



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

**Human Rights in Closed Institutions
Report of National Preventive
Mechanism of Georgia**

2013

HUMAN RIGHTS IN CLOSED INSTITUTIONS (REPORT OF THE NATIONAL PREVENTIVE MECHANISM)

SITUATION IN PENITENTIARY INSTITUTIONS

This report describes results of the monitoring conducted in 2013 in penitentiary institutions, police stations, temporary detention isolators and the Academician B. Naneishvili National Center of Mental Health. It also provides information about the monitoring of small-size family-type children's homes carried out in February 2014.

The monitoring of the penitentiary institutions and the agencies subordinated to the Georgian Interior Ministry system was made possible by the European Union's financial support. The monitoring of the small-size family-type children's homes was financed by the Open Society Georgia Foundation.

Members of the Prevention and Monitoring Department of the Public Defender's Office conducted 45 planned visits and 313 special visits to Georgia's penitentiary institutions meeting 2,670 prisoners during the reporting period. 140 planned visits and 13 special visits were paid to and 107 detainees were visited in temporary detention isolators and police stations within the Georgian Interior Ministry system. 9 visits were paid to and 25 patients were visited in psychiatric institutions. 3 planned visits were paid to detention facilities for military servicemen (hauptwachts) and 27 military servicemen were visited. 30 visits were paid to and 250 children were visited in small-size family-type children's homes.

During the monitoring visits, Public Defender's trustees were inspecting both the physical environment and the status of protection of rights of individuals in these institutions. A special attention was paid to the actual treatment of these persons.

CHANGES IN THE PENITENTIARY SYSTEM

The reporting period was marked with many positive changes in the penitentiary system. Torture and other cruel, inhuman or degrading treatment has no longer been a systemic issue. Moreover, no single occurrence of torture has been detected and only a few facts of ill-treatment were revealed in the reporting period. We would like to commend the eradication of prison overcrowding¹ through active use of legal mechanisms such as amnesty, parole, pardon and release on account of health condition. The measures taken are fully consistent with the Council of Europe Committee of Ministers Recommendation concerning prison overcrowding dated 30 September 1999.²

Along with the decrease in the number of prisoners, the funding of the penitentiary system increased. Penitentiary institutions nos. 1 and 4 were shut down due to inappropriate residential conditions; repair works were commenced in the penitentiary institutions nos. 3 and 16 and the Medical Institution for Accused and Convicted Persons.

The penitentiary healthcare system received increased funding and attention. The number of prisoners transferred to civilian medical institutions significantly increased in the reporting period. Several programs were launched, including a programme for preventing, diagnosing and treating hepatitis C. Mortality rate decreased. The legal

1 The number of prisoners decreased from 19,349 by December 2012 to 9,177 by December 2013.

2 See <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538633&SecMode=1&DocId=412108&Usage=2> [last accessed 21.03.2014].

regulation of parole and postponement of sentence enforcement on account of health condition was changed.

The Minister of Corrections and Legal Assistance enacted up to 60 legal acts with a view of perfecting the applicable rules. Penitentiary personnel were provided with training opportunities. However, despite these positive changes and activities implemented, a handful of problems remains in the penitentiary system, which we will be discussing in detail below.

ILL-TREATMENT IN PRETRIAL DETENTION FACILITIES AND INSTITUTIONS FOR SENTENCED PRISONERS

Prohibition of torture and inhuman and degrading treatment is one of the fundamental values in a democratic society protected by Article 3 of the European Convention on Human Rights and Fundamental Freedoms.³ Another important international instrument in the area of combating ill-treatment is the Optional Protocol to the Convention against Torture, which laid foundation for the creation of national preventive mechanisms. In Georgia, the Public Defender acts as a National Preventive Mechanism, pursuant to the Georgian Organic Law on Public Defender.

It goes without saying that, compared to the previous years (until Fall 2012) when torture and other ill-treatment were of systemic nature in pretrial detention facilities and penitentiary institutions, the situation has drastically improved in 2013. In the course of monitoring such facilities and institutions, our special preventive group has not detected a single allegation of torture – a fact that should be evaluated as a positive change in combating inhuman practices. However, ill-treatment of prisoners remains a problem because in 2013 a number of prisoners did mention that they had been ill-treated again.

During the reporting period, the Public Defender received requests and applications from numerous prisoners alleging that they had been subjected to torture and other cruel, inhuman or degrading treatment in the period preceding Fall 2012. The Office of the Public Defender responded to each case by forwarding relevant information and materials to the Chief Prosecution Office and followed up by requesting the Prosecution Office to provide information about actions taken. According to the replies received, the Prosecution Office had opened criminal investigation on a majority of applications through its territorial offices, according to their jurisdictional rules. However, effectiveness of these investigations is questionable in some cases, which we will explain in detail in this report.

The case concerning O.G.

On 24 December 2013, members of our Special Preventive Group were on their scheduled visit to the Penitentiary Institution No. 8. When examining quarantine conditions, they heard several people shouting loudly. To find out what was going on, the Group members went up on the second floor of the quarantine building where they saw a prisoner surrounded by some of the staff members of the Institution No. 8. They were verbally and physically insulting the prisoner. The Special Preventive Group noticed injuries on Prisoner O.G.'s body.

As O.G. stated to the trustees of the Public Defender, on 24 December 2013, he was met with by one of the members of the prison staff in the quarantine building of the Institution No. 8. According to O.G., this prison official had been beating him up in 2011 – 2013 as a result of which his health was injured and the Gldani-Nadzaladevi Prosecution Office of Tbilisi was investigating this case at the material time. As O.G. explained to us, he was suffering from mental disorder that caused him enter into some disagreement with the mentioned official who then started verbally and physically abusing him.

The Public Defender addressed the Chief Prosecutor with a recommendation to immediately open investigation into the ill-treatment possibly administered against the prisoner. The Prosecution Office replied that they commenced criminal investigation under Article 333 of the Criminal Code.

³ The European Convention on the Protection of Human Rights and Freedoms, 4 November 1950, Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”.

The case concerning M.G.

On 10 December 2013, a member of the Special Preventive Group met with M.G., a convicted prisoner, at the Penitentiary Institution No. 7. According to the prisoner, in the evening of 7 December 2013, he had some minor disagreement with a staff member of the Institution. 5 minutes after the incident, the staff member told M.G. the boss wanted to talk to him. The staff member then escorted M.G. from his cell to the administration premises where they were met by the director, two of the director's deputies and some other prison officials. They wanted to know why M.G. used foul language against the staff member and started to beat him. According to the prisoner, the beating lasted for about 5 minutes. He was then escorted from the administration room towards his cell. As they were passing through the corridor, M.G. told other prisoners that he had been beaten up. He was then taken back to the administration room where he was handcuffed and beaten up again. The prisoner had visible injuries on his body.

On 11 December 2013, the Ministry of Corrections published information on its website that the Ministry's Inspectorate-General launched internal examination on the basis of a complaint filed by M.G.'s lawyer.

With a view of ensuring effective investigation in the ill-treatment administered against M.G., the Public Defender addressed the Ministry of Corrections with a recommendation to forward the case to the Prosecution Office for their response. This recommendation was upheld.

The case concerning I.N.

On 10 May 2013, the Special Preventive Group met with and talked to I.N., a convicted prisoner at the Penitentiary Institution No. 7. According to the prisoner, the same day he was visited by representatives of the Penitentiary Department whom he informed about alleged violations of prisoners' rights in the Institution No. 7. He was then taken out in a yard which is normally used by prisoners for taking a walk. According to the prisoner, he was approached by the Deputy Director of the prison who complained of the fact that the prisoner provided information to the members of the Penitentiary Department. As the prisoner stated to us, he was verbally abused, punched with a hand and beaten with a club in his back and sides by the Deputy Director. Our Special Preventive Group member documented the injuries on the prisoner's body.

The Office of the Public Defender forwarded materials of this case to the Chief Prosecution Office for further response. According to a reply received from the Prosecution Office, on 13 May 2013, they opened investigation into alleged exceeding of official power by the officials of the Penitentiary Department under Article 333(3) of the Criminal Code of Georgia. The Tbilisi Prosecution Office is investigating the case.

The case concerning D.B.

On 30 September 2013, trustees of the Public Defender met with and talked to D.B., a convicted prisoner at the Penitentiary Institution No. 2. According to the prisoner, on 25 September 2013, a prison official took him out of his cell by deception. Then, by using force against him, he was taken to a solitary confinement cell in Building A by the Chief of Prison Regime Unit and the Shift Leader. As D.B. stated to us, he was driven into the solitary confinement cell, handcuffed and abused both verbally and physically. In particular, the Prison Deputy Director punched him with a fist into his face several times. The prisoner says he was spent the entire night handcuffed in the cell.

The Office of the Public Defender forwarded a copy of a protocol of our conversation with D.B. to the Chief Prosecution Office for their response. Through its Letter No. 13/6703 dated 11 November 2013, the Prosecution Office replied that the Investigation Department of the Ministry of Corrections opened investigation into Criminal Case No. 073250913005 under Article 3782 of the Criminal Code of Georgia but no separate investigation has started on account of alleged ill-treatment of the prisoner.

The case of D.O. and N.B.

On 6 December 2013, D.O. and N.B., convicted prisoners from the Penitentiary Institution No. 6, furnished the Office of the Public Defender with information. According to the prisoners, in mid-November 2013, they went

on hunger strike requesting that the Parliament of Georgia amend the Criminal Code. By the end of November, they were paid a visit by an official from the administration of the Institution No. 6 who asked them to follow him to the administrative building. According to the prisoners, on their way to the administrative building, they were joined by other officials from the prison administration who handcuffed them by using force. D.O. and N.B. stated that the prison officials were deliberately pressing them on injured body areas with their hands (squeezing their upper limbs where the prisoners had self-inflicted injuries) and hitting them in their heads and backs. According to the prisoners, the prison officials brought them to the administrative building where they continued verbally and physically insulting them. N.B. stated that he was verbally and physically insulted also by the Prison Director.

The Office of the Public Defender forwarded these prisoners' explanations to the Chief Prosecution Office for their response. However, a reply received from the Prosecution Office suggests that they are investigating alleged storage by D.O. and N.B. of a prohibited item but no separate investigation has started in regard to ill-treatment of these prisoners.

The case of A.B.

On 6 December 2013, A.B., a convicted prisoner, addressed the Public Defender for assistance. According to the prisoner, his transfer to the Penitentiary Institution No. 17 was scheduled on 25 September 2013. But that day he felt unwell, of which he informed the guard before they got into a vehicle. However, he was told that he would be provided assistance if needed. On the way to the institution, the prisoner felt worse and asked for medical assistance but the guard told him he could only get assistance after arrival at the place of destination. According to A.B., he then fainted. After he came around, he injured himself using a piece of tinplate he found in the car protesting against the guard's refusal to provide medical assistance. According to the prisoner, he was brought into the yard of the Penitentiary Department where, acting out of heat of passion, he injured himself again and verbally insulted the physicians who came out to assist him. The prisoner was then handcuffed, driven out of the vehicle and put down on the ground. About twenty officials of the Penitentiary Department started beating him with their feet. The prisoner stated that these individuals stopped beating him only after a person unknown to him arrived at the scene and ordered his transfer to the Penitentiary Institution No. 6. According to A.B., on the way from the Penitentiary Department to the Institution No. 6, the penitentiary officials continued to verbally insult him.

The Office of the Public Defender forwarded the prisoner's explanations to the Chief Prosecution Office for their response. With their Letter No. 13/7629 dated 7 February 2014, the Prosecution Office informed us that the Investigation Department of the Ministry of Corrections opened investigation into alleged storage and carriage of a prohibited item by Prisoner A.B. but it was terminated due to lack of elements of crime under the Criminal Code of Georgia.

The case concerning I.M.

On 11 April 2013, trustees of the Public Defender met with and talked to I.M., a convicted prisoner in the Penitentiary Institution No. 7. According to the prisoner, on 5 April 2013, he had been brought from Institution No. 6 to the Institution No. 7 where, on entry, he was verbally insulted and threatened by the Institution's Deputy Director.

According to I.M. he was accommodated in Cell No. 7 where he was subjected to menace and physical abuse. In protest, he injured himself. About three hours later, he was transferred to a civilian hospital where his wounds were treated. He was then brought back to the Institution No. 7.

On arrival, he was questioned by a prison security official and the Director of the Institution. They wanted to know the reasons of why he inflicted injuries to self. The prisoner told them about the physical insults and threats he was subjected to. If he were brought into the institution again, he said, he was determined to injure or even kill himself.

According to the prisoner, this time he was accommodated in Cell No. 3 where he was in a company of prison security officials all night long guarding him from injuring himself again. In the morning, he was again visited by Deputy Director named "Gia" who again threatened him saying "this is where you die". The prisoner says he had nothing to do but injure himself, in particular, his legs, again. Having done that, he was verbally insulted and threatened by the Director saying he would "spoil" him. The Director also said he would punish other prisoners for his

behavior and he would then have to answer to these angry prisoners. According to I.M., he then inflicted injuries on his throat. He said he did not feel secure.

The Office of the Public Defender forwarded the prisoner's explanations to the Chief Prosecution Office for their response. With their Letter No. 13/43210 dated 23 April 2013, the Prosecution Office replied that the Investigation Department of the Ministry of Corrections opened investigation into Criminal Case No. 0732220413003 under Article 333 of the Criminal Code of Georgia (exceeding official power).

In their applications to the Public Defender, prisoners have been complaining about unnecessary and disproportional use of force by the Penitentiary Department's representatives against prisoners. According to a standard established by the European Court of Human Rights, any recourse to physical force in respect of a person deprived of his liberty, which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 of the European Convention on Human Rights.⁴

In the reporting period, prisoners were often referring to use of physical force on the part of prison administrations even when they showed no resistance to the demands of prison officials. Moreover, according to prisoners' reports, the use of force was usually preceded by administrations' oral orders to behave in a certain way. Such practice seems to be an established trend when prisoners are transferred from one institution to another.

The case concerning I.F., G.K., and others

Through November – December 2013, the Public Defender received numerous applications, including collective applications, from convicted prisoners of the Penitentiary Institution No. 19 (Center for the Treatment and Rehabilitation of TB Patients). The prisoners were complaining of ill-treatment administered by prison officials.

Pursuant to the results of a monitoring visit carried out on 23 December 2013 within the framework of the National Preventive Mechanism to the Penitentiary Institution No. 19, I.F., G.K., and others – convicted prisoners of the same institution, were allegedly subjected to physical and verbal abuse as well as disproportional use of force. According to the prisoners, the unlawful treatment was implemented by the Chief of Security Unit and other administration officials of the Penitentiary Institution No. 19 who especially aggressive during a transfer of convicted prisoners to other prisons.

The Public Defender's trustees also met and conversed with I.F., a prisoner transferred from Institution No. 19 to Institution No. 6, and G.K., a prisoner transferred from Institution No. 19 to Institution No. 8. As the prisoners stated to us, on 18 December 2013, they were told to appear in the administrative building. On the stairs to the second floor of administrative building, they were met with by the Chief of Security Unit and some other person whom they did not know. According to the prisoners, it was at that moment that about 20 to 25 officials of the Institution entered the building who, acting on the instructions of the Chief of Security, made the prisoners put their hands on their backs and handcuffed them. The Chief of Security then started verbally insulting them. He pushed I.F. from the back; as a result, I.F. fell on the staircase with his face. The prison officials then lifted them with their hands and legs to take them to the prisoners' transport vehicle.

As the prisoners stated to us, the prison officials used force against them without first demanding to behave in a certain way; in other words, the prisoners were subjected to use of force without rendering any resistance to the prison staff.

The Office of the Public Defender forwarded materials of the above case to the Chief Prosecution Office for their response. The Prosecution Office responded that they did not commence investigation and forwarded the materials back to the Penitentiary Department instead.

The case concerning U.B. and A.M., juvenile prisoners

Trustees of the Public Defender met and talked to U.B. and A.M., juvenile prisoners at the Penitentiary Institution No 8.

⁴ Ribitsch v. Austria, Judgment of 4 December 1996, par. 38.

According to the juveniles, on 1 December 2013, they were transferred from Institution No. 11 to Institution No. 8 where Chief of Regime Unit, Deputy Director and other staff of the Institution No. 8 suddenly handcuffed and pushed them on the ground. According to the prisoners, the administration officials never required them to behave in a certain way before the use of force. A.M. was injured as a result.

We forwarded the information provided by the prisoners to the Ministry of Corrections for their response. The Ministry then informed the Public Defender's Office that the prisoners explained to an inspection group from the Ministry's Inspectorate-General that they had never been verbally or physically insulted by the staff of the Institution No. 8 and they had no claims to put forward.

In many of its judgments, the European Court of Human Rights has consistently stressed that States must ensure that the manner and the method of execution of punishment do not subject a convicted person to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured.⁵ The Court has also noted that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.⁶

Results of a special monitoring visit of the Special Preventive Group of the National Preventive Mechanism to the Penitentiary Institution No. 7 on 18 December 2013 have shown that the conditions of living in the institution are inconsistent with the national and international standards. In fact, the prisoners have to live in conditions that are humiliating their human dignity and are endangering their health.⁷

Another observation of ours for 2013 is that some prisoners had been subjected to ill-treatment by other prisoners. Unfortunately, one of such cases ended with the death of a prisoner.

The case concerning deceased L.K.

According to the information publicized by the Chief Prosecution Office, the Investigation Division of the Western Georgia Prosecution Office and the Regional Division of the Interior Ministry for Imereti, Racha-Lechkhumi and Lower Svaneti Region carried out joint investigative activities, which resulted in finding that on 12 May 2013 L.K. was transferred from the Penitentiary Institution No. 6 to the Penitentiary Institution No. 14 in Geguti. At about 20:00 hrs, as the prisoner was being accommodated in building 6 of the Institution, L.K. and I.Sh., a prison security officer, had a quarrel between each other. The security officer tasked Sh.S., another prisoner, with clearing up the situation with L.K. Acting on the security officer's instructions, Sh.S. started talking to L.K. but their conversation grew into mutual physical assault. Responding to Sh.S.'s violent behavior, L.K. hit Sh.S. Having learnt about this incident, security officer I.Sh. ignored his official duty to ensure the prisoners' security and to detect and put an end to their disorderly behavior.

