Cyclodol 2 p. (corrective); Patient 2: Psyzin 10 mg (antipsychotic), Zopin 50 mg (antipsychotic), Tisercin 25 mg (antipsychotic), Cyclodol 4 mg (corrective); Patient 3 – combination of Sedarex (antipsychotic), Chlorosene (antipsychotic), Tisercin (antipsychotic), Tryptazine (antipsychotic), Cyclodol (corrective);

<sup>312</sup> For example, one patient was prescribed Cedarex 4 mg (antipsychotic), Cyclodol 4 mg (corrective), Clopixol 40 mg (antipsychotic) and Zopin 100 mg (antipsychotic).

<sup>313</sup> National clinical practice recommendation (guideline) - Treatment and Management of Schizophrenia in Adults, p. 46. Heart rhythm disorder that potentially causes a rapid, chaotic heartbeat.

<sup>314</sup> Heart rhythm disorder that potentially causes a rapid, chaotic heartbeat.

In addition to the above, another problem at the National Mental Health Centre is drug overdose,<sup>315</sup> both for the rapid tranquilization and sedation (for non-therapeutic purposes) of a patient upon admission to the facility and later, during the course of treatment.<sup>316</sup> The monitoring revealed that in some cases, especially on weekends, in order to manage the patient's critical condition and achieve rapid tranquilization, doctors on duty, without proper prescription, use injectable forms of antipsychotic drugs so that the formally voluntary patient is not offered pills, which contradicts the national clinical practice recommendations (guidelines).<sup>317</sup> In addition, the need for rapid tranquilization is not properly substantiated, the patient's condition is not monitored and the process is not documented in accordance with the above-mentioned recommendations (guidelines).<sup>318</sup>

As for the patient's involvement in the process of psychiatric care, the monitoring results show that patients are not properly involved in this process, which is proved by the fact that some of the patients are not even aware of their diagnosis or the name of prescribed medicines, and do not have information about the alternative methods of treatment. The Special Preventive Group believes that under similar conditions, it is virtually impossible to form a positive therapeutic alliance between staff and patients and to significantly improve the patient's condition.<sup>319</sup>

Based on all the above, the Special Preventive Group concludes that the National Mental Health Centre and Batumi Medical Centre fail to adequately manage psychiatric cases. The services provided by these institutions are not oriented to recovery or based on respect for personal autonomy. Moreover, in some cases, the intervention carried out in these institutions causes significant harm to the patient.

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<sup>315</sup> The Special Preventive Group assumes that the use of maximum therapeutic dose of one antipsychotic drug in combination with average or even minimum therapeutic dose of another antipsychotic drug is an overdose. Such a combination of medications is dangerous and can be fatal.

<sup>316</sup> Particular attention should be paid to the following combinations in terms of overdose: 1) In the same hourly regimen, parenterally, Haloperidol 30 mg three times (maximum therapeutic daily dose) and Zopin 300 mg three times (average therapeutic daily dose); 2) Psyzin (Trifluoperazine) 30 mg three times (maximum therapeutic daily dose) and Zopin (Clozapine) 200 mg (therapeutic dose); 3) Olan 10 mg twice (maximum dose) and Zopin 50 mg before going to bed (initial therapeutic dose).

<sup>317</sup> National clinical practice recommendation (guideline) - Treatment and Management of Schizophrenia in Adults - Para. 4.8.2 (Treatment of an acute episode): "Offer oral antipsychotic medications during an acute episode or relapse of schizophrenia. Para. 4.8.2.2. (Rapid tranquilization): "Use rapid tranquilization after another strategy fails to calm the patient; Rapid tranquilization shall be an emergency treatment and not a primary therapeutic strategy." Para. 4.8.2.2.2. (Implementation of rapid tranquilization): "Offer oral medication if possible." Available at: < <https://bit.ly/2XmJH2P> > [last accessed 22.01.2020].

<sup>318</sup> Ibid, Para. 4.8.2.2.3 – Physical monitoring of rapid tranquilization.

<sup>319</sup> The European Committee for the Prevention of Torture focuses on the vulnerability of formally voluntary patients and problems with patient's involvement in the treatment process in the report on its visit to Georgia on 10-21 September 2018, p. 62-65, also p. 56-58. See the link: <<https://rm.coe.int/1680945eca>> [last accessed 10.01.2020].