Encouraged with the security officer's irresponsible attitude, Sh.S. and another prisoner G.Sh. took L.K. to Cell No. 338 on the third floor of building 3 by force where they and other prisoners physically and verbally insulted L.K. Security Officer I.Sh. was aware of the fact that L.K. was taken to the mentioned cell with a view of brutally settling accounts with him. In contravention with his official duty to ensure security of the prisoner and to prevent and put an end to crime before it would unleash, Security Officer I.Sh. did nothing to help avoid the conflict and allowed violent individuals beat L.K. in Cell no. 338. L.K. started bleeding from his nose. Only after they finished beating him up did they let L.K. leave the cell.

A few minutes after this incident, when L.K. was with other prisoners in a cell located on the fourth floor of building 6, he was approached by another group of prisoners – Sh.S., G.Sh., S.D., G.U., T.G. and N.B. – who said they wanted to talk to L.K. They took him to Cell no. 336 where they beat him up as a group, for insulting prisoner Sh.S., with fists and feet as well as using solid parts of an electric teapot and a fan. The beating was extremely brutal and it continued for about 10 minutes. As the group of prisoners was beating L.K., he fainted but they continued beating him up even with his lost consciousness, for several minutes.

5 Valašinas v. Lithuania, Judgment of 24 July 2001, par. 102; Kudla v. Poland, Judgment of 26 October 2000, par. 94.

6 Dougoz v. Greece, Judgment of 6 March 2001, par. 46.

7 For more details, please refer to Chapter entitled "Conditions of Living" in this Report.

As a result of this group violence, L.K. was heavily injured so that the injuries were dangerous for his life. In particular, he had multiple wounds and bruises on his forehead, both eyes, right temple and nose with hemorrhages in his skull soft tissues and the brain substance, and a linear fracture of his nose.

With a view of letting the perpetrators go unpunished, Security Officer I.Sh. deliberately misled the investigator who arrived at the institution to inspect the scene. In particular, I.Sh. lied to the investigator by saying that L.K. got these injuries at a different place when he fell down on the stairs from the second floor. The Ministry of Corrections then unknowingly published this wrong information about the incident.

On 23 May 2013, as a result of a closed cranio-cerebral trauma that developed due to acutely swollen and softened brain, L.K. passed away without coming around.

A general obligation under Article 1 of the European Convention on Human Rights requires the States to conduct effective investigation in ill-treatment even if it was administered by private individuals.⁸ The approach of the European Court of Human Rights is that, under Article 1 of the Convention, the High Contracting Parties are obligated to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention; to do so, the States must take measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals.⁹

INVESTIGATION OF ILL-TREATMENT

Applications received and the results of monitoring activities carried out by the Office of the Public Defender show that effectiveness of investigation into alleged facts of ill-treatment in remand facilities and institutions for sentenced prisoners remain a concern.

With its purpose in mind, Article 3 of the European Convention on Human Rights requires by implication not only that States refrain from torture, inhuman and degrading treatment (hereinafter, «ill-treatment») but that they carry out an effective investigation into allegations of such treatment. Although this is not expressly stated in Article 3, such conclusion logically follows from the general obligation under Article 1 to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, including by means of conducting an effective investigation. Otherwise, the general legal prohibition of ill-treatment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.¹⁰

To prevent the spreading of the impunity syndrome amongst State agents, effective investigation into allegations of ill-treatment plays a crucial role, as stressed in general and specific reports of the Committee for the Prevention of Torture (CPT). The CPT has mentioned that lack of prompt and effective response to information indicative of ill-treatment leads those minded to ill-treat persons deprived of their liberty to a conclusion that they will get away with punishment.¹¹ According to CPT:

“The CPT wishes to stress that the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offenses are not held to account for their actions. Some of the delegation’s interlocutors met during the visit were of the opinion that information indicative of ill-treatment was frequently not followed by a prompt and effective response, which engendered a climate of impunity.”¹²

The Public Defender has been repeatedly expressed his stance concerning ill-treatment and impunity in both his annual reports to the Parliament and special reports. In this report too, we emphasize that each occurrence of ill-treatment must be investigated following the procedural standards implicated by Article 3 of the European Convention on Human Rights. This is crucial to preventing the development of the impunity syndrome in the

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

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

10 Labita v. Italy, Judgment of 6 April 2000, par. 131; see also Boicenco v. Moldova, Judgment of 11 July 2006, par. 102.

11 14th General Report CPT’s Activities, par. 25.

12 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 17, available at <http://www.cpt.coe.int/documents/geo/2010-27-inf-geo.pdf> [last accessed 16.03.2014].

society and fear amongst prisoners as well as ensuring that the State's upright denouncement of torture and other ill-treatment is not questionable.

The Office of the Public Defender has forwarded all of the ill-treatment-related information to the Georgian Chief Prosecution Office for further examination and response. According to reply letters received from the Prosecution Office, instead of opening criminal cases and conducting investigation through its relevant divisions, the Chief Prosecution Office usually forwards these materials to the Ministry of Corrections. In some cases, the Chief Prosecution Office has refrained from commencing investigation based on information received about alleged ill-treatment of prisoners stating that they will examine and deal with these allegations within the ongoing criminal cases that have already been opened. Individual stories of prisoners described above and other cases are the examples of the prosecution office's such practice.

A.B., a convicted prisoner, complained of being verbally abused and beaten up by about twenty officials from the Penitentiary Department. The Public Defender's Office forwarded A.B.'s written complaint to the Chief Prosecution Office for their response. By its Letter no. 13/7629 dated 7 February 2014, the Prosecution Office informed the Office of the Public Defender that on 26 September 2013 the Investigation Department of the Ministry of Corrections opened Criminal Case no. 073250913006 under Article 3782(1) of the Criminal Code of Georgia to investigate alleged storage and carrying of a prohibited item by prisoner A.B. As part of investigative measures, A.B. was interrogated and the allegations he raised in his testimony, including alleged ill-treatment against him, were examined. On 23 December 2013, the Criminal Case no. 073250913006 was terminated on the ground that no elements of the impugned criminal offense were found.

Information provided by D.O. and N.B., convicted prisoners, alleging ill-treatment administered against them by the administration of Penitentiary Institution No. 6 were forwarded by the Public Defender's Office to the Chief Prosecution Office for their response. By its Letter No. 13/5654 dated 30 November 2013, the Prosecution Office informed the Public Defender that on 30 November 2013 the Investigation Department of the Ministry of Corrections opened a criminal case no. 073301113004 under Article 3782(1) of the Criminal Code of Georgia to investigate alleged storage and carrying of a prohibited item by prisoners D.O. and N.B. A forensic evidence taking was ordered but no report has been produced this far. Investigation is ongoing. It should be noted that the Prosecution Office's letter said nothing about any results of their examination of the alleged ill-treatment against the prisoners.

The Office of the Public Defender forwarded a copy of a protocol of our conversation with D.B., in which the prisoner complained of having been subjected to ill-treatment on the part of staff of the Penitentiary Institution No. 2 to the Chief Prosecution Office for their response. Through its Letter No. 13/6703 dated 11 November 2013, the Prosecution Office replied that the Investigation Department of the Ministry of Corrections opened investigation into Criminal Case No. 073250913005 under Article 3782 of the Criminal Code of Georgia; however, no separate investigation has started concerning the alleged ill-treatment of the prisoner.

Information provided by I.F. and G.K., convicted prisoners complaining of alleged ill-treatment administered against them in Penitentiary Institution No. 19, was forwarded by the Office of the Public Defender to the Chief Prosecution Office for their response. By its Letter No. 13/4738 dated 27 January 2014, the Prosecution Office informed the Public Defender that our information with appended materials had been forwarded to the Inspector-General of the Ministry of Corrections.

One criterion the European Court of Human Rights uses to determine whether or not an allegation of ill-treatment was effectively investigated is whether the investigation was independent and impartial. In this regard, it is worth noting that the Court has been reiterating its stance in a series of judgments against Georgia that an institutional connection between the investigators and those implicated by the applicant in the incident raises legitimate doubts as to the independence of the investigation conducted.¹³

The Court has further specified that investigation of alleged ill-treatment must be carried out independently from the criminal charges involving the victim, since the purpose of the criminal proceedings against the accused person (who is the victim of ill-treatment) is either to find him innocent or guilty of these criminal charges brought up

¹³ Mikiashvili v. Georgia, Judgment of 9 October 2012, par. 87; Tsintsabadze v. Georgia, Judgment of 15 February 2011, par. 78; Enukidze and Girgvliani v. Georgia, Judgment of 26 April 2011, par. 243.

against him and not to investigate the ill-treatment against him.¹⁴

Usually allegations of ill-treatment administered against prisoners in the Georgian penitentiary institutions are investigated by the Investigation Department of the Ministry of Corrections – a fact that puts a big question mark about effectiveness of these investigations.

It is without saying that the above-described practice cannot be deemed compatible with the procedural requirement of Article 3 of the European Convention – effective investigation of each occurrence of ill-treatment.

Investigation into possible facts of ill-treatment cannot be effective if it is done as part of investigation into a criminal case against the victim. Veracity of this statement is corroborated, for example, by the above-mentioned case of A.B., in which the investigation was discontinued on account of lack of elements of crime. It should be noted that in that case the investigating authorities were investigating possible storage and carriage of a prohibited item by the prisoner. The only way to terminate the investigation was to find that the prisoner had not committed a crime, while the prisoner's allegations about ill-treatment remained unexamined at all.

It is of crucial importance that each investigation into alleged ill-treatment of prisoners in penitentiary institution be commenced and carried out by an agency that is institutionally detached from the Ministry of Corrections¹⁵ to ensure independence, impartiality and thoroughness of investigation.

In regard to effective investigation of ill-treatment, incorrect legal qualification of the conduct remains a major concern. Usually, investigation is commenced not under the torture article¹⁶ or the article on inhuman or degrading treatment¹⁷, but under Article 333(1) of the Criminal Code¹⁸ – with the latter envisaging a rather milder sanction.¹⁹

In its 2010 Report, the Committee for the Prevention of Torture (CPT) indicated that the Prosecution Office often failed to initiate criminal cases into complaints of ill-treatment, and when cases were opened, this was rarely under Section 144 of the Criminal Code, but rather under Section 333. Furthermore, it was said that the proceedings were protracted and very rarely led to convictions, which diminished trust in the system for investigating complaints.²⁰

In 2013, too, if the authorities were opening criminal cases, they were doing so under Article 333 and, accordingly, investigation in these cases cannot be described as effective.

The European Court of Human Rights has been reiterating in its judgments that investigation into ill-treatment must be such as to bring about detection and punishment of those responsible; otherwise, the general legal prohibition of ill-treatment would, despite its fundamental importance, be ineffective in practice [...]²¹

Pursuant to information received from the Georgian Chief Prosecution Office, in 2014, criminal prosecution was commenced against 48 employees of the Penitentiary Department on account of alleged perpetration of ill-treatment and other related criminal offenses by these individuals against prisoners. 28 of these 48 employees were convicted. It should be noted with satisfaction that the criminal offenses committed by these individuals were given the legal qualification of torture or inhuman or degrading treatment; however, this is only true about actions committed before Fall 2012, while since then, the alleged offenders are prosecuted under Article 333 of the Criminal Code.²²

14 Nechiporuk and Yonkalo v. Ukraine, Judgment of 21 April 2011, par. 164.

15 Having in mind the current legal system in Georgia, it would be the most appropriate for the prosecution office to in charge of investigation into allegations of ill-treatment.

16 Article 1441 of the Criminal Code.

17 Article 1443 of the Criminal Code.

18 Exceeding official powers.

19 A sanction under Article 333(1) of the Criminal Code is deprivation of liberty for up to three years, from nine to fifteen years under Article 1441 (1) and from four to six years under Article 1443 (2).

20 CPT Report to the Georgian Government, 2010, par. 17.

21 Assenov and Others v. Bulgaria, Judgment of 28 October 1998, par. 102. Labita v. Italy, par. 131; Boicenco v. Moldova, par. 102

22 It should be noted that, despite our request, the Chief Prosecution Office did not furnish the Office of the Public Defender with statistical data about the number of members of the Penitentiary Department prosecuted in 2013 for crimes under Articles 332, 333, 1441, 1442 and 1443 of the Criminal Code. Accordingly, the above-described opinion is based on the cases dealt with by the Office of the Public Defender.

As revealed by our monitoring, in the reporting period, victims of ill-treatment were not properly protected from becoming subjected to repeated violence or intimidation.

One important requirement of prohibition of ill-treatment under Article 3 of the European Convention on Human Rights is the protection of victims. Victims of ill-treatment and their family members should be provided with additional guarantees and must be protected against violence, threat of violence and any other form of intimidation that may emerge any time during the beginning and the end of judicial proceedings.

The Committee for the Prevention of Torture (CPT) regards it a major requirement of effective investigation that, while investigation into alleged ill-treatment is ongoing, potential victims of ill-treatment not be placed under the direction or supervision of individuals who might have administered ill-treatment against them.²³

The above-mentioned requirement has been violated in the above-described case of M.G. The Inspectorate-General of the Ministry of Corrections commenced internal examination of the relevant allegation on 13 December 2013. The Chairman of the Penitentiary Department ordered suspension of the director of the Penitentiary Institution No. 7. On 16 December 2012, the Inspectorate-General completed its internal examination and forwarded the case materials to the Tbilisi Prosecution Office for their response. Accordingly, a formal basis for keeping the prison director suspended from office no longer existed and therefore he returned back to his office.

While this case was under investigation, a trustee of the Public Defender of Georgia met with Prisoner M.G. in the Penitentiary Institution No. 7. According to the prisoner, it was unavoidable for him to meet with the staff members of the prison administration whom he alleged to have physically and verbally exerted pressure upon him. For this reason, the prisoner explained, he was psychologically subdued and did not feel safe.

With a view of ensuring effective investigation into M.G.'s case, the Public Defender recommended the Minister of Corrections to move this prisoner to some other institution but the Public Defender's recommendation was not upheld.

It should be noted that the applicable Georgian law makes it possible to suspend a civil servant provided that he/she is not facing charges as an accused person²⁴ and the suspension is ordered within an internal examination procedure.²⁵ If within the examination procedure elements of crime are revealed, the internal examination procedure will end and the case will be forwarded to an appropriate investigative authority. However, where this is the case, it is no longer possible under the applicable law to suspend a civil servant from office. Accordingly, victims remain unprotected and cannot avail of the aforementioned protection measure. That is exactly what happened in the case of M.G.

Unfortunately, the applicable Georgian law does not envisage proper guarantees to protect victims of ill-treatment from re-victimization – a fact that obstructs and turns effectiveness of investigation into allegations of ill-treatment questionable.

Finally, it must be noted that effectiveness of investigation largely depends on whether the existing evidence are collected immediately in the beginning of the investigation. Documenting bodily injuries is crucial.²⁶ The established practice at this point is that, whenever injuries are detected, members of the Special Preventive Group will draw up a protocol to describe the injuries but such verbal description cannot be a replacement to photography.²⁷ Since there is a high probability of injuries fading away before a forensic examination is ordered and carried out (especially when a prisoner refuses to report about the injuries to the law enforcement bodies), it is crucially important that members of the Special Preventive Group be authorized to photograph injuries; in addition, it is highly

23 Report of the Committee for the Prevention of Torture (CPT) to the Albanian Government concerning its visit to Albania during 23 May – 3 June 2005, CPT/Inf(2006) 24, par. 52. See also Appendix to CPT's public statement concerning the Chechen Republic of the Russian Federation, CPT/Inf (2007), par. 17, 53.

24 Pursuant to Articles 159 and 160 of the Code of Criminal Procedure, a court may order a defendant's suspension from his official duties (job) if there is reasonable ground to believe that, if allowed to remain in office, he/she may obstruct the investigation, hinder reimbursement of damages inflicted by crime or continue criminal activity.

25 Pursuant to Article 91 of the Law of Georgia on Civil Service, a public official who has the right impose a disciplinary sanction may suspend an official subject to disciplinary proceedings from official duties while the proceedings are ongoing.

26 Mikiashvili v. Georgia, Judgment of 9 October 2012, paras. 78-79.

27 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") (United Nations; New York and Geneva, 2001 – 2004), par. 106.

desirable that members of the Special Preventive Group be entitled, based on a clear word of law, to photograph the physical surroundings because bad physical conditions in which prisoners are kept may sometimes amount to inhuman and degrading treatment.



Recommendations:

To the Parliament

- To amend the applicable law with a view of enabling members of the Special Preventive Group to photograph traces of injuries and the physical environment.

To the Chief Prosecutor

- To commence and carry out investigation, by itself, into each and every occurrence of ill-treatment against prisoners by employees of the Penitentiary Department;
- In regard to legal qualification of ill-treatment, to open criminal cases not under Article 333 of the Criminal Code but under the provisions on torture and inhuman or degrading treatment.

To the Minister of Corrections

- To immediately notify the Prosecution Office about ill-treatment of prisoners by employees of the Penitentiary Department;
- To move victims of ill-treatment to other penitentiary institutions and to ensure the safety of their persons;
- To provide employees of the Penitentiary Department with advance training in use of force.

DISCIPLINARY PUNISHMENTS AND DISCIPLINARY DETENTION

According to the European Prison Rules, disciplinary procedures shall be mechanisms of last resort.²⁸ Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.²⁹ The severity of any punishment shall be proportionate to the offence.³⁰ Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment are prohibited.³¹ Punishment shall not include a total prohibition on family contact.³²

Pursuant to information received from the Ministry of Corrections, in the period of 1 January – 31 December 2013, prisoners have been disciplined for various violations in 1,408 cases. Of these instances, 532 prisoners were subjected to solitary confinement. According to information obtained from the Ministry of Corrections, in 2013, only one prisoner was subjected to administrative detention, in the Penitentiary Institution No. 7 – a fact that may deserve positive evaluation compared to what was the practice in previous years.

The information received from the Ministry of Corrections states that 4 prisoners challenged disciplinary measures they were ordered to. Three of these four complaints were rejected. The one remaining complaint is now being examined by a court. It is worth noting that prisoners normally do not appeal against the use of disciplinary measures in regard to them stating that such appeal would be of no avail.

Pursuant to Article 88(2) of the Code of Imprisonment, convicted and remand prisoners committed to solitary confinement have no right to short and long-term visits, telephone communication and purchase of food products.

28 The European Prison Rules, Rule 56.1.

29 The European Prison Rules, Rule 56.2.

30 The European Prison Rules, Rule 60.2.

31 The European Prison Rules, Rule 60.3.

32 The European Prison Rules, Rule 60.4.

The actual practice follows the written rules. The CPT has recommended the Georgian Government “to take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts.”³³

In this regard, the Public Defender addressed the Parliament in 2012 with a recommendation to enact appropriate amendments in the legislation but Article 88 of the Code of Imprisonment remains unchanged this far.

Having said the above, we believe prohibition of contact with the outside world should not be used as a form punishment. Stability in prisons could be achieved by increasing and expanding measures of encouragement and fair use of punishment when necessary; on the other hand, unfair and unlawful treatment may actually ignite unnecessary conflicts between the prisoners and the prison administration or amongst the prisoners themselves.

As regards application of sanctions by heads of penitentiary institutions for disciplinary misconduct, the laws currently in force do not determine which specific sanction should be used in specific circumstances. Therefore, the discretion afforded to heads of penitentiary institutions in deciding which sanction is appropriate in the given circumstances is too broad. Our monitoring has found that prisoners are sanctioned completely differently for the same misconduct in different penitentiary institutions. For example, punishments for violations such as “making noise and bumping on the cell door” or “insulting a staff member of the penitentiary institution” varied from institution to institution, from “limiting the right to receive parcels and packages” to “limiting the right to have a conversation over the phone” to “solitary confinement” for various periods. Solitary confinement as a sanction was most commonly used in the Institution No. 2 (43 cases), the Institution No. 8 (306 cases), and the Institution No. 15 (66 cases). In the Institution No. 7, pursuant to information obtained from the same institution, there were 38 prisoners by 1 January 2013 and 50 prisoners by 31 December 2013. During the reporting period, this Institution used “limitation of phone conversation” 43 times and “limitation of short-term visits” 11 times as sanctions. These figures are record figures compared to other penitentiary institutions if account is taken of the percentage ratio of other institutions’ populations. As a conclusion, it follows that, in applying sanctions, in the Penitentiary Institution No. 7 they favor using sanctions envisaging greater isolation of prisoners from the outside world.

We would like to summarize by saying that penitentiary institutions apply disciplinary sanctions inconsistently, which may eventually serve as a cause of prisoners’ protest.

Recommendations:

To the Parliament

- **To amend the Code of Imprisonment with an effect that prisoners placed in solitary confinement cells retain the right to visits.**

To the Minister of Corrections

- **To elaborate guidelines on the use of disciplinary sanctions so that the practice of application of such sanctions is consistent in all of the penitentiary institutions.**

CONDITIONS OF LIVING

Pursuant to the European Prison Rules, the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.³⁴ In all buildings where prisoners are required to live, work or congregate: the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system; artificial light shall satisfy recognized technical standards; and there shall be an alarm system that enables prisoners to contact the staff

³³ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 115, available at <http://www.cpt.coe.int/documents/geo/2010-27-inf-geo.pdf> [last accessed 16.03.2014].

³⁴ The European Prison Rules, Rule 18.1.

without delay.³⁵ It is established by the case-law of the European Court of Human Rights that conditions in which an individual is kept may cause violation of Article 3 of the European Convention on Human Rights.³⁶ And, it is one of the major principles of the European Prison Rules that prison conditions that infringe prisoners' human rights are not justified by lack of resources.³⁷

The infrastructure was completely outdated in the recent past in the Tbilisi Institution No 1, Batumi Institution No. 3 and Zugdidi Institution No. 4. Prisoners had to live in unbearable conditions in these institutions for years. There were problems related to accommodation, lighting, ventilation, heating and hygiene.

In 2013, the Tbilisi Institution No. 1 and the Zugdidi Institution No. 4 were shut down – a fact that we want to welcome. Repair works have started in the Batumi Institution No. 3. Despite these changes, a number of penitentiary institutions still require thorough repair.

Tbilisi Institution No. 7

The conditions of living in the Penitentiary Institution No. 7 are largely inappropriate. The Public Defender has addressed the Minister of Corrections with a series of recommendations on this matter³⁸ but the problem has not been eradicated this far.

The European Court of Human Rights has been consistently stressing the States' obligation in its judgment to ensure that conditions of detention are compatible with respect for his human dignity and that the suffering and humiliation involved do not in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Health and well-being of those detained must be adequately secured.³⁹ The Court has also mentioned that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.⁴⁰

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

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

Our monitoring revealed that, in cells for eight people, there were 7 prisoners in Cell no. 7, 5 prisoners in Cell no. 2, 4 prisoners in Cell no. 16 and 4 prisoners in Cell no. 23. As regards cells for four, there were 3 prisoners in Cell no. 17. There were 2 prisoners in Cell no. 14 designed for two people. 15 prisoners were accommodated separately in different cells.

We did some calculation based on these figures and concluded that, in Cell no. 7 with 7 prisoners, each prisoner has a floor space of about 2 square meters, which is a violation of a standard set forth in the Code of Imprisonment.⁴¹ As regards Cell no. 2 with 5 prisoners, Cell no. 16 with 4 prisoners and Cell no. 4 with also 4 prisoners, the floor space occupied by each prisoner varies from 2.9 to 3.6 square meters.

It should be noted that this calculation does not include the toilet space and the area occupied by beds and chairs. The space on which toilets are located vary from 0.4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. Each bed occupies 1.3 square meters. It follows that we should subtract 5,2 (1,3X4) square meters as well as roughly 1 square meter occupied by toilettes and tables amounting to a total of 8.3 square meters from the total area of

35 The European Prison Rules, Rule 18.2.

36 See, inter alia, Ramishvili and Kokhreidze v. Georgia, Judgment of 27 January 2009, par. 79.

37 The European Prison Rules, Rule 4.

38 30/07/2013 No. 03-3/513; 16/12/2013 No. 894/03-5; 19/02/2014 No. 03/458.

39 Valašinas v. Lithuania, Judgment of 24 July 2001, par. 102; Kudla v. Poland, Judgment of 26 October 2000, par. 94.

40 See Dougoz v. Greece, Judgment of 6 March 2001, par. 46 .

41 Under Article 64(2) of the Code of Imprisonment, floor area per each sentenced prisoner must not be less than 2.5 square meters in a closed place of deprivation of liberty.

each cell for eight people. It follows that even if only 4 prisoners are accommodated in a cell for eight people, the actual area that usable by prisoners is narrow enough. The same is true for cells designed for four people.

The European Committee for the Prevention of Torture (CPT), after its visit to Georgia in 2012, recommended the Georgian Government to provide every inmate in the penitentiary institutions nos. 2 and 8 with at least 4 m² of living space in the multi-occupancy cells and to remove excess beds.⁴²

In assessing daily conditions of living from the perspective of Article 3 of the European Convention on Human Rights, the European Court of Human Rights pays attention, in addition to personal living space, other aspects of physical environment such as the ability to exercise outside, natural lighting, natural and artificial ventilation, appropriate heating, privacy in toilets, sanitation and hygiene.⁴³ In *Peers v. Greece*, the Court deemed that the sharing of a cell with an area of 7 square meters between two inmates was a violation of Article 3 of the European Convention on Human Rights coupled with the fact that there was a lack of ventilation and daylight.⁴⁴

Our monitoring revealed improper conditions for living in the Penitentiary Institution No. 7. The cells in the Institution have small windows (75x43 cm) covered with several layers of iron bars making the entry of air and sun beams into the cells virtually impossible. The ventilation system existing in the institution does not provide sufficient movement of fresh air. Damp cells are ill lit and insufficiently heated.

It is planned to replace the windows in the Institution No. 7. However, the new windows will not open and thus the current problem of insufficient fresh air in the cells will not be remedied. As our group has found out on the spot, the works to replace the existing windows have already started. In particular, they have already installed pipes in the walls to provide artificial ventilation to compensate for the lack of fresh air.

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

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

In regard to the planned installation of new windows in the Penitentiary Institution No. 7, on 16 December 2013, the Public Defender addressed the Minister of Corrections with a recommendation. In the recommendation, the Public Defender stressed that, even if artificial ventilation system would be provided, such a system could not be a replacement for the need for fresh air intake in the cells. Accordingly, the Public Defender's recommendation was to take account of domestic and international requirements by installing such windows as would allow both daylight and natural ventilation in the cells.

In its reports concerning its visits to Georgia, CPT has been paying special attention to windows in the cells of Georgian penitentiary institutions, which are covered with iron shutters and bars preventing the entry of daylight and fresh air into cells.⁴⁵ The Committee has been recommending the Georgian Government to take measures, without delay, to provide natural lighting and adequate ventilation in the penitentiary institutions. CPT has been particularly keen on prisoners' access to daylight and fresh air considering that these two are basic elements of life which must never be denied to prisoners despite any security needs.⁴⁶

42 CPT Report to the Georgian Government on its visit to Georgia from 19 to 23 November 2012, CPT/Inf (2013) 18, par. 33.

43 *Vlasov v. Russia*, Judgment of 12 June 2008, par. 84; see also *Trepashkin v. Russia*, Judgment of 19 July 2007, par. 94.

44 *Peers v. Greece*, Judgment of 19 April 2001, paras. 70-72.

45 CPT Report to the Georgian Government on its visit to Georgia on 6-18 May 2011, see <http://www.cpt.coe.int/documents/geo/2002-14-inf-geo.pdf> [last accessed 13.03.2014]; CPT Report to the Georgian Government on its visit to Georgia on 18-28 November 2003; CPT Report to the Georgian Government on its visit to Georgia on 7-14 May 2004, <http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdf> [last accessed 13.03.2014].

46 11th General Report of the Committee for the Prevention of Torture (CPT) [CPT/Inf (2001) 16], par. 30, at <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf> [last access 13.03.2014].

In its judgments on applications filed against Georgia, the European Court of Human Rights has been referring to the reports of the European Committee for the Prevention of Torture (CPT) stating that the iron shutters on windows of cells in penitentiary institution were blocking the entry of fresh air and daylight into the cells, and there was no ventilation system to compensate for the absence of lack of air. The Court deemed that these conditions amounted to violation of Article 3 of the European Convention on Human Rights.⁴⁷ In particular, the European Court of Human Rights stated:

“The Court also notes that, in the prison concerned, windows had iron shutters preventing air and natural light from entering the cells. There was no ventilation system to compensate for this lack of air. [...] In the view of the Court, the evidence at its hand allows it to consider it proven “beyond reasonable doubt” that the applicant was indeed kept in the conditions of detention he complained of in his application. In particular, he had no bed of his own and was suffering from constant lack of air and dirt... Therefore, there was a violation of Article 3 of the Convention.”⁴⁸

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

There are only two rooms for visits (the so-called investigation rooms) in the Penitentiary Institution No. 7. These rooms are used by clergymen, lawyers and representatives of investigative authorities. When these two rooms are busy, visitors may have to wait all day long. In some cases, lawyers had waited for many hours to meet with their clients, with no avail.

Institution No. 8: juveniles' division

The cells in the juveniles' division are dilapidated and out of order. Our monitoring revealed that the ventilation system is not operational. The number of bedside-tables in the cells is insufficient compared with the number of prisoners and most of these units are out of order.

Institution No. 12 in Tbilisi

Although this institution is a half-open institution and the convicted prisoners spend most of their time outside the buildings, the conditions in buildings are inappropriate for accommodation. There is no ventilation system. Since there is no central heating, prisoners have to use electric heaters to heat their cells. The institution does not have infrastructure for conjugal visits.

Institution No. 6 in Rustavi

This institution does not have a ventilation system. The windows do not ensure sufficient natural ventilation.

Institution No. 14 in Geguti

Medical division

The wards have no ventilation system, taps or toilettes. Prisoners have to use toilets and washstands located in the corridor. The medical division's shower room and laundry room are located within the same area. Two shower units are located side by side without any partition in between. Prisoners have to change their clothes, wash themselves and do laundry in one and the same area.

Regime building no. 6

The cells have no operational ventilation system.

⁴⁷ Aliev v. Georgia, Judgment of 13 January 2009; Ramishvili and Kokhreizde v. Georgia, Application No. 1704/6, 27 January 2009; Ghavtadze v. Georgia, Judgment of 3 March 2009; Gorgiladze v. Georgia, Judgment of 20 October 2009.

⁴⁸ Aliev v. Georgia, Judgment of 13 January 2009, paras. 82-84.

Kitchen/dining room

The physical conditions in the kitchen are not satisfactory. A major overhaul is needed. No ventilation system is operational. The existing inventory is outdated.

Shower room

There are 5 operational shower rooms on the first floor of the regime building no. 6. The shower rooms do not have a compartment for changing clothes. There are no shelves to put items of hygiene on. There are no partitions amongst showers. 6 prisoners can take shower at a time. The sewerage system does not ensure proper conductivity and the water gets ponded. Because of the dysfunctional ventilation system, steam accumulates heavily in the shower room.

Recommendations to the Minister of Corrections:

- **Rooms for visits (the so-called investigation rooms) should be added in Institution No. 7 so that authorized persons can meet with the prisoners without obstacles;**
- **Adequate natural and artificial lighting, ventilation and heating should be provided in all of the institutions;**
- **All of the above-referenced institutions should be repaired with a view of making them compatible with the established standards;**
- **Each institution for convicted prisoners should provide a meeting room so that trustees of the Public Defender and/or members of the Special Preventive Group can meet with prisoners at any time without being eavesdropped or subjected to surveillance.**

PERSONAL HYGIENE

In its judgment in *Ananyev and Others v. Russia*, the European Court of Human Rights pointed out that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity.⁴⁹

In *Kudla v. Poland*, the Court has explained in a clear-cut manner that Article 3 of the Convention obliges the States to secure the physical health of detained persons.⁵⁰

Pursuant to Article 14(a.a) of the Code of Imprisonment, convicted prisoners and remand prisoners have the right to be provided with personal hygiene. Under Article 21, convicted/remand prisoners must be able to satisfy their physiological needs and maintain personal hygiene in a manner that is not infringing on their honor and dignity.

It should be noted that, in terms of hygiene, conditions in the penitentiary institutions have improved but some problems persist in the Institution No. 7.

In the Institution No. 7, toilets are small-sized, no ventilation system exists and lavatory bowls are not installed. Although toilets are isolated from the rest of the cell space, the doors on the toilets are short to cover the toilets in full and, because of no ventilation system, the open space above the short doors lets bad odor out of the toilettes.

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

49 *Ananyev and Others v. Russia*, Judgment of 10 January 2012, par. 156.

50 *Kudla v. Poland*, par. 94.

Rights has discussed this issue in the context of inhuman and degrading treatment in many of its judgments.⁵¹

Prisoners are experiencing are difficulties such as lack of bedside-tables and shelves and thus they can do nothing but to put their items and fruits on the floor and on their beds.

In the Institution No. 7, prisoners are not allowed to have shaving and nail care tools in their cells. All such tools belonging to prisoners from the same cell are kept in various boxes made of what formerly used to be milk product packages. These boxes are, on its turn, kept in officers' duty room together with various supplies and stationery. This is not only a violation of hygienic norms but a potential source of contagious diseases.

We should note that, in the Institution No. 7, 28 prisoners are suffering from chronic hepatitis C and their items of personal hygiene such as shaving and nail care tools must not be kept with those of others, since this poses other prisoners under the danger of getting infected with the disease.

The Institution No. 7 does not have a laundry room and the prisoners have to wash and dry their clothes and linen by themselves, in their cells.

Recommendation to the Minister of Corrections:

- **To provide the population of the Penitentiary Institution No. 7 with appropriate conditions to meet the requirements of hygiene.**

THE RIGHT TO STAY ON FRESH AIR

In *Yevgeniy Alekseyenko v. Russia*, the European Court of Human Rights stated that the applicant's situation that he had to spend the entire days and nights in the cell was exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day.⁵²

In *Moiseyev v. Russia*, the Court found that the outdoor exercise yard that was just two square meters larger than the cell and was surrounded by three-meter-high walls with the opening to the sky protected with metal bars was not able to provide recreation and recuperation.⁵³

In *Ananyev and Others v. Russia*, the Court explained that in assessing the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners can take it.⁵⁴

Under Article 14(g) of the Georgian Code of Imprisonment, convicted and remand prisoners have the right to be on fresh air at least 1 hour a day.

The European Committee for the Prevention of Torture (CPT) has recommended the Georgian Government to ensure that both sentenced and remand prisoners are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Prisoners under special security regime must have such opportunity for at least 1 hour every day.⁵⁵

In none of the pretrial detention facilities and closed-type institutions for convicted prisoners are exercise yards properly equipped. The prisoners thus have to spend their walk time on their feet. Often times they waive their right to take a walk or prefer to go back to their cells before due for this reason.

51 *Ramishvili and Kokhreidze v. Georgia*, Judgment of 27 January 2009, par. 86; *Aleksandr Makarov v. Russia*, Judgment of 12 March 2009, par. 97.

52 *Yevgeniy Alekseyenko v. Russia*, Judgment of 27 January 2011, par. 88.

53 *Moiseyev v. Russia*, Judgment of 9 October 2008, par. 125.

54 *Ananyev and Others v. Russia*, Judgment of 10 January 2012, par. 150.

55 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 17, available at <http://www.cpt.coe.int/documents/geo/2010-27-inf-geo.pdf> [last accessed 16.03.2014].

It should be noted that, in terms of duration of outdoor walk, the conditions in penitentiary institutions have generally improved but certain problems still persist in the Institution No. 7.

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

One should also take into account that the Penitentiary Institution No. 7 is a closed-type facility for both sentenced and remand prisoners and the prisoners are entitled to 1 hour of walk per day. Amongst the Institution's population are prisoners who are suffering or have previously suffered from lung tuberculosis multiple times. These prisoners are accommodated in the cells of the first floor with damp walls, floor and ceiling. This situation exacerbates their health condition dramatically increasing the risk of them getting infected with tuberculosis again.

The right to stay on fresh air is limited in the Penitentiary Institution No. 14 as well. Although the Institution has a shared dining room, it is out of use and prisoners are provided with food in the cells. By lunch time, prisoners have to go back to their cells to have their lunch. The lunch time lasts for about 2 hours. During this period, the prisoners have to stay in their cells. This practice violates their right under the Code of Imprisonment to freely move around in the Institution's territory during daytime.