### Psycho-social rehabilitation

The UN Convention on the Rights of Persons with Disabilities (2006)<sup>320</sup> obliges States Parties to organize comprehensive rehabilitation and habilitation services and programmes in the areas of health care and social services in such a way that these programmes begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths, and support inclusion and participation in all aspects of public life. To this end, the States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.<sup>321</sup>

According to Georgian legislation,<sup>322</sup> one of the components of psychiatric care is psycho-social rehabilitation, which aims to maintain the patient's social and employment contacts and to develop the skills that determine his/her ability to live independently in the community.

Despite the requirements set by international standards and legislation, biopsychosocial rehabilitation measures at the psychiatric hospitals of the Mental Health Centre and Batumi Medical Centre are extremely scarce. There is no practice of drawing up or implementing individual rehabilitation or recovery plans based on multidisciplinary approach and assessment of patients' needs. The institutions lack material resources and properly qualified staff.

It should be noted that in fact no rehabilitation process was ongoing in the National Mental Health Centre due to the shortage of staff working in the direction of psycho-social rehabilitation.<sup>323</sup> According to the reply received from the Centre, various activities were introduced in divisions I and III.<sup>324</sup> It is important that psycho-social rehabilitation programmes be accessible to all patients in the facility, especially to long-term inpatients, and that they be not fragmented.

As for Batumi Medical Centre, during the visit, the clinic had eight people working in the direction of psycho-social rehabilitation,<sup>325</sup> however, according to the interviews and examination of the rehabilitation space and documents, it can be said that they fail to ensure psycho-social rehabilitation of patients. It should be noted that the professional qualifications of social workers do not meet the requirements set by the legislation of Georgia,<sup>326</sup> in particular, the social workers do not have bachelor's,

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<sup>320</sup> Took effect in Georgia on April 12, 2014.

<sup>321</sup> United Nations Convention on the Rights of Persons with Disabilities, 13 December 2006, Article 26.

<sup>322</sup> Law of Georgia on Psychiatric Care, Article 21.

<sup>323</sup> During the visit to the National Mental Health Centre, there were vacancies for 3 psychologists and specialists of the psycho-social rehabilitation team. According to the administration of the institution, despite their efforts, they were not able to staff the institution with necessary specialists. Consequently, only one psychologist and one social worker had to work with 116 patients placed in the clinic.

<sup>324</sup> Units I and III mainly serve acute patients.

<sup>325</sup> 2 psychologists, 2 social workers, 4 occupational therapy instructors.

<sup>326</sup> Law of Georgia on Social Work, Article 42

master's/equivalent or doctor's academic degree in the field of social work or the relevant certificate as required by law.

It should be particularly noted that the scarce psycho-social rehabilitation measures available at Batumi Medical Centre are intended only for the so-called "quiet" patients.<sup>327</sup> Space for occupational therapy is allocated only for women under long-term treatment. Interviews with patients show that "acute" female patients or male patients have never been offered to participate in similar activities. At the same time, the registers produced by occupational therapy instructors show that basically one and the same patients, up to 15 persons, participate in the activities.

#### **4.5. Somatic (physical) health**

Management of somatic (physical) health problems and access to medical services are still problematic in psychiatric institutions. The Mental Health Programme<sup>328</sup> in 2019 did not provide for the monitoring and treatment of somatic (physical) health problems of persons with mental health problems, which may deteriorate their health or may even cause death in some cases.<sup>329</sup> Unfortunately, the mental health programme 2020 does not provide for somatic health either.<sup>330</sup>

The medical cards of the National Mental Health Centre and Batumi Medical Centre do not include the list of clinical-laboratory examinations or consultations provided by specialists for the management of comorbid<sup>331</sup> somatic diseases or side effects of medicines. In order to timely identify, refer and treat somatic health problems, it is important to ensure access to a family doctor free of charge in all facilities.<sup>332</sup>

Patients enrolled in universal health care programme are mainly transferred in case of aggravation of their health condition, as urgent cases, which in most cases is caused by the lack of timely detection of the disease and regular treatment. Regular medical services, including dentistry, require co-financing, but patients do not have enough financial resources for it. Other problems are transportation to another medical facility and purchase of therapeutic drugs for treatment, which are associated with additional

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<sup>327</sup> This is how the medical staff of Batumi Medical Centre refers to patients undergoing long-term inpatient treatment.

<sup>328</sup> Decree No. 693 of the Government of Georgia (2018) on Approval of State Health Care Programmes 2019, Annex 11 - Mental Health (Programme Code 27 03 03 01)

<sup>329</sup> See the report on the visit to Acad. B. Naneishvili National Mental Health Centre: <<http://www.ombudsman.ge/res/docs/2019101014124916439.pdf>> [last accessed: 20.01.2020].

<sup>330</sup> Decree No. 674 of the Government of Georgia on Approval of State Health Care Programmes 2020, 31 December 2019.

<sup>331</sup> Concomitant diseases.

<sup>332</sup> At Batumi Medical Centre patients are served by a doctor-therapist, whose services are not free. As for the National Mental Health Centre, they do not have a family doctor, although they have specialist doctors and their services are also associated with additional costs. It happens often that patients cannot afford to enjoy these services.

costs. In case Batumi is the place of registration of a patient placed at Batumi Medical Centre, he/she is taken to the city for medical services with the help of a social worker. It is important that the services provided by the universal health care programme be available to all patients, regardless of their place of registration.

The above problem was also indicated in the report of the European Committee for the Prevention of Torture following its visit to Georgia on September 10-21, 2018. According to the Committee, the fact that indigent mentally disordered in-patients are expected to fund their own somatic health care is absolutely unacceptable. The Committee recommends that urgent action be taken to remedy this problem.<sup>333</sup>

Patients who have been taking antipsychotic medications for a long time should undergo regular physical health examinations.<sup>334</sup> Carrying out a blood and urine test alone, irregularly, fails to provide proper management of the side effects of antipsychotic medicines and increases the risk of late diagnosis of somatic (physical) diseases. In addition, in many cases, the results of laboratory tests remain beyond the attention of medical staff and the patient is not consulted or treated by the relevant specialist.

The Special Preventive Group deems it important that attention be paid to the frequent use of Zopin<sup>335</sup> (active ingredient Clozapine), without considering the international and national standards<sup>336</sup> of the management of its side effects.<sup>337</sup> The European Committee for the Prevention of Torture recommends in its report<sup>338</sup> that the Georgian authorities take urgent steps to render regular blood tests mandatory

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<sup>333</sup> Report (CPT/Inf (2019)16) of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, para. 128, available in English at: <<https://rm.coe.int/1680945eca>> [last accessed: 19.02.2020].

<sup>334</sup> Treatment and Management of Schizophrenia in Adults, National clinical practice recommendation (guideline), Chapter 4.7.

<sup>335</sup> Treatment with Clozapine requires adherence to the prescription procedure and management of side effects. During treatment with Clozapine, it is not recommended to prescribe 12.5 mg as an initial dose and to gradually increase the dose. The drug should be prescribed in the doses of 50, 100 or 300 mg from the very beginning of treatment. For example, one of the patients was prescribed 50 mg of Zopin (Clozapine) twice a day in combination with Pzysin (Trifluoperazine). Another patient was prescribed 0.3 mg of Zopin in combination with 30 mg of Haloperidol three times a day.

<sup>336</sup> Treatment and Management of Schizophrenia in Adults, National clinical practice recommendation (guideline), Chapter 4.7.

<sup>337</sup> Clozapine monotherapy or the use of Clozapine in combination with other psychotropic drugs may develop orthostatic hypotension, bradycardia, syncope and cardiac arrest, as well as fatal myocarditis and cardiomyopathy. Stephen M. Stahl, A Pocket Guide to Atypical Antipsychotics. Dosing, switching, and other practical information <<https://bit.ly/2xds5OG>> [last accessed: 18.02.2020].

<sup>338</sup> Report of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10-21, 2018, available at: <<https://rm.coe.int/1680945eca>> [last accessed: 21.01.2020].

in all psychiatric establishments whenever Clozapine is used; staff should be trained to recognise the early signs of the potentially lethal side effects of Clozapine.<sup>339</sup>

In view of the above, it is important that the issue of somatic (physical) health of patients placed in psychiatric hospitals be considered within the framework of the state programme. Through cooperation with psychiatric institutions, it is important to ensure timely referrals, including by providing access to a family doctor and covering transportation costs, as well as to manage the side effects of medicines through appropriate examinations and consultations, in accordance with the guidelines applied in the country.