Recommendations to the Minister of Corrections:

- **In pretrial detention facilities and closed-type institutions for sentenced prisoners, to increase the time the prisoners can spend outside to breathe fresh air as much as possible;**
- **To ensure that benches and inventory for physical exercises are installed and equipped in a way to suit different climate conditions.**

CONTACT WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture (CPT) has been attaching considerable importance to maintaining good contact with the outside world by all persons deprived of their liberty. "The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources."⁵⁶

Likewise, Article 61 of the Standard Minimum Rules for the Treatment of Prisoners stresses the importance for the prisoners to maintain contact with the society. In particular, the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard the rights relating to civil interests, social security rights and other social benefits of prisoners.

Under Article 24.4 of the European Prison Rules, the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

Short-term visits

The Georgian Code of Imprisonment regulates rules of administering short-term visits to prisoners. In particular, under Article 62(2)(b), a sentenced prisoner who is serving his sentence in a half-open institution is entitled to 2 short-term visits per month and to 1 additional short-term visit a month as an incentive measure.

⁵⁶ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The CPT Standards: "Substantive" Sections of the CPT's General Reports, Strasbourg, 18 August 2000, p. 37.

Under Article 17(7) of the Code of Imprisonment, a short-term visit shall last from 1 to 2 hours. Short-term visits may be subjected to only visual surveillance by a representative of the prison administration save in the events described in the legislation.

Article 50 of the Order of the Minister of Corrections and Legal Assistance No. 97 determines further details regarding the short-term visits. In particular, short-term visits should take place in special rooms located on the territory of penitentiary institutions. Depending on the type of a penitentiary institution, a short-term visit may be held in the form of a meeting or through a separating glass.

It should be noted that visits are usually administered in a room with a glass partition with parties sitting across the partition. Such arrangement does not allow a prisoner any physical contact with his family members. Only in exceptional circumstances such as prisoners with serious health condition and or juvenile visitors, and subject to a prison director's consent, may a visit take place without this barrier.

Conditions in which prisoners are meeting with their guests are one of the important factors affecting prisoners' successful social rehabilitation. Lack of direct contact and inadequate communication with the visitor across the glass partition is psychologically suppressive. Such visits violate the confidentiality of conversation too since prisoners may feel restrained to openly talk to their family members in the presence of other inmates.

The Code of Imprisonment determines a limited list of persons who may pay short-term visit to an inmate. In particular, under Article 17(2), upon their written request, sentenced and remand prisoners may be allowed to receive a short-term visit from their close relatives (children, spouses, parents/adopting parents, adopted children and their descendants, grandchildren, sisters, brothers, nephews and their children, grandparents, parents of grandparents, uncles, aunts, father's sisters, cousins, or any person with whom the inmate had been living together during the last 2 years before his/her imprisonment).

It should be noted that, the European Committee for the Prevention of Torture (CPT) has been referring to the said provision from the Code of Imprisonment stating that it allows prisoners to meet only with their family members and close relatives. The CPT regards it improper that prisoners are not allowed to meet with their friends, especially with consideration given to the fact that many prisoners are single, divorced or living apart from their families. Those who do not have families or close relatives are virtually deprived of the opportunity of maintaining contact with the outside the world and integrating into the society. Under the Code, inmates may not be visited by their friends and to receive some direct human support from them.

We would like note with satisfaction the fact that a new paragraph 21 has been added to Article 17 of the Code of Imprisonment stipulating that "With the consent of the Chairperson of Penitentiary Department, sentenced or remand prisoners may be allowed to have a short-term visit with individuals who are not listed in Article 2(2) of this Law." This amendment will play a positive role in resocializing sentenced prisoners.

Recommendation to the Minister of Corrections:

- To provide the possibility of conducting short-term visits without a glass partition.

Conjugal visits

Under Article 23 of the International Covenant on Civil and Political Rights, the family is the natural and fundamental group of unit of society and is entitled to protection by society and the State. The ability of prisoners to receive long-term visits furthers this goal as such visits are the best way for prisoners to resocialize and maintain full-fledged contact with their close people – something that is most needed by inmates in closed-type penitentiary institutions.

Under Article 172(1) of the Georgian Code of Imprisonment, a long-term visit means a period in which an sentenced prisoner is permitted to live with individuals listed in paragraph 2 of this Article on the territory of a penitentiary institution for sentence prisoners, in a room specially designed for this purpose, at the expense of this prisoner or the visiting individual, without the presence of the prison administration representatives. Pursuant to Article 62(2)(e) of the Code of Imprisonment, a sentenced prisoner who is serving his sentence in a half-open

prison for sentence prisoners is entitled to 2 conjugal visits per year and to 1 additional conjugal visit a year as an incentive measure.

Article 65(3) of the Code provides that life prisoners serving their sentence in closed institutions for sentenced prisoners are entitled to 2 conjugal visits per year and to additional 2 conjugal visits a year as an incentive measure.

It is worth noting that the Code of Imprisonment does not prescribe rules and procedures of administering conjugal visits for sentenced prisoners in closed-type penitentiary institutions, which is a serious flaw in the law. However, it is contemplated to amend the Code by adding a new paragraph “d” to Article 65(1) entitling sentenced prisoners serving their sentence in closed penitentiary institutions to 2 conjugal visits per year and to 1 additional conjugal visit a year as an incentive measure.

Pursuant to Section 4 of the Order of the Minister of Corrections and Legal Assistances No. 42 dated 18 March 2011, a conjugal visit shall be administered at the expense of the sentenced prisoner or his/her visitor. One such visit costs 60 Georgian Lari payable via wire transfer.

We welcome the fact that a new paragraph 11 was added to Article 172 of the Code of Imprisonment stipulating that “a conjugal visit may be administered without payment of the fee, according to a procedure determined by the Minister.” It should be noted that the current fee for conjugal visits often times becomes a barrier to maintaining a family contact. Against this background, the mentioned amendment in the law allowing free-of-charge visits should be evaluated as proactive approach.

Data on long-term visits in the Georgian penitentiary institutions

Table 1: Number of long-term visits

№	Name of the Penitentiary Institution	Number of long-term visits registered
1.	Institution No. 2 ⁵⁷	188
2.	Institution No. 6	270
3.	Institution No. 11	18
4.	Institution No. 14	1342
5.	Institution No. 15	962
6.	Institution No. 16	57
7.	Institution No. 17	1346

The Institution No. 8 has no infrastructure for administering conjugal visits. With prior agreement with their families, life prisoners are taken once a month to the Institution No. 6 where they can receive such long-term visits.

As regards remand prisoners (accused persons), Article 17(10) of the Code of Imprisonment provides that they are entitled to only short-term visits pursuant to the rules and requirements established by the Georgian legislation. Remand prisoners may not receive long-term visits, which restricts their opportunity to maintain contact with their families. We believe that an outright prohibition of conjugal visits for remand prisoners is not justified.

This issue has been discussed by the European Court of Human Rights in its judgment in the case of *Varnas v. Lithuania*.⁵⁸ The case concerned a complaint lodged by Thomas Varnas, a Lithuanian national whose request for a conjugal visit was denied by the prison administration while he was kept in custody at a remand prison under the pretext that only sentenced prisoners had the right to such visits.

The European Court of Human Rights disagreed with the respondent Government’s argument that remand prisoners had no right to conjugal visits due to the prevailing public interest of investigation. The Court stated that the applicant’s wife was neither a witness nor a co-accused in the criminal cases against her husband, which removed the risk of collusion or other forms of obstructing the process of investigation. The Court eventually found that

⁵⁷ In the Institution No. 2, the infrastructure for long-term visits became operational on 11 September 2013.

⁵⁸ *Varnas v. Lithuania*, Judgment of 9 December 2013.

there was a violation of Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. In deciding the case, the Court relied, inter alia, upon the views expressed by the European Committee for the Prevention of Torture (CPT) concerning the way conjugal visits were administered in Lithuania.

Under Article 99 of the European Prison Rules, unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, and shall additionally have access to other forms of communication.

With these circumstances in mind, we believe the Code of Imprisonment should be amended so that remand prisoners are allowed to receive conjugal visits.

As regards female sentenced prisoners, under Article 173 of the Code of Imprisonment, they have the right to a family visit. By virtue of this right, they may be visited by their children, adopted children, spouses, parents (adoptive parents), sisters and brothers. Family visits are administered in the territory of the penitentiary institutions, in rooms designed specifically for this purpose. Such a visit may last no more than 3 hours.

Pursuant to Rule 27 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”), where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.

Under the Georgian Code of Imprisonment, however, unlike male sentenced prisoners who are entitled to conjugal visits with the duration of up to 24 hours, female sentenced prisoners may only receive 3-hour family visits. This provision from the Code of Imprisonment is therefore clearly contradicting the international standard set forth in the Bangkok Rules as well as the spirit of UN Convention on the Elimination of All Forms of Racial Discrimination against Women.⁵⁹

Under Article 1241 of the Code of Imprisonment, with a view of facilitating the exercise of the right to conjugal visits, the Minister of Corrections is obligated to set up appropriate conditions and commence administering conjugal visits at women’s institutions and closed institutions for sentenced prisoners not later than 31 December 2015. We believe all appropriate measures should be taken to provide women prisoners with proper conditions for exercising their right to conjugal visits.

Recommendations:

To the Parliament

- with no detriment to investigation interest, to amend the Code of Imprisonment so that remand prisoners are allowed to avail themselves of long-term visits.

To the Minister of Corrections

- to provide infrastructure and arrangements for long-term visits in the penitentiary institutions nos. 5, 7, 8 and 12.

Video visits

Pursuant to Article 171(1) of the Code of Imprisonment, sentenced prisoners in penitentiary institutions, except prisoners convicted of very serious crimes and individuals referred to in Article 50(1)(f) of the Code, have the right to video meetings (through direct audio and visual TV bridge) with anyone.

It is intended to amend the Code of Imprisonment with a view of re-framing Article 171(1). If the amendment is enacted, the new provision will read: “sentenced prisoners in institutions for sentenced prisoners, except prisoners in high risk institutions for convicted prisoners and individuals referred to in Article 50(1)(f) of the Code, have the

⁵⁹ Ratified by Resolution of the Parliament of Georgia No. 561 dated 22 September 1994.

right to video visits (through direct audio and visual TV bridge) with anyone.

Authorization of both conjugal visits and video visits for all categories of prisoners would be a positive change furthering the goal of prisoner resocialization. Moreover, video visits can be used not only by family members but friends and other close people. The prohibition under the Code of Imprisonment on the use of video visits by a certain category of prisoners seems to be an additional punishment and is therefore unjustified since any prohibition or restriction must be individual and duly substantiated in each specific case.

Table 2: Data concerning the use of video visits

№	Name of the Penitentiary Institution	Number of video visits
1.	Institution No. 5	1
2.	Institution No. 9	0
3.	Institution No. 11	4
4.	Institution No. 15	104
5.	Institution No. 16	73
6.	Institution No. 17	77

According to Paragraph 2 of the Order of the Minister of Corrections and Legal Assistance No. 55 dated 5 April 2011, a video visit to a sentenced prisoner may be administered not more than once in any 10 calendar-day period, on workdays, from 10:00 till 18:00 hrs. Each video visit may not exceed 15 minutes.

Under Article 171(1)(4) of the Code of Imprisonment, there is an established fee for each video visit payable through wire transfer to the account of the National Probation Agency. Money collected through these payments are then used for implementing the purposes and functions of the Agency. The Minister of Corrections is entitled to release a prisoner from the duty of paying the fee for a video visit. Under paragraph 41 of the same provision, the fee is not payable also by individuals referred to in Article 17(2) of the Code of Imprisonment who are registered in the Unified Database of Socially Unprotected Families whose socio-economic score is less than the Government-determined marginal score of eligibility for receiving subsistence allowance. The fee for a video visit must be paid by a person who wishes to have such a visit or the prisoner's legal representative.

The Minister of Corrections determines a list of institutions for sentenced prisoners where video visits are allowed as well as the permitted number, duration and the procedure of administering video visits.

Recommendation to the Minister of Corrections:

- **To provide all of the penitentiary institutions with infrastructure required for administering video visits.**

Phone conversations

Under international norms and established standards, the right to a phone conversation is one of the important rights of prisoners in terms of maintaining contact with the outside world. Article 14 of the Code of Imprisonment recognizes the prisoners' right to have phone conversation. Prisoners may use a shared telephone if there is one in the institution. Under Article 19 of the Code, prisoners are responsible for paying for their phone conversations. Conversations are subject to the administration's control. A sentenced prisoner will be allowed to have a phone conversation after he/she files a written application in which he/she must indicate the addressee's telephone number and call duration.

Pursuant to Article 62(2)(c) of the Code of Imprisonment, sentenced prisoners in half-open institutions are entitled to 4 phone conversations during a month, at their own expense. Each conversation may not last more than 15 minutes. However, as an incentive measure, they may have an unlimited number of conversations at their own

expense, each conversation being limited to no more than 15 minutes. Article 65(1)(c) of the same Code states that prisoners serving their sentences in closed-type institutions are entitled to 3 phone conversations per month, at their expense, for no more than 15 minutes each. As an incentive measure, such prisoners may be allowed to have an unlimited number of conversations at own expense, for no more than 15 minutes each.

Normally, telephones are available for use in penitentiary institutions from 9am till 6pm. Prisoners working for the logistics unit may access a telephone till 10 o'clock in the evening. As regards life sentence prisoners, they may call until midnight. Prisoners have 2 days a week to make international calls.

Although prisoners are entitled to phone conversations under the applicable laws, in real life their exercise of this right is limited due to problems related to calling cards. In particular, if a prisoner does not exhaust the talk time on one card, the remaining talk time is blocked and he/she can no longer make a call to use the minutes remaining on the card. The only way is then to buy a new calling card, which is an additional cost for prisoners.

Calling cards are also blocked when a prisoner is unable to have conversation due to unrelated reasons such as network overloading, call interruption, incorrect number dialing, etc.

Some prisoners are serving their sentences in places remotely located from their regular places of residence or from where their family members live and the only way of communicating with the outside world is telephone conversation. The above-described problems with calling cards are a serious barrier to their ability to communicate with the outside society. The CPT has been advocating the need for some flexible approach as regards use of telephone contacts vis-à-vis prisoners whose families live far away. "For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families."⁶⁰

Recommendation to the Minister of Corrections:

- **To provide prisoner in all of the penitentiary institutions with appropriate arrangements to be able to exercise their right to phone conversation in a full-fledged manner.**

Resocializing sentenced prisoners

The Public Defender has been reiterating in its reports that the conditions in penitentiary institutions must be such as to provide prisoner's resocialization and reintegration into the society. While serving their sentence, prisoners should be able to learn or deepen their knowledge of subjects and skills they wish to explore more and to participate in sports, art-related, intellectual and other activities. All of these are necessary for prisoners to return to the society as full-fledged citizens after serving their sentences.

Since 2013, the following vocational and crafting programmes have been offered to prisoners in penitentiary institutions: learning courses in computer office software, Internet and information technologies; vector graphics; bar-tending; graphical printing; hairdressing; enamel work; stone cutting; electricity repair; plasterboard installation; thick felt, quilt and batik work; beauty therapy (cosmetology); massage; floor and wall tiling; sculpting (making sketches using the soft parts of bread); sewing; wood engraving; church chanting; icon painting; dances (choreography).

For the purpose of facilitating to prisoners' resocialization, a series of activities were implemented in penitentiary institutions such as courses in English language, Georgian writing and speech, marketing, "Start your own business" and small-size hotel management. Prisoners were able to watch and participate in cultural, intellectual and religious events, various exhibitions, "The Pen" Competition in literature, presentation of poem collections, theatrical performances, movie shows, poetry evenings, and meetings with clergy members. Educational entertainment events such as "Etalon", "Who? What? Where?" and "The Smartest" were conducted. A methadone replacement program was implemented for drug-addicted prisoners. Various sporting events were held.

In the Institution No. 2, prisoners have the opportunity to engage in various learning courses such as church chanting, Georgian writing and speech, Microsoft Access software, electricity installation and repair, floor and wall

60 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, par. 51 see <http://www.cpt.coe.int/en/annual/rep-02.htm> [last accessed 14.03.2014].

tiling and trimming, and wood engraving. A project entitled “Read books with the blessing by the Patriarch” is being implemented. A meeting was held with Nana Gubeladze, Associated Professor at the Akaki Tsereteli Kutaisi State University. A tournament in table tennis and an intellectual game “What Where? When?” were conducted.

In the Institution No. 5, the non-governmental organization “Woman and Business” offered the following courses during 2013: hairdressing, therapeutic massage, cosmetology, doing small business, thick felt/batik/quilt work, computer office software and hotel business. Based on a memorandum of understanding between the Penitentiary Department and the Education Ministry, the Public Law Entity “Mermisi” Vocational School conducted a teaching course in sewing. The course was financed by the Penitentiary Department.

The “Aphazeti” Humanitarian Charity Center provided vocational courses in icon-painting, wood engraving, clay work, embroidery, choreography, computer office software and enamel work. The project was financed by the Penitentiary Department.

NORLAG helped deliver training in civil education with the aim of fostering prisoners’ rehabilitation. The “Woman and Business” Association, together with its partner organizations such as the Professional Psychologists’ Association and the “PEONI” Women’s Club, provided psychological and legal consultations to prisoners. The prison librarian provided English language lessons for beginners. In addition, the Institution was regularly holding other different cultural events directed at resocializing and rehabilitating the prisoners.

In 2013, no general educational or vocational programs were implemented **in the Institution No. 6**. Only the “Atlantis” program was operational aimed at anti-drug rehabilitation. Within the program, drug-addicted sentenced prisoners underwent a rehabilitation course.

In the Institution No. 7, no single prisoner has expressed a wish to receive any kind of training. Because of the categories of prisoners, no rehabilitation programs are offered.

In the Institution No. 8, a methadone programme is running for drug-addicted prisoners. In addition, a sculpting course (prisoners make the work pieces using soft parts of bread) is offered.

In the Institution No. 11, the following psycho-social rehabilitation programmes were running during the year of 2013: the “Equip” psycho-social rehabilitation programme, effective communication training, anger management, art therapy, psychology group “MythDrama”, training in healthy way of life and training course in soccer and rugby.

According to official records, 76 adolescents were attending high schools within the Institution in 2013. Here are statistics of sentenced prisoners who took vocational training courses: enamel work – 13 prisoners; information technologies – 12 prisoners; Internet technologies – 13 prisoners; wood engraving – 100 prisoners; computer office software – 30 prisoners; decorative wood work and design – 31 prisoners.