#### **4.6. Material conditions**

Compared with previous year, some steps have been taken in 2019 to improve the physical environment and sanitary-hygienic conditions in psychiatric institutions,<sup>340</sup> however, conditions in a number of psychiatric institutions still need to be significantly improved and brought in line with international standards.<sup>341</sup>

During visits paid to the National Mental Health Centre on April 22-25, 2019 and the Psychiatric Hospital of Batumi Medical Centre on September 18-19, 2019, the infrastructure and sanitary-hygienic conditions were significantly different in old and renovated wards.



*New building of Acad. B. Naneishvili National Mental Health Centre*

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<sup>339</sup> Causing death.

<sup>340</sup> The new building of the National Mental Health Centre was put into operation, repairs were launched in Psychiatric Hospital of Batumi Medical Centre in 2017, which continued during the visit of the Special Preventive Group as well.

<sup>341</sup> Standards of the European Committee for the Prevention of Torture, available at: <<https://bit.ly/33Ki4EY>> p. 80.



*Old building of Acad. B. Naneishvili National Mental Health Centre*



*Old ward of Batumi Medical Centre*



*Repaired ward of Batumi Medical Centre*

During the above-mentioned visits, there was favorable situation in one of the newly renovated wings of women's unit of Batumi Medical Centre and the newly constructed units (I and III) of the National Mental Health Centre.<sup>342</sup> In contrast, radically different and deplorable infrastructural situation was found in the parts of women's and men's divisions of Batumi Medical Centre that needed to be repaired, as well as in the shelter and women's VII and men's II civic units of the National Mental Health



*Batumi Medical Centre ltd*

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<sup>342</sup> Adequate lighting and sanitary-hygienic conditions were provided in the wards.



Centre.<sup>343</sup> The extremely deplorable situation in these institutions was assessed by the Special Preventive Group as a degrading and inhuman treatment.<sup>344</sup>



*Batumi Medical Centre Ltd.*



*Acad. B. Naneishvili National Mental Health Centre*

During visits made to the National Mental Health Centre on April 22-25, 2019 and the Psychiatric Hospital of Batumi Medical Centre on September 18-19 of the same year, patients were not provided with 8 sq. m. of space in accordance with the relevant standard<sup>345</sup> and the distance between beds was less than 1.2 meters.<sup>346</sup> There were also problems in terms of adaptation of the environment. Sanitary-

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<sup>343</sup> 213 patients were placed during the visit.

<sup>344</sup> In its report of May 10, 2019, the European Committee for the Prevention of Torture assesses the living conditions in hospital wards as degrading and inhuman. The report is available at: <<https://rm.coe.int/1680945eca>> [last accessed: 14.02.2020].

<sup>345</sup> According to the Terms of Permit for Inpatient Institutions approved by Resolution No. 385 of the Government of Georgia of December 17, 2010, the area in the ward shall be at least 8 sq. m. and the distance between beds shall be at least 1.2 meters.

<sup>346</sup> The problem of overcrowding is especially acute in the men's ward of the Psychiatric Hospital of Batumi Medical Centre, due to which, patients' beds are placed in the corridor.

hygienic conditions were not observed<sup>347</sup> in the wards of the units that were in need of refurbishment; privacy was not ensured; wards were not artificially ventilated; artificial lighting was also problematic in some cases. During the visit paid on September 18-19, 2019, patients in the non-repaired wards of the Psychiatric Hospital of Batumi Medical Centre reported numerous cases when they had lice. Patients were allowed to take a shower only once a week, which was a problem in terms of protecting their personal hygiene.<sup>348</sup>

During a visit to Batumi Medical Centre,<sup>349</sup> it was found out that due to the ongoing repairs, patients had not been allowed to walk in the open air for several months;<sup>350</sup> in addition, the walking yard was not well-maintained and as representatives of the administration explained, they were planning to arrange the yard in the near future. It should be positively noted that during the visit paid by the Deputy Public Defender of Georgia to Batumi Medical Centre Ltd on December 6, 2019, as well as during the visit of the Public Defender of Georgia on February 19, 2020, patients were walking in the yard of the institution. Beneficiaries of Acad. B. Naneishvili National Mental Health Centre are provided with the opportunity to be in the open air for one hour a day.<sup>351</sup> During the visit, the facility infrastructure did not allow patients to walk in rainy weather. The lack of open air has a negative impact on patients' physical and mental health. Therefore, it is important to allow patients to spend more time in the open air and to arrange walking areas so that to enable patients to walk there in rainy weather.

It should be noted that during visits paid to the National Mental Health Centre on April 22-25, 2019 and the Psychiatric Hospital of Batumi Medical Centre on September 18-19 of the same year, patients complained about problems with making phone calls. Patients could only make a call by the phone of the social worker.<sup>352</sup> Therefore, there is no doubt that given the size of the institutions and the busy

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<sup>347</sup> There is a heavy, pungent smell in the wards; the walls are dirty and damp; flies and mosquitoes are common in the wards, the interior is damaged by damp and the furniture is old.

<sup>348</sup> Detailed information on the situation in these two facilities is available in the report on the visit to the National Mental Health Centre. The report is available at: <<http://www.ombudsman.ge/res/docs/2019101014124916439.pdf>> p. 31-36, as well as in the report on the visit to Batumi Medical Centre Ltd.

<sup>349</sup> September 18-19, 2019.

<sup>350</sup> In 2018, the European Committee for the Prevention of Torture paid a visit to Georgia, during which, the members of the committee visited Batumi Medical Centre Ltd. In the report, the European Committee for the Prevention of Torture points out that outdoor exercise for patients at Batumi Medical Centre was very limited; some of the patients had not had access to outdoor exercise for weeks, months. The report is available at: <<https://rm.coe.int/1680945eca>> para. 129. [last accessed: 09.01.2020].

<sup>351</sup> Women placed in the shelter are an exception, as they have the opportunity to enjoy longer walks in good weather.

<sup>352</sup> The telephone is only available for patients during the working hours of the social worker (10:00 am - 6:00 pm). There is no specific regulation in this regard.

work schedule of social workers, the latter will not be able to give their personal phones to all the patients whenever they desire the above.

It should be noted that the National Mental Health Centre and Batumi Medical Centre are now under repairs. The Public Defender hopes that after timely completion of repairs, patients at the National Mental Health Centre will be able to receive psychiatric care in decent conditions. As for Batumi Medical Centre, the visit paid by the Public Defender of Georgia on February 19, 2020 showed that the living conditions were improved as a result of refurbishment, which should be praised, but it should also be noted that the lack of artificial ventilation, adaptation of the environment for persons with disabilities and the lack of privacy in the men's unit remain problematic.

#### **4.7. State oversight and control**

The monitoring results show that the state oversight of the provision of adequate psychiatric care in psychiatric institutions, as well as the monitoring of the protection of patients' rights, is problematic.

According to regulations, LEPL Regulation Agency for Medical and Pharmaceutical Activities shall monitor the quality of medical care provided to patients by legal and natural entities and review applications and complaints.<sup>353</sup> According to Articles 17 and 18 of the Government's Resolution No. 674 on Approval of State Health Care Programmes 2020 (December 31, 2019), LEPL Regulation Agency for Medical and Pharmaceutical Activities shall carry out control and inspection of psychiatric institutions through scheduled and ad hoc visits. The mental health programme is being implemented by the Social Service Agency,<sup>354</sup> a legal entity of public law subordinated to the Ministry of Labour, Health and Social Affairs of Georgia, which also carries out inspection through the Department of Control.<sup>355</sup> It should be noted that the Law of Georgia on Psychiatric Care does not contain provisions that would properly regulate the complaints review procedure and the issues relating to monitoring.

As for the control and supervision carried out by the above-mentioned agencies, information provided to the Public Defender makes it clear that no inspection had been conducted in psychiatric institutions by the Social Service Agency from January 1, 2019 to December 16, 2019.<sup>356</sup> LEPL Regulation Agency

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<sup>353</sup> Article 2 (3 (b) and (c)) of the Statute of the Regulation Agency for Medical and Pharmaceutical Activities – a legal entity of public law (legal substitute of the State Regulation Agency for Medical Activities since November 1, 2019) approved by Order No. 01-64/N of the Minister of Labour, Health and Social Affairs of December 28, 2011.