In the Institution No. 12, with the Penitentiary Department’s sponsorship, NORLAG is implementing a project entitled “Getting ready for release”. Also, the prisoners have had the chance to watch the movie “A machine that causes everything to disappear” directed by Tinatin Gurchiani. After the movie was shown, the prisoners discussed the movie along with the movie director and the producer.

In the Institution No. 14, prisoners were provided with training in a computer awareness course entitled “Access”. The Penitentiary Department financed and organized training in stone cutting implemented by the Abkhazia Center. A soccer tournament with prisoners participating was held.

In the Institution No. 15, prisoners can enroll in courses such as graphical printing, computer awareness course “Access” and a wood engraving course. The “Spectrum” College offers a practical course in plasterboard installation.

In the Institution No. 17, prisoners can attend Civic Education Training, a computer awareness course “Access”, training in enamel work and wood engraving skills.

It goes without saying that we welcome the offering and implementation of above-described programmes and events at some penitentiary institutions; however, it is crucial that such programmes and events are provided on a continuous basis and in all of the penitentiary institutions. It is not justified that the Institution No. 7 does not offer any programmes for the simple reason that prisoners have not asked for one; for prisoners to wish to be enrolled in

a programme, they should first be told about the availability of such programmes. In other words, an initial needs assessment should be carried out to determine the needs of the prisoners.

Recommendation to the Minister of Corrections:

- **To introduce and implement various programmes aimed at prisoners' resocialization in the Institutions no. 6, 7 and 8.**

EMPLOYMENT OPPORTUNITIES FOR PRISONERS

In the period of January – December 2013, 506 sentenced prisoners were employed on paid jobs. Normally, inmate work duties were related to cleaning, tidying up, doing laundry, distributing food, etc.

Starting 2 October 2013, sixty sentenced prisoners were employed in the Institution No. 2, seventeen in the Institution No. 5, thirty-two prisoners were registered at the logistics unit in the Institution No. 6, only five in the Institution No. 7 of whom only four inmates are still having their jobs (two of them are cleaning storerooms and the two other prisoners are tasked with the same at the kitchen), one hundred thirty prisoners work in the Institution No. 8, five in the Institution No. 9, thirty-two inmates were employed in the Institution No. 12 in the period of 2 October – 31 December 2013, sixty-two in the Institution No. 14, up to fifty prisoners in the Institution No. 15 (of whom twelve individuals were employed at the bakery located inside the institution and were collecting wages accordingly), eight inmates had paid jobs at the local bakery in the Institution No. 16 in the period of 1 January – 31 December 2013, seventy-eight inmates had paid jobs at the logistics unit in the Institution No. 17, only two prisoners in the Institution No. 18 and 25 inmates in the Institution No. 19.

PRISONER ALLOCATION

Prisoners are accommodated according to the category and seriousness of the crime committed, by types of institutions operated by the Georgian Penitentiary Department.⁶¹ Individuals convicted for less serious or serious crimes punishable with up to ten years of imprisonment will serve their sentence in half-open institutions. Those who have been convicted for particularly serious intentional crimes for the first time will have to serve their sentence in closed-type institutions.⁶² In mixed-type institutions, remand prisoners must be isolated from the sentenced prisoners, at least by being accommodated in different residential spaces.⁶³

The Public Defender is often times being approached by sentenced prisoners who have had problems with maintaining contact with the outside world due to their transfer to another institution. For them, it is important to maintain as much contact with their families and friends as possible within the applicable rules.

The Order of the Minister of Corrections and Legal Assistance No. 184 dated 27 December 2010 determines the types of institutions operated by the Georgian Penitentiary Department. However, the real situation in the prisons does not match the conditions described in the rules governing the relevant types of prisons. For example, the Order says that the Penitentiary Institution No. 6 is both a half-open and a closed-type institution for sentence prisoners but the actual conditions in the Institution No. 6 are not such as to allow the inmates to exercise the rights they are entitled to in a half-open regime.

The Public Defender is receiving numerous applications from prisoners and their family members requesting to be transferred to other institutions so that they are closer to their near people. Article 46 of the Code of Imprisonment stipulates that sentenced prisoners should serve their sentences in appropriate types of institutions that are closest by their location to their homes or where their close relatives live, except when such institution cannot accept the prisoner due to overcrowding. In exceptional circumstances, such as health condition, security considerations and/or at the prisoner's consent, a sentenced prisoner may be transferred to another institution. We would like to note the importance of prisoners' contact with their close relatives as one of the means of resocialization.

61 Code of Imprisonment, Article 61(1).

62 Code of Imprisonment, Article 64(1).

63 Code of Imprisonment, Article 9(2).

In exceptional cases, when it is impossible to accommodate a prisoner in an institution located close to his/her relatives, the European Committee for the Prevention of Torture (CPT) recommends adopting a somewhat flexible approach:

“The CPT wishes to emphasize in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families.”⁶⁴

Through 1 January – 31 December 2013, 8,538 prisoners were transferred from one penitentiary institution to another. Pursuant to European Prison Rules, as far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.⁶⁵

The Public Defender has been receiving applications from sentenced prisoners asking for their transfer from closed institutions to half-open institutions, taking into account their sentence. Under Article 61 of the Code of Imprisonment, convicted individuals will, by default, be allocated to half-open institutions if they have been convicted of less serious or serious crime and if the imposed sentence is no more than 10 years. Unfortunately, this requirement is ignored in quite a number of cases.

For example, N.Sh., a convicted prisoner, asked for his transfer from a closed to an open institution because his sentence was only 2 years and 6 months. The prisoner was also alleging that he had been subjected to ill-treatment and was at the material time allocated to a cell along with those who had participated in his beating. Accordingly, the prisoner was stating that he had to stay in a psychologically tensed and stressed environment all the time. The Office of the Public Defender addressed the Penitentiary Department in writing several times with the same request but with no avail.

Sometimes, in order to maintain order in the prison, prison administrations resort to transferring a prisoner to another institution if the prisoner is often violating the rules. However, the European Committee for the Prevention of Torture (CPT) has been stressing in this regard that the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical wellbeing. Moreover, a prisoner in such a position will have difficulty in maintaining appropriate contacts with his family and lawyer.⁶⁶ When a prisoner is transferred from one institution to another, the prison authorities do not take a prompt action to inform his family members and lawyer thereabout. Prison administrations are obligated to inform a close relative of a sentenced prisoner about his admission into a penitentiary institution no later than within 3 days after admission.⁶⁷ In addition, pursuant to the European Prison Rules,⁶⁸ upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

Often times prisoners are unaware of the reasons of their transfer.⁶⁹ Moreover, the Penitentiary Department refuses to inform the Public Defender’s Office about the reasons of transfer. Normally, a template letter from the Penitentiary Department will say that a prisoner has been transferred from one institution to another on the basis of a confidential letter of the institution’s director. The European Court of Human Rights has explained that a decision to transfer a prisoner from one establishment to another must be reasoned and must serve a legitimate goal. The frequent moving of a prisoner from one institution to another, depending on the specific circumstances of the case, may result in violation of Article 3 of the European Convention on Human Rights.⁷⁰

During monitoring, trustees of the Public Defender have found in a number of cases that both remand prisoners

64 2nd General Report on the CPT’s activities covering the period 1 January to 31 December 1991, par. 51 see <http://www.cpt.coe.int/en/annual/rep-02.htm> [last accessed 14.03.2014].

65 Rule 17.3.

66 2nd General Report on the CPT’s activities covering the period 1 January to 31 December 1991, par. 57.

67 Code of Imprisonment, article 34.

68 The European Prison Rules, Rule 24.9.

69 Only one prisoner challenged an order on the transfer of prisoners to another institution in 2013.

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

and sentenced prisoners were alone in their cells.⁷¹ Neither were they serving a disciplinary punishment nor was there any other circumstance to justify this fact. Unless it is in the interest of the individual sentenced prisoner's personal security or at his own initiative, placing him alone in a cell can have harmful effects on his psychological and physical wellbeing. The European Court of Human Rights has explained that keeping a sentenced prisoner isolated in a cell for a long period of time may amount to inhuman treatment.⁷²

In the course of monitoring, trustees of the Public Defender have found that juvenile remand prisoners and adult sentenced prisoner were able to contact each other, in the Penitentiary Institutions Nos. 8 and 2. Pursuant to Article 8(d) of the UN Standard Minimum Rules for the Treatment of Prisoners, young prisoners shall be kept separate from adults. The same standard is enshrined in the Order of the Georgian Minister of Corrections and Legal Assistance No. 97.⁷³

The monitoring also showed that nine inmates in the Institution No. 7 have had lung tuberculosis in the past and three inmates were undergoing treatment within the DOTS program. These individuals were accommodated together with other prisoners who were not infected with tuberculosis. This circumstance coupled with the existing improper conditions creates an unfavorable epidemiological situation.

Recommendations:

To the Minister of Corrections

- When moving prisoners from one establishment to another, the prisoners should be made aware of the grounds and reasons of their transfer, which should be documented by drawing up a relevant protocol; they should also be informed about their right to challenge the transfer order.

To the Chairperson of the Penitentiary Department

- To completely separate juvenile prisoners from adult prisoners;
- To accommodate prisoners infected with tuberculosis separately, in any event;
- When allocating prisoners to penitentiary institutions, to take into consideration proximity of the institutions to their homes or their relatives' homes;
- To ensure that prisoners are allocated to the appropriate types of penitentiary institutions as required by law.

71 For example, in the Institution No. 7.

72 Mathew v. The Netherlands, Judgment of 29 September 2005.

73 Article 19(16).

THE PENITENTIARY HEALTHCARE SYSTEM AND TORTURE PREVENTION MECHANISMS

PURPOSE AND METHODOLOGY OF MONITORING

During the monitoring carried out in 2013, we paid special attention to the effectiveness of the functioning of the penitentiary healthcare system and the existing challenges. In the course of the monitoring, we questioned the inmates and the medical personnel of penitentiary institutions. We also examined the existing situation in medical units of the penitentiary institutions and the infrastructure in the treatment facilities.

For the purposes of the research, we were using statistical reports and information provided by both the Medical Department of the Ministry of Corrections and individual penitentiary institutions.

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

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

Geneva Declaration (1948), Declaration of Malta (1991, 2006), Helsinki Resolution (2003, 2007);

- A Guide to International Instruments and Mechanisms against Torture, International Rehabilitation Council for Torture Victims (IRCT) (as of 4 July 2007)
- Health in Prisons, A WHO guide to the essentials in prison health;
- The Madrid recommendation: health protection in prisons as an essential part of public health (WHO, 2010).

ORGANIZATIONAL ASPECTS OF THE GEORGIAN PENITENTIARY HEALTHCARE SYSTEM AND REFORMS IMPLEMENTED

Pursuant to information received from the Ministry of Corrections, 2013 was a year of systemic overhaul of the penitentiary healthcare system. The Medical Department structure was made compatible with its basic functions and requirements of contemporary management standards: separate units were created to manage primary healthcare, specialized medical assistance, medical regulation, and healthcare economy and logistics. Primary healthcare and specialized institutions were subordinated to the relevant divisions.

Since 1 January 2013, the Ministry of Corrections has been implementing an 18-month-long reform, pursuant to the Reform Strategy and Action Plan. According to the information received from the Ministry, the following activities have been implemented within the reform:

- The penitentiary healthcare budget was increased;
- Salaries of the penitentiary medical personnel were increased;
- A program to prevent, diagnose and treat hepatitis C in the penitentiary system was developed;
- The Medical Department was reorganized;
- The Personal Electronic Health Record software (PEHR) was launched;
- Primary healthcare module was introduced in all penitentiary institutions;
- The penitentiary healthcare personnel was renewed through competitions;
- An intensive program for training nurses was developed;
- A basic list of medications was elaborated and approved;
- A new center for the treatment and rehabilitation of tuberculosis was opened;
- Repair and re-equipment of the Medical Institution for Accused and Convicted Persons started;
- A suicide prevention program was developed and launched;
- A joint commission composed of representatives from the Ministry of Labor, Health and Social Protection and the Ministry of Corrections was reformed;
- A new nutrition standard was elaborated and launched;
- An active campaign against drug addiction was commenced;
- An information material about available medical services was prepared for migrant prisoners in 10 different languages.

These changes deserve positive evaluation. However, a series of substantive problems remain in the penitentiary healthcare system, which will be discussed in detail below.

Funding of the medical services

Funding of the penitentiary healthcare services: a yearly breakdown

Table 3

Total penitentiary healthcare budget in 2012	7.587.000 Lari
Total penitentiary healthcare budget in 2013	11.958.000 Lari
Medical personnel wages in 2012	Doctors: 650 Lari Nurses: 350 Lari
Medical personnel wages in 2013	Doctors: 1200 Lari Nurses: 650 Lari

We note with satisfaction the trend of increased funding of the prison healthcare services. We also welcome the fact that the salaries of the prison medical personnel have been raised. These positive changes have given rise to increased expectations of the beneficiaries and other interested parties towards the prison healthcare services. Naturally, with more effective administration methods and tools in place, one would reasonably expect a steep increase in the capacity and the quality of the penitentiary healthcare services compared to the previous years.

Provision with medications; pharmacy operation

In 2013, thirteen drug storage pharmacies and private pharmacies were functioning in penitentiary institutions. In the below table, we provide data about sums spent on medication supplies for the penitentiary institutions through 2012-2013:

Table 4

Penitentiary Institution No.	2012	2013	National TB program 2012	National TB program 2013
2	59182,39	145131,16		
5	105797,35	80859,96		
6	47423,15	91484,74		
7	5271,5	17831,54		
8	133578,84	220578,02		
9	52359,28	28075,45		
11	2953,78	9237,01		
12	28990,24	48431,36		
14	136132,54	173845,94		
15	99404,51	179667,21		
17	69069,1	227222,41		
18	374215,76	231375,68		
19	136601,34	216408,7	170428,37	74827,13
Total	1250979,78	1670149,18		

Pursuant to information received from the Ministry of Corrections, each drug storage facility has its responsible person. Penitentiary institutions are receiving medications according to an approved basic list of medications based on monthly or individual requests submitted by chief doctors of individual penitentiary institutions. These requests are drafted jointly by the institution's chief doctor, pharmacists and doctors. From the drug storage facilities, medications are given out based on doctor prescriptions, which must be signed under by the recipient and approved by the chief doctor.

There is a private pharmacy in the Center for the Treatment of Tuberculosis and Rehabilitation but it is not functioning. Also, prisoners in the Penitentiary Institution No. 14 are unhappy with the fact that the only pharmacy in

their institution is open only one day a week.

Prisoners have been complaining of unavailability of prescribed medications at their institutions. Prisoners are often irritated about the so-called generic drugs. Pursuant to Article 11(1) of the Georgian Law on Drugs and Pharmaceutical Activity, a generic drug is an international non-patented pharmaceutical product. Generic pharmaceutical products are used to replace patented (original) medications since they have the same treatment effect as their original counterparts. According to the World Health Organization (WHO) definition, a generic drug is a pharmaceutical product, intended to be interchangeable with an innovator product, that is manufactured with a license from the innovator company and marketed after the expiry date of the patent or other exclusive rights.⁷⁴

The effectiveness of generic pharmaceutical products depends on their composition and equivalency. A generic pharmaceutical product, like to an original drug, contains an active agent and a supplement. It is the latter that is responsible for how fast and in what quantity the active agent is released from a pill or a capsule. Effectiveness of generic drugs depends on these factors. A minor change in the supplementing substance or the pill casing may greatly affect the drug quality. If the supplementing substance in a generic pharmaceutical product differs from the substance used in the original drug, the two drugs may not be interchangeable in terms of therapeutic effect or may have different therapeutic effects.

That said, prisoners must be provided with adequate information about generic pharmaceutical products. If prisoners are unhappy complaining about the treatment effect of generic drugs, these drugs must be examined clinically to determine their therapeutic equivalency.

During our routine and special monitoring visits, we found out that some medications listed as available were not actually available in the relevant institution. For example, in December 2012, when the trustees of the Public Defender were visiting the Center for the Treatment of Tuberculosis and Rehabilitation as well as the Penitentiary Institution No. 8 within the monitoring, the local personnel could not show the monitoring group some of the medications that were on the list of available medications; however, the medical personnel did explain they had replacement drugs.

To avoid any misunderstanding and disappointment amongst the prisoners, we suggest that all of the drugs formally listed as available in a particular penitentiary institution be actually available at all times. To this end, it would be appropriate that the medical personnel estimate potential consumption of drugs in advance and submit a request for sufficient quantity of drugs to make sure that their institution does not experience shortage until the requested drugs are delivered to the institution.

Medical referrals

The Ministry of Corrections offers prisoners healthcare services in 52 civilian clinics. These clinics are selected by a simplified rule, after a market research, taking into account geographic accessibility and the current need for medical services, on the basis of a Government resolution.⁷⁵

Medical referral implies the redirecting of patients to specialized medical clinics both within and outside the penitentiary system. With a view of making the referrals effective, transparent and fairly managed, in May 2013, the Medical Department and the IT Department of the Ministry of Corrections jointly developed a special electronic software. On 1 September 2013, the Personal Electronic Health Record (PEHR) software was launched in penitentiary institutions. The software has automated implementation of standard procedures and data management. One of the modules of the software is responsible for the management of medical referrals.

A legal basis for medical referrals is the Code of Imprisonment (Article 121) and the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the “Rules of transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department’s Center for the Treatment of Tuberculosis and Rehabilitation and to the Institution for the Treatment of Remand and Sentenced Prisoners.”

74 See <http://www.who.int/trade/glossary/story034/en> [last accessed 10.03.2014].

75 Resolution of the Government of Georgia No. 2163 dated 26 December 2013.

The medical referral procedure consists of the following stages: 1. Primary healthcare units (in the penitentiary institutions) decide on their own whether there is a need for specialized medical services and, if positive, submit a request for a patient's referral; the request may be registered in the system either directly by an institution's doctor or through an operator. 2. After the request is registered, it will be processed by the Ministry's Medical Department using the National Recommendations on Clinical Practices (Guidelines) and the State Standards of Disease Management (Protocols). If the request is well-founded, it will be accepted and assigned a serial number, which becomes known to the relevant primary healthcare unit and the beneficiary (the patient). 3. After the request is accepted, according to the number in the row, the patient's referral will be agreed with a medical service provider and the patient will then be referred to that provider.