<sup>354</sup> Article 7 of Annex 11 to the State Health Care Programme 2020 approved by Resolution No. 674 of the Government of Georgia of December 31, 2019 (Mental Health, programme code: 27 03 03 01)

<sup>355</sup> Order No. 01-14/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on Approval of Statute of the Social Service Agency - a legal entity of public law, October 3, 2018, Article 9.

<sup>356</sup> Letter No. 04/64154 of LEPL Social Service Agency, December 16, 2019.

for Medical and Pharmaceutical Activities conducted inspection in 10 psychiatric institutions from January 1, 2019 to December 3, 2019.<sup>357</sup>

The external control mechanisms focus on patients' complaints, which, in the absence of a proper, accessible procedure for filing complaints about the deficiencies in psychiatric care and human rights violations, fails to ensure the required degree of state control. In particular, the work of control mechanisms is not thorough or coordinated and in case of detection of violations, their elimination is not strictly controlled.

In view of all the above, it is important that the grounds for carrying out external oversight/monitoring of the supervision of the provision of psychiatric care and monitoring of patients' rights be defined in the Law of Georgia on Psychiatric Care. It is necessary to clearly state who shall carry out the monitoring, as well as to define the relevant mandate, composition and timetable. At the same time, any conflict of interest should be ruled out to ensure impartiality. In addition, it should be a flexible mechanism for responding to violations and forwarding information on violations to the relevant body in a timely manner.

The Public Defender believes that the monitoring body/bodies should meet the following 3 criteria:<sup>358</sup>

1. Systemic: Monitoring should be thorough and system-oriented. The monitoring report should assess the provision of quality psychiatric care based on biopsychosocial model and respect for the patients' rights. The report should include specific recommendations.
2. Proactive: Monitoring should be carried out ex officio and should be regular.
3. Transparent: The reports developed by the mechanism should be public.

The Public Defender is aware that in June–July 2018, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, with the technical support of the Council of Europe, developed a questionnaire for the evaluation of psychiatric service providers based on the WHO QualityRights tool kit.<sup>359</sup> In March–May 2019, 11 psychiatric institutions were evaluated according to the above-mentioned questionnaire in terms of human rights protection. The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs plans to implement this type of monitoring in the state monitoring programme.<sup>360</sup> The Public

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<sup>357</sup> Letter No. 02/1557 of the Regulation Agency for Medical and Pharmaceutical Activities, December 3, 2019.

<sup>358</sup> In 2018, the Public Defender issued a recommendation on regular, systemic and proactive monitoring of psychiatric institutions, which has been endorsed in the resolution of the Parliament of Georgia on September 20, 2019.

<sup>359</sup> Letter No. 01/20057 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, November 27, 2019.

<sup>360</sup> The response of the Government of Georgia of November 21, 2019 to the report of the European Committee for the Prevention of Torture on its visit paid to Georgia on September 10–21, 2018, available in English at: <<https://rm.coe.int/168098e29c>>, [last accessed: 10.01.2020].

Defender welcomes this initiative, but notes that the steps taken in this direction are fragmentary and require systemic strengthening of state control

### **Proposal to the Parliament of Georgia**

- Amend Article 16 of the Law of Georgia on Psychiatric Care so that to stipulate that formally voluntary patients shall not be normally subjected to physical restraint, while in case of extreme urgency of physical restraint, the procedure for re-examination of his/her legal status (voluntary/involuntary) should be initiated immediately

### **Recommendation to the Government of Georgia**

- Establish a mechanism for external state oversight of the provision of psychiatric care and monitoring of the quality of mental health services and protection of rights, the competence of which will be to receive confidential/open complaints from the beneficiaries of psychiatric services, their representatives and other stakeholders relating to the violations of rights and the quality of psychiatric care, as well as to carry out systemic, regular and proactive monitoring of psychiatric service providers

### **Recommendation to the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

#### *Ill-treatment*

- In order to prevent inter-patient violence and ensure their safety, develop a normative framework to regulate the issues of introduction of an appropriate system of pre-assessment of risks coming from specific patients by staff, multidisciplinary work, preventive measures to protect patients from violence and ensure their safety, proper monitoring/supervision of patients by staff, organization of proper trainings for staff, development of standard procedures and de-escalation strategy, as well as timely and adequate intervention in case of a danger, documentation of violence/incidents and responses, accountability and responsibility of the staff
- Define by a legal act the rules for documenting conflicts and violence, as well as measures taken in response, and the obligation of psychiatric inpatient institutions to apply this rule; define that each case of violence against patients shall be reported to the Ministry of Internal Affairs, and if the above is done by telephone, a document shall be drawn up, and fact of reporting a case to the Ministry shall be registered
- Instruct the State Regulation Agency for Medical and Pharmaceutical Activities to examine the cases of forced hospitalization of patients receiving formally voluntary psychiatric care and take

all necessary measures to immediately discharge them from psychiatric institutions if there are no legal grounds for using the involuntary psychiatric care procedure.