It should be noted that if the request is rejected, the rejection will be registered in the system and the primary healthcare unit will be informed about the reasons of rejection. In the period of 1 September 2014 – 1 January 2014, 306 requests were deemed unfounded and rejected.

Patients will be put in electronic queue only if they have their medical services scheduled ahead of time. Patients who need urgent or emergency assistance will not be put on standby. There are two separate electronic queues – one in the western Georgia and the other in the eastern Georgia. Inpatient and outpatient referrals (queues) are also run separately. This is to eliminate obstacles linked with a geographical area or the type of services. Requests are processed by the principle of “first come – first served”. A patient in an electronic queue may not be artificially moved forward or backward.

It should be noted that the functioning of the electronic database of medical referrals is not regulated by a separate order of the Minister of Corrections. The Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the “Rules of transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Institution for the Treatment of Remand and Sentenced Prisoners”, does not contain any specific rules about the database. These Rules are not perfect, on their turn. In particular, under Article 1 of the Rules, remand and sentenced prisoners may be transferred to the Center for the Treatment of Tuberculosis and Rehabilitation based on a prison director's order; such orders are based on a recommendation sent from the Ministry's Medical Department to the prison director, which on its turn is based on a request made by a prison doctor. As regards transfers from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, Article 2 of the Rules says that such a transfer shall be based upon an order of the Penitentiary Department, which on its turn is based on a prison doctor's request to the Penitentiary Department and the latter's recommendation approving the request. When making a request for transfer, a prison doctor must furnish one copy of the request to the prison director. Both prison directors and the Chairperson of the Penitentiary Department may dismiss a request.

To summarize, a prisoner's access to medical services formally depends upon the decision of prison directors and the Chairperson of the Penitentiary Department. This contradicts the spirit with which the reform of the penitentiary system was carried out when the medical personnel were brought under the direction of the Ministry of Corrections Medical Department. The very aim of the reform was to increase the independence of penitentiary healthcare staff.

The launching of an electronic medical referral database is certainly an interesting novelty and should be evaluated as a positive change towards better regulation of the referrals. However, a problem with the referral system, which continues to be a concern, is the lack of individual approach to ensure timely provision of required healthcare services. In other words, it is axiomatic that the one who needs medical assistance the most must be the first to receive such assistance. This principle must be taken into account in any endeavor of perfecting organizational aspects of the penitentiary medical referrals.

The European Court of Human Rights has been constantly stating in its judgments that “the relevant domestic authorities shall ensure that diagnosis and care are prompt and accurate and that supervision by proficient medical personnel is regular and systematic and involve a comprehensive therapeutic strategy.”⁷⁶ The electronic medical referral database is, in our view, an instrument to effectively manage medical referrals. Representatives of the Ministry of Corrections have stated that a major strength of the electronic database is that it ensures equal treatment of prisoners and a greater transparency of the referral procedure.

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

Changing a queue number in the electronic database is impossible which makes it impossible, on its turn, to first serve the prisoners who need to be assisted the most. We believe this approach and the “first come – first served” principle will hinder timely provision of medical services to prisoners in need unless their medical condition falls within the urgent category.⁷⁷ Furthermore, the way the electronic database functions excludes any chance of changing a patient’s number in a standby list, even if the patient’s health gets aggravated. In other words, if the patient’s condition does not qualify as urgency, the patient’s number in the queue may not be changed and the patient cannot be transferred to a hospital in a speeded up manner. It is essential to provide patients in need with required medical assistance promptly where there is a risk of developing a chronic form of a disease.

With these reasons in mind, we think it is necessary to revise the current mechanism of the medical referral system for it to take into account the needs of individual prisoners. To this end, we would recommend splitting the electronic queue into two parts depending on whether the medical condition is acute or chronic. Alternatively, the way the electronic database functions has been functioning to date may remain unchanged but the Minister of Corrections may consider enacting a separate order about provision of urgent medical assistance to patients with acute forms of diseases. Acute diseases are characterized with clearly expressed symptoms and, therefore, local prison doctors could determine initial diagnosis by making locally available medical tests; with this diagnosis, the matter of medical referral can be decided thereafter. Another option is to categorize diseases by the degree of their impact upon vital human organs and by strength of pain after receipt of painkillers.

We should admit, in the interests of fairness, however, that implementing the above-described alternatives will not make the existing situation essentially better unless the actual opportunities of medical referral are increased. Pursuant to information received from the Ministry of Correction, 10 prisoners are transferred to various medical establishments in eastern Georgia per work day on average; of this figure, two prisoners are transferred to hospitals and eight to outpatient clinics. The actual opportunities of medical referral also depend on the availability of the required attending personnel and vehicles and the number of patient vacancies in civilian medical establishments. According to the representatives of the Ministry of Corrections, the electronic database conductivity is negatively affected by patient cases involving self-injuries and urgent medical assistance, since these cases usually require prisoners’ transfer civilian medical establishments.

Recommendations to the Minister of Corrections:

- **To approve new rules of medical referral entitling only the Chief of the Medical Department of the Ministry of Corrections to decide on the transfer of prisoners to penitentiary and civilian healthcare establishments after consulting with the Chairperson of the Penitentiary Department on security issues. These Rules should also contained detailed guidelines about emergency, urgent and scheduled transfer as well as peculiarities related to the functioning of the electronic database.**
- **Taking into account how diseases develop in each individual case as well as the specific needs of individual prisoners, to ensure timely provision of medical services penitentiary and civilian healthcare establishments, on as needed basis;**
- **If a prisoner has not been examined completely at a civilian medical establishment or a prisoner needs additional medical examination in a short time period (several days) after his visit to such an establishment, to ensure that such prisoners are transferred to these establishment without having to wait for their turn in the queue.**

Medical infrastructure

The primary healthcare system within the penitentiary consists of 37 units. The medical units of penitentiary institutions offer electric cardiography, ultrasound examination, X-ray, and sample-taking for general and biochemical blood tests and for lab tests on tuberculosis, hepatitis and HIV/AIDS. Dental services are available as well.

⁷⁷ Pursuant to Article 3(S1) of the Law of Georgia on Healthcare, urgent medical assistance means assistance without which it will be impossible to avoid the patient’s death, disability or serious deterioration of health condition.

On 1 January 2013, a new Center for the Treatment and Rehabilitation of TB Patients was opened. A project of repairing and re-equipping the Treatment Facility for Remand and Sentenced Prisoners has been ongoing since September 2013 and its opening is scheduled by April or May 2014.

Record keeping; statistical data; reporting procedures

Outpatient record keeping is governed by the Order of the Minister of Labor, Health and Social Protection no. 01-41/N dated 15 August 2011 approving **“Rules of producing and maintaining outpatient medical documentation”**. In addition, because of the special nature of the penitentiary system, outpatient medical cards for prisoners additionally include some more information as determined by the Order of the Minister of Corrections and Legal Assistance No. 82 dated 10 May 2011.

Inpatient record keeping is governed by the Order of the Minister of Labor, Health and Social Protection No. 108/N dated 19 March 2009 approving “Rules of producing and maintaining inpatient medical documentation in medical establishments”.

Medical records of dental services provided to remand and sentenced prisoners are governed by the Order of the Minister of Labor, Health and Social Protection No. 01-55/N dated 25 November 2011 approving the “Rules of producing and maintaining dental medical documentation”.

When required, the penitentiary healthcare personnel uses, for guidance, the Order of the Minister of Labor, Health and Social Protection No. 338/N dated 9 August 2007 approving “Rules of filling out a health certificate and a template for a health certificate”.

Penitentiary statistical data are produced and maintained according to the Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012 approving “Rules of producing and reporting medical statistics”.

The medical personnel of penitentiary institutions are producing and submitting their activity reports to the Medical Department every month. Each report covers 16 issues, which the medical staff of the institutions are required to elaborate on. Every report contains information about the medical personnel of the relevant penitentiary institution, number of inmates in the institution, number of inmates admitted during the month, number of primary medical check-ups conducted, and information about any medical services provided. The reporting template contains separate sections about dental services, services provided within the national programs for the treatment of tuberculosis and HIV/AIDS control, number of medical tests on hepatitis and sexually transmitted diseases, number of cases of infliction of self-injuries, number of suicide attempts, and number of prisoners transferred to various medical establishments for additional diagnostic tests or specialized treatment. The reporting template further includes information about monthly expenditure on medications and other medical supplies and data about prisoner deaths. It should be noted that the reporting template contains a separate section about any problems related to provision of inmates with medical services and a section for additional comments.

Each report is usually accompanied by the following forms: Form No. 1-9.1 (annual morbidity data in the penitentiary system) broken down into sections by months and another form – which has no number – about medical assistance provided during the year in the penitentiary system (with sections arranged by months); Form No. 1-9.2 (diseases revealed by medical specialists through medical consultations provided, broken down by sex and age; a form with no number about prisoner deaths in each penitentiary institution per annum (broken down into months); a form with no number, which is a TB Programme monthly report; Form No. IV-25 (for registering patients who have been diagnosed for the first time in Tbilisi outpatient clinics. Other than Form No. IV-25, the above-mentioned reporting forms are not envisaged by the Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012.

The monthly reports contain only general data, which make full-fledged processing of statistical data impossible. The Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012 approving “Rules on producing and reporting medical statistics” envisages Form No. IV-01 (medical establishments’ reporting template). The reporting template requires entry of detailed information about medical services provided and consists of 78 issues. Having in mind the special nature of the penitentiary healthcare, we recommend using the

above-mentioned Form No. IV-01, with some relevant modifications, because it envisages entering more detailed information that will render making more accurate analysis of provided medical assistance possible.

Recommendation to the Minister of Corrections:

- To elaborate and approve forms for producing and reporting statistical data using the Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012 as a guideline, with modifications relevant to the penitentiary system.

ACCESS TO A PHYSICIAN

Access to a physician’s consultation in the penitentiary system has improved. According to prisoners, compared to previous years, it is less difficult to arrange an appointment with the prison healthcare staff. However, access to medical practitioners specialized in specific areas remains a problem. Prisoners say they wish doctors were visiting penitentiary institutions more often; were this the case, they would not have to wait too long and would be able to arrange appointments to obtain medical consultation as soon as they needed it. The prisoners are also complaining about long intervals between the visits of psychiatrists and psychologists. It should be noted that such a specialized establishment as the Center for the Treatment of Tuberculosis and Rehabilitation where the demand for both psychologists’ and psychiatrists’ services is high does not have a psychologist at all.

The penitentiary healthcare system currently employs the following staff:

Table 5

Institution	Doctors	Nurses	Shift
№2	12	16	Full time
№3	6	6	Full time
№5	8	10	Full time
№6	12	16	Full time
№7	4	5	Full time
№8	30	36	Full time
№9	5	10	Full time
№11	4	5	Full time
№12	6	9	Full time
№14	10	12	Full time
№15	12	22	Full time
№17	13	22	Full time
№18	65	100	Full time
№19	38	55	Full time
Total:	225	321	

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Medical services provided to prisoners:**Table 6**

№	Description (preventative and treatment measures)	Total
1.	Initial medical check-up	16 554
2.	Outpatient visits (treatment)	22 4363
3.	Inpatient treatment:	1 293
	3.1. at the Medical Institution for Accused and Convicted Persons	677
	3.2. at the Center for the Treatment of Tuberculosis and Rehabilitation	516
4.	Medical tests and treatment in civilian specialized hospitals	5 199
5.	Emergency and scheduled surgeries	1 637
6.	Dental assistance (cases)	15 814
	6.1. Therapeutic assistance	10 359
	6.2. Surgical assistance	4 358
	6.3. Orthopedic assistance	1097
7.	Psychiatric assistance: consultation and treatment	10 752
8.	Wholesale screening to detect tuberculosis risk groups	65 130
	8.1. Examination of individual suspected of having been infected with tuberculosis	7 980
	8.2. „DOTS“	237
	8.3. „DOTS +“	57
	8.4. Number of patients who have accomplished the anti-tuberculosis treatment	260
9.	Number of individuals tested on HIV/AIDS	5 263
	9.1. Number of individuals newly enrolled in the anti-retrovirus programme	17
	9.2. Individuals already enrolled	431
10.	Number of individuals tested on hepatitis	4 701
11.	Number of individuals tested on sexually transmitted diseases	606
12.	Number of individuals enrolled in the methadone-based detoxication programme	311
13.	Number of individuals consulted by physicians specializing in different areas	33 929
14.	Number of individuals enrolled in the State Programme for the treatment and rehabilitation of diabetes mellitus and diabetes insipidus	7
	14.1. Insulin	7
	14.2. Desmopressin	0

EQUIVALENCY OF MEDICAL SERVICES

In 2012, prisoners were transferred to civilian medical establishments in 3,558 cases; in 2013, the same index increased up to 5,199. A serious increase in the number of prisoner transfers to civilian clinics against the background that the overall number of the prison population has drastically decreased should deserve a positive evaluation. However, a problem that remains a matter of concern is the equivalency of medical services provided to prisoners. We believe it is necessary to evaluate how equivalent were the medical services provided both in these 5,199 cases (Table 6, point 4) and locally at penitentiary institutions.

It seems at a glance that the equivalency principle has been followed in the above-mentioned 5,199 cases due to the fact that the prisoners received medical services in civilian medical establishments; however, for the sake of fairness, we should be critical in evaluating equivalency of the actually provided services. It should be noted that, in 2013, the number of outpatient visits and tests in civilian clinics reached 4,283, which amounts to 82% of the total number of cases (5,199). An overwhelming majority of outpatient visits to civilian clinics was aimed at conducting various medical tests. Prisoners complain that they are not examined in a complete manner during these visits and

they are apparently saying truth because not always is it possible to perform a comprehensive examination in only a day, in a medical establishment with a narrow profile of services offered and lack of required equipment. Unlike regular citizens who are able to visit a medical establishment several times on subsequent days, prisoners have to register again in the electronic database of medical referrals and to wait for some period of time. With this situation on the ground, prisoners may not be getting the needed medical service on time that may lead to deteriorated health condition, which eventually constitutes a violation of the equivalency principle.

In evaluating equivalency of the medical services provided locally at penitentiary institutions, one should take into account the existing medical infrastructure as well as the competence and expertise of the prison healthcare staff. We would like to welcome the changes effected at the Center for the Treatment of Tuberculosis and Rehabilitation. Although some problems remain in regard to both the Center and the National Center for Tuberculosis and Lung Diseases, it is safe to say that the medical services provided to TB patients within the penitentiary system are equivalent to (comparable with) those provided at civilian clinics. As regards the Medical Institution for Accused and Convicted Persons, its infrastructure and capabilities were deemed unsatisfactory and the institution has been under repair and re-equipment since September 2013. The repair was still ongoing by the end of the reporting period.

As regards pretrial detention facilities and institutions for sentenced prisoners, their medical units can offer only a limited number of services. Normally, penitentiary institutions can offer services such as electric cardiography, ultrasound examination, X-ray, and sample-taking for general and biochemical blood tests and for lab tests on tuberculosis, hepatitis and HIV/AIDS. Despite their limited capabilities, the medical units of penitentiary institutions function as if they were secondary healthcare units, offering inpatient services. It is therefore impossible to meet the equivalency requirement in these conditions.

To illustrate the existing medical needs within the penitentiary system, we are providing morbidity data in the below table.

Table 7

No	Morbidity	Total
1.	Cardiovascular diseases	859
2.	Diseases of the respirator system	1 536
3.	Digestive system diseases	1 708
4.	Urinary and genital system diseases	1 180
5.	Nervous system diseases	958
6.	Mental diseases	1 998
7.	Endocrine system diseases	185
8.	Hematologic diseases	19
9.	Diseases of sensory organs	1 349
10.	Infectious diseases	168
11.	Tuberculosis	294
12.	HIV/AIDS – newly detected	7
13.	Diseases of bones and joints; diseases of connecting tissues	416
14.	Skin diseases; sexually transmitted diseases	285
15.	Dental illnesses	15 807
16.	Acute surgical diseases	230
17.	Oncologic diseases	40
	Total	27 039

If we subtract dental cases (that can be dealt with locally in the penitentiary institutions) and TB cases (that can also be dealt with locally without taking prisoners to the National Center for Tuberculosis and Lung Diseases) from the total number of cases shown in the table, 11,064 will remain. Certainly, some of these cases may indeed be

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diagnosed and treated within the limits of the penitentiary healthcare but it is evident that transfers of prisoners to civilian medical establishments in 5,199 cases are insufficient to fully satisfy their needs for medical assistance.

It is important to establish quality control over the medical services provided at penitentiary healthcare institutions, pretrial detention facilities and institutions for sentenced prisoners, and to perform patient safety assessment. In this regard, we would recommend that the Medical Regulatory Unit of the Ministry of Corrections enhance its activities and interact more effectively with the Public Law Entity “Agency for the State Regulation of Medical Activity”.

Pursuant to information received from the Ministry of Corrections, a new Medical Regulatory Unit has been functioning within the Ministry since March 2013. The Unit is responsible for quality control of medical services provided. One of the key activities the Unit carries out to achieve its goals is that it conducts inspection of medical records with a view of verifying whether the relevant rules on producing and maintaining medical documentation are observed and whether the medical services provided are adequate.

In addition to pre-planned monitoring activities, the Unit is authorized to conduct unscheduled check-ups on the basis of complaints it receives. From the day it was founded until January 2014, the Unit looked into 73 cases of which planned monitoring was carried out in 18 cases. The Unit deals with cases through a panel of experts. Whenever necessary, medical specialists specializing in the required area are invited to assist the panel. If the panel detects a physician’s error, the case will be forwarded to the Public Law Entity “Agency for the State Regulation of Medical Activity”.

Recommendation to the Minister of Corrections:

- **To exercise quality control over the provision of medical services by strengthening the interaction between the Ministry’s Medical Regulatory Unit and the Public Law Entity “Agency for the State Regulation of Medical Activity”.**

CONFIDENTIALITY AND INFORMED CONSENT

Maintaining confidentiality of medical information remains a problem within the penitentiary system. Although the penitentiary healthcare personnel are answerable to only the Medical Department of the Ministry of Corrections, it is difficult to keep information about visits to a physician confidential. This is true about doctor consultation both within the relevant penitentiary institution and outside at a civilian medical establishment. Medical records are not protected in a manner they should be. Frequent contact between the prison healthcare staff and the prison administration as well as lack of knowledge of professional ethics norms often become reasons of unacceptable disclosure of medical information.