#### Use of restraint

- In 2020, make the following changes to the instructions on the rules and procedures for the use of methods of physical restraint towards patients with mental disorders:
  - Define the obligation to use alternative (de-escalation) methods of physical and chemical restraint during the crisis intervention, to document the use of such methods and to justify why these methods were not effective and why it became necessary to use physical or chemical restraint
  - Develop detailed instructions for the implementation of physical restraint, specifying the obligation to document the bodily injuries received by the patient and/or staff during the use of physical restraint; specific characteristics of the special equipment used during the application of physical restraint; where physical restraint shall be carried out and who shall be present; what requirements shall be met by a specialized isolation ward; issues related to the use of a video surveillance system during the application of physical restraint and the obligation of staff to talk to patients after the use of physical restraint and to inform them of their right to appeal. Inter alia, develop a form of special register and the obligation to record the above data in it.

#### Internal complaints procedure

- Define by a normative act a unified internal (inside hospital) complaints review and feedback procedure for all institutions, which shall be: in line with human rights; accessible; easy; fair and transparent

#### Psychiatric care

- Provide the assessment of the needs of the patients placed in psychiatric facilities for more than 6 months in order to discharge them from the facility and refer them to the community services; devise a plan for opening a shelter in accordance with the number of future beneficiaries of the shelter
- Amend the Minister's order<sup>361</sup> so that to make it mandatory, at all stages of starting, continuing and changing treatment, to fill in a form (№IV-300-12/a) approved by Annex 13 to Order No. 108/N of the Minister of Labour, Health and Social Affairs of March 19, 2009

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<sup>361</sup> Order No. 87/n of the Minister of Labour, Health and Social Affairs of Georgia on the Approval of the Rules for Placement in Psychiatric Hospital, March 20, 2007.

- Instruct the State Regulation Agency for Medical Activities to examine the use of antipsychotic drugs and management of side effects in psychiatric institutions
- Organize trainings for the staff of psychiatric institutions in psychiatric case management, by using the WHO training materials and national clinical practice recommendations (guidelines)
- Make it mandatory for all psychiatric institutions to justify the need for rapid tranquilization, document patient's consent to tranquilization in writing, implement physical monitoring in accordance with national clinical practice recommendations (guidelines) and reflect the monitoring results in the medical documentation

#### Psycho-social rehabilitation

- In 2020, for the purpose of deinstitutionalization of psychiatric facilities, provide the assessment of patients and transfer of those, who do not require inpatient treatment, to family-like services
- In 2020, through the multidisciplinary team, develop and update individual psycho-social rehabilitation plans and measure the results achieved
- In 2020, organize trainings for all social workers employed in psychiatric hospitals, who do not have a bachelor's, master's/equivalent or doctor's academic degree in the field of social work
- Provide patients with unlimited access to telephone communication

#### Somatic health

- Make changes to the mental health programme and address the issue of treatment of patients of psychiatric hospitals for somatic health; prior to this, the Ministry should, as a temporary measure, provide access to a family doctor for patients placed at psychiatric hospitals and their transportation to the medical facility
- Make changes to the health care programme and provide for the management of side effects of medicines through relevant examinations and consultations, in accordance with the guidelines applied in the country

#### Physical environment

- In order to ensure that psychiatric institutions meet the inpatient institution permit requirements, check in 2020:
  - The situation in the shelter of Academician Bidzina Naneishvili National Mental Health Centre, women's and men's units, as well as in the Psychiatric Hospital of Batumi Medical Centre, and respond appropriately

#### State oversight and control

- In 2020, ensure regular, systemic and proactive monitoring of psychiatric institutions, monitor the compliance of their conditions with standards set by the ordinance on issuance of licences for medical activities and permits for inpatient institutions.