Pursuant to the Recommendation issued by the Council of Europe Committee of Ministers to the Member States, medical confidentiality should be guaranteed and respected with the same rigor as in the population as a whole.⁷⁸ Under Article 72 of the Georgian Law on the Rights of the Patient, a medical service provider is obliged to keep information it possesses about the patient confidential both during the patient’s life and after the death of the patient.

In this context of confidentiality of medical information, we would like to discuss compatibility of some of the provisions of the Order of the Minister of Corrections No. 38 dated 10 March 2011 with the ethical principle of confidentiality. Under the Rules approved by this Order, in order to transfer a prisoner from a penitentiary institution to penitentiary or civilian medical establishments, a doctor of the relevant penitentiary institution should apply to the Medical Department of the Ministry of Corrections with a request for transfer; the Medical Department will, on its turn, send its recommendation to the director of the penitentiary institution from where the request originated (if the request was to transfer the prisoner to a treatment facility within the penitentiary system) or to the Chairperson of the Penitentiary Department (if the request was to transfer the prisoner to a civilian medical establishment). It should be noted that when a request for an inmate’s transfer to a civilian medical establishment is made, the doctor of the penitentiary institution forwards one copy of the request lodged with the Medical Department to the director of the same penitentiary institution.⁷⁹ We think this violates the confidentiality principle

⁷⁸ Recommendation no. R (98) 7 of the Council of Europe Committee of Ministers to Member States concerning the Ethical and Organisational Aspects of Health Care in Prison, 20 April 1998, par. 13.

⁷⁹ Article 2, the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the “Rules of

because the requests lodged by prison doctors with the Medical Department contain information about medical condition and this information becomes disclosed to a third person such as the prison director. Accordingly, the above-described procedure needs to be changed.

That said, however, fairness demands to recognize that maintaining absolute confidentiality in regard to inmates' medical needs is practically impossible given a prison setting. In any event, the director of the relevant prison and the Chairperson of the Penitentiary Department will know about the need for having an inmate transferred to a medical establishment on account of the inmate's medical condition. However, all other information of medical nature is possible to keep and must be kept confidential. In addition, in time of provision of medical services, the role of the penitentiary officials and employees should be confined to only transportation of the inmates and taking necessary security measures.

Pursuant to information received from the Ministry of Corrections, it is planned to equip the penitentiary institutions with safes for storing medical documentation and to make the latter accessible by only duly authorized personnel.

Recommendation to the Minister of Corrections:

- To provide the penitentiary healthcare personnel with advance training in professional ethics;
- To take disciplinary measures whenever information of medical nature is disclosed to unauthorized individuals;
- To repeal the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the "Rules of transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation and to the Medical Institution for Accused and Convicted Persons"; to ensure that a new normative act on medical referral fully recognizes and protects confidentiality of medical information.

The situation has improved in terms of informing the patients about medical services provided to them. However, it remains a matter of concern that, in a series of cases, when prisoners are transferred from one penitentiary institution to another, their medical documentation remains in the former institution and the recipient institution's healthcare staff does not get full information about individual prisoners' medical needs or any medical services provided to them.

Pursuant to a recommendation of the Committee of Ministers (CM) of the Council of Europe, the indication for any medication or medical interference should be explained to the inmates, together with any possible side effects likely to be experienced by them.⁸⁰ The problem of informing patients about side effects of anti-tuberculosis treatment and related medications is especially persistent at the Center for the Treatment of Tuberculosis and Rehabilitation.

The above-cited CM Recommendation also stresses that all transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality.⁸¹

transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Medical Institution for Accused and Convicted Persons."

80 Recommendation no. R (98) 7 of the Council of Europe Committee of Ministers to Member States concerning the Ethical and Organisational Aspects of Health Care in Prison, 20 April 1998, par. 14.

81 Ibid. par. 18.

HUMANITARIAN SUPPORT: SPECIAL CATEGORIES

Juvenile prisoners

During the reporting period, within the National Preventing Mechanism activities, we conducted a special (thematic) monitoring at juveniles' pretrial detention facilities and institutions for sentenced juveniles. The monitoring showed the conditions of juveniles at the Penitentiary Institution No. 8 are not satisfactory. It turned out that juveniles have contact with adult prisoners. In particular, this opportunity emerges either when the prisoners are transferred to the court or during their visits to the dentist when they have to go to the medical unit. Other problems are related to medical services, nutrition, and day planning. For detailed information on the monitoring results, please see the chapter concerning children's rights.

Women prisoners

Women prisoners are allocated in the Penitentiary Institution No. 5. There were 906 women prisoners at the Institution No. 5 by January 2013 and only 242 women prisoners by the end of the same year. We welcome the increasing practice of early release (parole) of women prisoners, which fits well into the requirement under Rule 63 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).⁸² We positively evaluate also the fact that during the reporting period the inmates in the Institution No. 5 had the opportunity to enroll in various training courses, attend cultural events and access legal and psychological advice.

The general situation in the Institution No. 5 is satisfactory. However, a number of problems remain unresolved. There were 63 occurrences of hunger strike in the period of 1 January – 31 December 2013. A total of 141 inmates of the Institution announced hunger strike. Their protest was based on their claims related to medical services, revision of convicting judgments and fairness of early release practices. 10 attempts of suicide occurred in the Institution No. 5 during the reporting period.

Pursuant to information provided by the Institution's administration, 421 inmates were transferred to various medical establishments during the year of 2013. The Institution has two medical rooms, a shock room and a gynecologist's room. 4 cells are allocated for TB-infected prisoners. It is locally possible to take samples for TB and HIV/AIDS testing. The Institution's Division for Mothers and Children has 12 rooms and 1 children's entertainment room.

Since women prisoners are a special category of prisoners having special needs, these needs must be constantly assessed and handled through appropriate programmes. The best interests of children being in the Institution must be taken due account of. There should be gender-specific mental health and rehabilitation programmes.⁸³

Women prisoners' contact with the outside world should be facilitated to the highest possible extent.⁸⁴ In this regard, it must be noted that women prisoners should be able to exercise the right to conjugal visits on equal basis with men. This issue is dealt with in detail in a chapter on conjugal visits.

Accused persons remanded to detention

Accused persons remanded to detention are a category of prisoners who are the most vulnerable to torture and ill-treatment.⁸⁵ Accordingly, for the purpose of preventing and combating torture, remand prisoners should be paid a special attention.

Pursuant to official data provided by the Ministry of Corrections, 1,403 accused persons with bodily injuries were

82 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 21 December 2010, Rule 63.

83 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 21 December 2010, Rule 12.

84 Ibid. Rules 26 – 28.

85 6th General Report of the European Committee for the Prevention of Torture, 1995, par. 15.

admitted to various penitentiary institutions in 2013. 82 of them stated that they had been injured during and/or following their arrest. Information about these incidents was forwarded to the relevant investigation authorities. It is now necessary that these authorities carry out independent and impartial investigation into these allegations and those responsible are punished.

Because the conditions in which accused persons are kept and their ability to actually exercise their legal rights may be manipulated to exert influence upon them, we deem it appropriate to evaluate these conditions and the actual exercise of these legal rights in practice. Under Article 95.1 of the European Prison Rules, the regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future. In its judgment in *Varnas v. Lithuania*, the European Court of Human Rights explained that Article 10 § 2 (a) of the International Covenant on Civil and Political Rights requires, inter alia, that accused persons should, save in exceptional circumstances, be subject to separate treatment appropriate to their status as unconvicted persons who enjoy the right to be presumed innocent.⁸⁶

During the reporting period, untried prisoners were allocated in the penitentiary institutions nos. 2, 3, 4, 5, 6, 7, 8 and 9. Of these institutions, only the institutions nos. 2, 5, 7, 8 and 9 remained operational by December 2013. In these institutions, untried prisoners are in the same conditions as sentenced prisoners in closed institutions.

It should be noted that the Ministry of Corrections does not maintain statistical data about accused persons separately. Accordingly, it is impossible to separately deal with and analyze the medical needs of accused persons to help discern some general trends. The volume of medical services available to untried prisoners is limited as well. Thus, untried prisoners are not entitled to use the diagnostic and treatment services within the hepatitis programme. They have access to the programme's prevention component only.

Finally, accused prisoners are not entitled to conjugal visits while tried prisoners do have this right. Having the above-described facts in mind, it is safe to say that accused persons remanded to detention in Georgia are not provided with the rights and conditions appropriate to their status.

Recommendations:

To the Minister of Corrections

- To start producing and maintaining statistical information about medical services provided to accused persons with a view of processing and analyzing these data thereafter;
- To assess the special needs of remand prisoners and to take measures to satisfy these needs.

To the Minister of Labor, Health and Social Protection

- To amend the “Rules of approving and implementing the programme for preventing, diagnosing and treating virus hepatitis C in pretrial detention facilities and institutions for sentenced prisoners” with a view of making accused persons eligible for appropriate medical services within the diagnosis and treatment component of the Programme.

Persons with mental disorder and the problem of drug addiction in the Georgian penitentiary system

Pursuant to information received from the Ministry of Corrections, psychiatrists provided 10,752 prisoners with psychiatric consultation in 2013. 137 patients underwent a treatment course at the mental health department of the Medical Institution for Accused and Convicted Persons and 33 patients were treated at psychiatric divisions of civilian medical establishments. According to the same official information, outpatient psychiatric assistance was provided in 2,000 cases. In 2013, 76 prisoners were transferred to specialized civilian clinics for psychiatric treatment based on court decisions.

According to the data provided by the Ministry of Corrections, by the end of the first half of 2013, 1,322 prisoners

⁸⁶ *Varnas v. Lithuania*, par. 119.

were registered as users of psychotropic substances. By the end of the year, this index decreased to 777 prisoners.

It should be noted that no information exists about the number of prisoners with mental health problems. The Ministry of Corrections cited lack of wholesale examination as a reason. Against this background, it is practically impossible to properly assess the existing needs and to develop a policy for combating this major problem of the penitentiary system.

Recommendation:

To the Minister of Corrections

- **To conduct a comprehensive mental health screening in penitentiary institutions with a view of collecting/analyzing the related statistical data and developing programmes to address the needs revealed.**

According to official data, 311 prisoners were involved in the methadone programme in 2013. In general, opioid addiction replacement therapy is governed by the Order of the Minister of Labor, Health and Social Protection No. 37/N dated 20 January 2009, which, on its turn, is issued based on Article 38(4) of the Law on Narcotic Drugs, Psychotropic Substances, Precursors and Narcologic Assistance. As regards the opioid addiction replacement therapy within the penitentiary system, this issue is regulated by the Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008 on “Rules of implementing replacement therapy programmes to deal with opioid addiction in penitentiary institutions”.

It should be noted that, pursuant to Article 5(b.e) of the “Methodology of implementing replacement therapy programmes in opioid addiction cases” approved by the Order of the Minister of Labor, Health and Social Protection No. 37/N dated 20 January 2009, a person may be enrolled in a replacement therapy programme in exceptional circumstances such as existence of special medical and social indications. No such exception is envisaged by the “Rules of implementing replacement therapy programmes to deal with opioid addiction in the penitentiary institutions” (approved by the Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008). We believe the Joint Order is therefore defective, since it makes enrollment of prisoners in a replacement therapy programme impossible even if there are exceptional circumstances such as special medical and social indications.

The only service available within the penitentiary system in this context is detoxication using a replacement drug but this service is incapable of fully handling the needs of drug-addicted prisoners. Accordingly, it is necessary to introduce a preservation-aimed replacement therapy.

Recommendations:

To the Minister of Labor, Health and Social Protection and the Minister of Justice

- **To revise the Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008 on the “Rules of implementing replacement therapy programmes to deal with opioid addiction in the penitentiary institutions”, including by adding rules of enrolling patients in the replacement therapy programme where there special clinical and social indications exist.**

To the Minister of Corrections and the Minister of Labor, Health and Social Protection

- **To take appropriate measures within their competence to introduce a preservation-aimed replacement therapy in the penitentiary system.**

Management and prevention of very dangerous contagious diseases

According to information provided by the Ministry of Corrections, screening on tuberculosis was conducted in 65,130 cases in 2013. A total of 294 prisoners infected with tuberculosis have been registered. In 2013, 107 bacteria-emissive prisoners underwent treatment. 57 prisoners are ill with multi-drug-resistant tuberculosis (MDR TB). 20 cases of terminated treatment were registered in 2013.

Pursuant to information received from the Ministry of Corrections, a sensitive form of tuberculosis grew into a resistant form in 44 cases. 4 TB-infected prisoners died. In 2013, prisoners were transferred to various civilian medical establishments for testing on or treatment of accompanying diseases in 202 cases.

A monitoring visit paid to the Center for the Treatment of Tuberculosis and Rehabilitation on 21 December 2013 showed that the conditions of living at the Center are satisfactory in general. However, infection control is a matter of concern. There is a ventilation system working with negative pressure installed in the cells but the prisoners say most times the system is switched off. The inmates are disturbed also by the noise caused by operation of the ventilation system. Prisoners move around inside the premises of the institution without wearing protective surgical masks. In their cells, they do not have containers/vessels for sputum. The division of extensive and multi-drug-resistant tuberculosis is located in another building. Prisoners suffering from tuberculosis are complaining of poor management of side effects of anti-TB medications and poor treatment of accompanying diseases. Pursuant to information received from the Ministry of Corrections, in 2013, anti-TB treatment was terminated in 20 cases. It should be noted that this figure does not accurately represent prisoner obedience in accomplishing treatment courses because, formally, under the TB Management Guidelines, an anti-TB treatment is considered terminated only if a patient refuses to follow the indicated treatment for two months or more in a row;⁸⁷ in reality, however, prisoners stop taking medications several times, for different time periods. Prisoners may stop taking drugs for various reasons such as side effects of the drug treatment or protest against inadequate medical assistance in handling the accompanying diseases. Be it this or other reasons, stopping treatment is dangerous as resistant form of tuberculosis may develop as a result. Unfortunately, of the 294 prisoners who became infected with tuberculosis in 2013, 57 prisoners have developed the multi-drug-resistant form (MDR TB). Sadly, moreover, in 44 cases a sensitive form of tuberculosis grew into a multi-drug resistant form, according to the information provided by the Ministry of Corrections.

The monitoring revealed that, by 21 December 2013, the Center for the Treatment of Tuberculosis and Rehabilitation was housing 187 prisoners, while it is designed to accommodate as many as 698 patients. TB-infected prisoners involved in the DOTS programme are accommodated also at the Penitentiary Institutions nos. 8, 6 and 17; women prisoners are undergoing their treatment in the Institution No. 5.

During its monitoring activities at the Penitentiary Institution No. 8 through 24 – 25 December 2013, the monitoring group found out that prisoners infected with TB are accommodated on the second floor of the “E” wing in the 1st Regime Building. Untried prisoners are accommodated in the same building. By 24-25 December, there were 3 smear positive, 18 smear negative, 4 extensive and 10 multi-drug-resistant TB-infected prisoners; 35 in total. Having talked to the healthcare staff of the Institution, we found out that the DOTS programme objectives were not being implemented properly since it was virtually impossible for the healthcare staff to observe whether and how the TB-infected prisoners were administering their drug treatment. The cells where TB patients were accommodated had no separate ventilation system to ensure negative pressure – something that is a violation of infection control requirements endangering other untried prisoners accommodated in the same building.

For these reasons, it is advisable to accommodate all the prisoners involved in the anti-tuberculosis treatment programme at the Center for the Treatment of Tuberculosis and Rehabilitation, which has a sufficient number of beds and appropriate infrastructure.

Recommendation to the Minister of Corrections:

- **To take all the infection-control measures according to the TB Management Guidelines at the Center for the Treatment of Tuberculosis and Rehabilitation;**

⁸⁷ Guidelines for the Management of Tuberculosis approved by the Order of the Minister of Labor, Health and Social Protection No. 22 June 2013, available at http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=68&info_id=1486 [last accessed 15.03.2014].

- **To transfer all of the prisoners infected with tuberculosis to the Center for the Treatment of Tuberculosis and Rehabilitation for the purpose of duly managing TB cases;**
- **To examine every case where prisoners refuse to continue taking anti-tuberculosis drugs on account of negative side effects or because they be treated for accompanying diseases; if prisoners' claims are justified, they must be provided with treatment of accompanying diseases in a timely manner.**

According to the information received from the Ministry of Corrections, 4,701 prisoners were tested on hepatitis in 2013. Of these, 8 prisoners enrolled in an anti-virus treatment. In the reporting period, the Minister of Labor, Health and Social Protection issued its Order No.01-5/n dated 31 January 2014 approving the “Rules of approving and implementing the programme for preventing, diagnosing and treating virus hepatitis C in remand facilities and institutions for sentenced prisoners”. Pursuant to Article 2(2) of the Rules, the programme goals are to prevent virus hepatitis C from spreading, to make voluntary testing accessible for all and to provide anti-HCV positive patients with the appropriate clinical and lab examination opportunity. The programme is also aimed at treating patients with HCV infection to be selected by established criteria.

Under Article 7(2) of the Rules, a convicted person is eligible for anti-virus treatment if he has been diagnosed with hepatitis C and has liver fibrosis scoring at 2 or higher by the METAVIR scale; in addition, the convicted person must have been sentenced to imprisonment and whose actual sentence is more than 18 months. Any additional punishments for crimes committed while in prison after the anti-virus programme was launched will not be counted towards the above-mentioned 18 months. We think this sentence duration requirement contradicts Article 14 of the Code of Imprisonment, which entitles both remand prisoners and sentenced prisoners to be provided with medical services. We believe the Rules should be amended to allow prisoners sentenced to less than 18-month imprisonment and remand prisoners to enroll in the anti-virus treatment if they meet the other remaining criteria as described above. Alternatively, a separate set of eligibility criteria may be established for the latter category of sentenced and remand prisoners but, in any event, complete deprivation of anti-virus treatment opportunities within the programme is not justifiable since these prisoners are facing a realistic threat of their health being injured irreversibly.

Finally, the impugned Rules establish a discriminatory approach in contravention of the positive obligation of the State derived from the European Convention on Human Rights to secure health and wellbeing of prisoners.⁸⁸

Recommendation to the Minister of Labor, Health and Social Protection:

- **To amend the Order of the Minister of Labor, Health and Social Protection No.01-5/n dated 31 January 2014 approving the “Rules of approving and implementing the programme for preventing, diagnosing and treating virus hepatitis C in pretrial detention facilities and institutions for sentenced prisoners” with a view of ensuring anti-virus treatment to any accused/convicted person where there is a medical indication that treatment is necessary.**

Prisoners who are unfit for long-term imprisonment

For many years, the prison population in Georgia included prisoners who were unfit for long-term imprisonment due to either medical condition or age. The Joint Steering Commission composed of representatives from the two Ministries (the Ministry of Corrections and the Ministry of Labor, Health and Social Protection) was not operational in reality. The procedure of postponing judgment enforcement was virtually unenforceable in real life.

We wish to commend the concrete steps made towards eradicating this problem. On 18 December 2012, the Minister of Corrections and Legal Assistance and the Minister of Labor, Health and Social Protection issued a Joint Order No. 181/01-72/N approving the Statute of a re-created Joint Steering Commission. Civil society organizations were actively involved in drafting the Statute. Furthermore, the Minister of Labor, Health and Social

⁸⁸ Kudła v. Poland, par. 94.

Protection issued the Order No. 01-6/N dated 15 February 2013 approving a list of serious and incurable diseases mandating release of a diseased prisoner from serving the sentence. This change boosted the effectiveness of the Joint Steering Commission; in particular, during 2013, 95 prisoners were released from the obligation to serve their sentence of whom 60 inmates were released on account of health condition and 35 due to age.

As regards the postponement of judgment enforcement, this procedure was applied in relation to 10 prisoners in 2013. On 14 June 2013, the Code of Criminal Procedure was amended making it possible to postpone enforcement of convicting judgments based on alternative forensic medical reports.⁸⁹ With participation by civil society organizations, a new version of Article 283 of the Code of Criminal Procedure was drafted, which is fully compatible with the attitude of the European Court of Human Rights towards the matter of postponement of sentence execution. Under the new Article 283, enforcement of a convicting judgment against the convicted individual may be delayed by the court that had passed the convicting judgment, on the basis of a forensic medical report, if the individual is unfit for imprisonment on account of his/her medical condition, until the time he/she fully recovers from the illness or his/her condition improves substantially.

The draft law,⁹⁰ although submitted to the Georgian Parliament, was not yet adopted by the end of the reporting period.

The mentioned legal mechanism requires betterment and should be used more effectively in the future so that prisoners who are unfit for long-term imprisonment are not subjected to inhuman and degrading treatment.

Deceased prisoners

Pursuant to the data provided by the Ministry of Corrections, 25 prisoners died in 2013.

Table 8

No	Name and birthdate of the deceased	Institution	Medical condition	Place of death	Death reason
1.	S.G. 29/09/1965	N16	HIV/AIDS phase C3, pneumocystic pneumonia, HIV-associated wasting syndrome, terminal condition, chronic hepatitis C, tuberculosis on both lungs, smear negative, residual events following an ischemic stroke such as hemiparesis, acute respiratory insufficiency.	Medical Institution for Accused and Convicted Persons	Acute respiratory and cardiovascular insufficiency
2.	A.T. 30/06/1969	N18	Pneumonia on both lungs, acute respiratory insufficiency, bronchial asthma, lung tuberculosis in the past, subcutaneous hematoma in the area of arterial-venous fistula, virus hepatitis C, chronic liver insufficiency, hepatosplenomegaly, sepsis.	Academician O. Gudushauri National Medical Center	Acute respiratory and cardiovascular insufficiency developed as a result of sepsis.

89 Under Article 283(1) of the Code of Criminal Procedure, a trial court may postpone enforcement of a convicting judgment based on a forensic medical report if it is the first time the convicted person has been sentenced to imprisonment. The court may decide the postponement issue either within the convicting judgment or separately, in a court decision handed down after the convicting judgment is passed. The enforcement of a convicting judgment may be postponed for at least one of the following reasons: a) if the convicted person has a serious illness that obstructs his serving of the sentence, the enforcement may be postponed until the time he/she fully recovers from the illness or his/her condition improves substantially; or b) if the convicted person is pregnant by the time the convicting judgment is due to be enforced, the enforcement will be postponed until 1 year passes after delivery.

90 See the full text of the draft law and the appended explanatory note at

https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2083564&lang=ge [last accessed 14.03.2014].

2013

3.	I.R. 11/08/1959	N18	Infiltrated tuberculosis of the right lung in the putrefying and seeding phase, smear positive, complicated exudative pleurisy on the right side, post-infarction cardio-sclerosis, 3rd degree lung and heart insufficiency, chronic virus hepatitis C, stones in the left kidney, asthenic syndrome, cachexia.	National Center of Tuberculosis and Lung Diseases	Growing respiratory and cardiovascular insufficiency developed as a result of tubercular intoxication.
4.	Ts.R. 15/12/1951	N14		Penitentiary Institution No. 14	Sudden death
5.	M.E. 16/07/1968	N2		Penitentiary Institution No. 2	Sudden death
6.	K.V. 10/03/1956	N8	Infiltrated tuberculosis of the left lung in the putrefaction and seeding phase, schizoid-type disorder, hallucinatory anxiety syndrome.	Medical Institution for Accused and Convicted Persons	Increasing respiratory and cardiovascular insufficiency
7.	E.N. 22/11/1951	N15	2nd degree arterial hypertension, acute bronchitis, left kidney cyst, scoliosis, paranoid syndrome.	Medical Institution for Accused and Convicted Persons	Acute cardiovascular insufficiency
8.	D.T. 05/02/1973	N17		Penitentiary Institution No. 17	Cardiac infarction, cardiovascular insufficiency
9.	Kh.D. 13/06/1976	N2		Penitentiary Institution No. 2	Sudden death
10.	A.K. 26/03/1974	N2		Penitentiary Institution No.	Suicide
11.	K.L. 15/10/1988	N14	Closed craniocerebral and craniofacial injury, bruised cerebral and facial soft tissues, hematomas and excoriations, linear fracture of nasal bones, acute subarachnoid hemorrhage.	Z. Tskhakaia National Intervention Medicine Center	Acute cardiovascular insufficiency
12.	T.Z. 04/06/1980	N18	Delirious organic disorder, epilepsy with generalized seizures, artificial heartbeat rhythm	Medical Institution for Accused and Convicted Persons	Acute cardiovascular insufficiency
13.	D.J. 25/12/1976	N8	Acute strangulated intestinal obstruction, acute diffusive peritonitis, acute sepsis, septic shock, fistula in the thin intestine, ulcerous and necrotic disseminated gastroenteritis with complicated bleeding.	Academician O. Gudushauri National Medical Center	Acute respiratory and cardiovascular insufficiency
14.	K.T. 05/10/1967	N17		Penitentiary Institution No. 17	Sudden death, Acute respiratory and cardiovascular insufficiency

15.	Q.V. 14/06/1951	N8	Large hematoma in the infrarenal section of the abdominal aorta, hemato-genic shock, liver insufficiency, acute insufficiency of kidneys, virus hepatitis C, post-hypoxic toxic encephalopathy	Central Clinic of Tbilisi	Acute respiratory and cardiovascular insufficiency
16.	J.G. 17/01/1951	N6		Penitentiary Institution No. 6	Suicide
17.	K.D. 03/04/1975	N8		Penitentiary Institution No. 8	Chronic hepatitis C, hepatosis, myocarditis
18.	Dz.G. 14/03/1997	N2		Penitentiary Institution No. 2	Suicide
19.	B.V. 20/04/1967	N8		Penitentiary Institution No. 8	Sudden death
20.	G.V. 19/02/1962	N19		The Center for the Treatment of Tuberculosis and Rehabilitation	Suicide
21.	K.G. 05/06/1980	N2		Penitentiary Institution No. 2	Sudden death
22.	I.S. 31/07/1966	N14		Penitentiary Institution No. 14	Sudden death
23.	Gh.F. 08/06/1959	N19		The Center for the Treatment of Tuberculosis and Rehabilitation	Disseminated lung tuberculosis, smear positive, multi-drug-resistant form; respiratory and cardiovascular insufficiency.
24.	B.D. 10/12/1980	N8		Penitentiary Institution No. 8	Suicide
25.	R.I. 14/04/1972	N19	Fibro-cavernous tuberculosis on the right lung, smear positive, multi-drug-resistant form, insomnia of non-organic origin, chronic prostatitis, myocardiodystrophy, straight hernia on the left groin, chronic hepatitis C without active pathological process	The Center for the Treatment of Tuberculosis and Rehabilitation	Suicide

The way the data are arranged in the above table shows that the death reasons are indicated differently in different cases. The most frequently indicated reason of death is “respiratory and cardiovascular insufficiency”; only in one case it is indicated that death was caused by “chronic hepatitis C, hepatosis and myocarditis”. It should also be noted that in 6 out of 25 cases the indicated reason of death is only “sudden death” with no further details are provided.

In 1967, the Twentieth World Health Assembly stated that a medical certificate of cause of death should indicate “all those diseases, morbid conditions or injuries which either resulted in or contributed to death and the circum-

stances of the accident or violence which produced any such injuries". The purpose of entering the mentioned information is to ensure that all the relevant data is recorded and that the certifier does not select some conditions for entry and reject others. The Assembly-provided explanation does not suggest inclusion of symptoms and signs accompanying the process of dying, such as heart failure or respiratory failure. To adhere to the above-mentioned purpose, the WHO developed an international form of medical certificate of cause of death⁹¹ on which basis the Georgian Minister of Labor, Health and Social Protection and the Georgian Justice Minister issued a Joint Order No. 01-5/N-19 dated 31 January 2012 approving a form of medical certificate on death and the rules of filling in and forwarding the certificate. Accordingly, it is necessary to produce and maintain statistical data on causes of death according to the requirements of the template for medical certificate of death.

Unfortunately, there were 6 suicide cases within the Georgian penitentiary system in 2013 (amounting to 24% of all deaths in the penitentiary during that year), which is higher than the previous year index.⁹² In one case, in Penitentiary Institution No. 14, a sentenced prisoner died as a result of violence he was subjected to by other prisoners. Notably, another prisoner died in the same institution on 4 March 2014 as a result of injuries inflicted by other individuals. These facts do raise concerns and we believe the Ministry of Corrections must, having assessed applicable risks, take all the reasonable measures with a view of preventing infringement of prisoners' lives and suicide occurrences in future.⁹³

TORTURE AND INHUMAN TREATMENT; TORTURE PREVENTION STANDARDS

In the reporting period, ill-treatment was no longer a systemic issue but individual cases were recorded. Documenting injuries by the healthcare personnel remains a problem. Injuries found on prisoners' bodies are not registered in the injuries' journals and medical documents according to the rules prescribed in the Istanbul Protocol.

The healthcare personnel have a special role in combating ill-treatment. Documenting traces of ill-treatment by the medical staff is of crucial importance to making an effective investigation possible. Doctors have to respect the patients' best interests of the patient and maintain confidentiality. However, at the same time, doctors have strong moral grounds to openly denounce evident maltreatment. Where prisoners agree to disclose that they have been ill-treated, doctors are obliged to forward the information to investigative authorities. But if a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in preventing the perpetuation of abuse.⁹⁴

Physicians examining an individual should be prepared to assess possible injury and abuse even in the absence of specific allegations by the patient. They should also be able to document physical and psychological evidence of injury or abuse and to correlate the degree of consistency between examination findings and specific allegations of abuse by the patient.⁹⁵ To describe the degree of consistency, physicians may use terms such as "not consistent", "consistent", "highly consistent" and "typical appearance".⁹⁶ Physicians should use a standardized medical report form for documenting purposes.⁹⁷ Examination must be carried out in private, with no third parties present in the examination room.⁹⁸

Healthcare personnel of penitentiary institutions are enter information about bodily injuries into journals for registration of injuries indicating the origin of the injuries in brief. Information about the origin of injuries is entered under one of the following sections: "self-injury", "everyday life injury" or "injured by other person". Doctors are

91 The Order of the Minister of Labor, Health and Social Protection No. 01-10/N dated 11 March 2011 approving "Rules of using medical classifiers in medical recordkeeping" added to the Order of the Minister of Labor, Health and Social Protection No. 92/N dated 12 April 2012 the following Annex 4: "Annex 4: International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Instruction Manual."

92 4 cases were recorded in 2012.

93 See, among others, *Osman v. the United Kingdom*, Judgment of 28 October 1998, par. 115-16; *Ketreb v. France*, Judgment of 19 July 2012.

94 Istanbul Protocol, par. 72.

95 *Ibid.*, par. 122.

96 *Ibid.*, par. 187.

97 *Ibid.*, par. 125.

98 *Ibid.*, par. 124.

not evaluating the consistency of prisoners reports about types of injuries and the way they occurred. In describing injuries, doctors are not following the Istanbul Protocol requirements. Pursuant to the official information received, 3,747 cases of bodily injuries were registered in 2013, including 2,529 self-injuries and 606 everyday life injuries.

For the purpose of properly documenting ill-treatment and facilitating investigation into allegations of ill-treatment, it is crucial that a relationship of trust is built between the doctor and the victim of ill-treatment. Unfortunately, in the previous years, the deep-rooted problem of wholesale ill-treatment within the Georgian penitentiary system undermined the confidence in the the penitentiary healthcare personnel.

The healthcare personnel must not partake in any activity unless the sole purpose of their intervention is patient care. In performing their professional duties, the medical personnel must be guided with ethical values, respect for human honor and dignity, fairness and compassion. Healthcare personnel must act only in the interests of the patient and must not use their knowledge and experience in contravention of humanity principles. In making professional decisions patients, health professionals must be free and independent, must not act with self-interest and must care for raising the prestige of the medical profession.⁹⁹ Adherence to the confidentiality principle is crucial for gaining the trust of prisoners but the monitoring revealed a different reality.¹⁰⁰

Recommendation to the Minister of Corrections:

- **To develop and introduce a new form for registration of injuries in accordance with the Istanbul Protocol requirements allowing more information to be entered about the injuries;**
- **To provide the penitentiary healthcare personnel with advance training in documenting ill-treatment.**

99 Law of Georgia on Healthcare, Article 30.

100 See sub-chapter entitled “Confidentiality and informed consent”.

HUMAN RIGHTS IN THE AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS

POLICE

This report describes the results of the monitoring carried out by the National Preventive Mechanism at police units and divisions under the Ministry of Internal Affairs of Georgia.

During the monitoring, the monitoring group examined journals for registration of detainees and journals for registration of individuals transferred to temporary detention isolators. It should be noted that these journals are filled out either incompletely or incorrectly. Thus, sometimes it is impossible to discern the time of arrest, the time and date of bringing the detainee to a district police unit or the subsequent fate of the detainee. Sometimes the numbering in the journals is messed up or there is no indication about where and how the impugned offence was committed. Relevant provisions from the Criminal Code are not referenced. Sometimes some sections are left empty.

When examining the journals at various facilities, the monitoring group found most of the violations in the police units of Keda, Batumi, Bolnisi, Dedoplistkaro, Lagodekhi and Kaspi. The least number of violations (2 in each case) were found in the journals kept at local district police units in Akhalkalaki, Gardabani and Khoni.

The Special Preventive Group's attention was captured by the fact that individuals were often times arrested and transferred to specialized institutions for testing on drug use.

For example, in the period of January – June, the Zugdidi division of the Samegrelo – Zemo Svaneti police arrested up to 1,600 individuals for alleged drug consumption but the actual consumption was proven only in 130 cases. These figures raise serious concerns since more than 90% of arrested individuals turned out to have been arrested on false suspicion. This leads us to conclude with a high probability that, in arresting these individuals, the police was acting not on the basis of a reasonable doubt test but arbitrarily.

The law enforcement officers we interviewed in the course of the monitoring confirmed that they were using such arrests as a preventative tool. In other words, the police wanted to make an impression that anyone may get arrested and tested regardless of whether the police have a reasonable doubt about a particular individual.

During the monitoring, members of the Public Defender's National Preventive Mechanism were allowed to enter without any difficulties and move freely in both the territories of penitentiary institutions and Interior Ministry's district units and temporary detention isolators. The only exception was the Sagarejo District Division of the Kakheti Chief Regional Division where the members of the Special Preventive Group denied the right to enter the police building. In particular, on 17 October 2013, the Public Defender's National Preventive Mechanism was visiting the Sagarejo District Division of the Ministry of Internal Affairs with a view of examining journals for registration of detainees and journals for registration of individuals transferred to temporary detention isolators.

On entering the duty officer's room, the trustees of the Public Defender explained the duty officer the reason of their visit. As they were talking to the officer, Giorgi Revazishvili, Deputy Chief of the Sagarejo District Division came into the duty room who insisted that the Public Defender's representatives leave the room. Although we explained the Public Defender's rights under the Organic Law of Georgia on the Public Defender, he behaved himself defiantly continuing to demand with a loud voice that the members of the Office of the Public Defender leave the duty room. Then, Giorgi Revazishvili used the help of another person dressed up in civilian clothes, al-

legedly a police officer, to force our representatives out from the room.

By his behavior, Giorgi Revazishvili hindered the Special Preventive Group from performing its functions and used physical violence against the group members. By doing so, Giorgi Revazishvili violated the requirements of the Organic Law of Georgia on the Public Defender of Georgia and exceeded his rights prescribed by law.

On this ground, on 18 October 2013, the Public Defender addressed the Minister of Internal Affairs with its Recommendation No. 771/03 advising the Minister to personally inquire into the obstruction of activities of the Public Defender’s Special Preventive Group and the exceeding of official powers prescribed by the Georgian legislation by Giorgi Revazishvili, Deputy Chief of the Sagarejo Police Division. In his Recommendation, the Public Defender asked the Minister of Internal affairs to take appropriate measure to respond to this incident. The Ministry of Internal Affairs then informed by the Public Defender by its Letter No. 2446496 dated 29 November 2013 that employees of the Ministry of Internal Affairs – Giorgi Revazishvili, Manuchar Gabelia and Elguja Javakhishvili – were issued recommendatory letters on the basis of a report of the Ministry’s Inspectorate-General.

Members of the Special Preventive Group have been monitoring police stations and divisions for years but they have never ever encountered such a problem before. Monitoring of both police units and temporary detention isolators was always going on smoothly without any artificial obstacles. Members of all of the police divisions and temporary isolators, including the employees of the Sagarejo temporary detention isolator, have fully cooperated with the Public Defender’s representatives in the past helping them conduct their monitoring in a full-fledged manner. We hope that the incident at the Sagarejo police will stay an exception and will never be repeated so that members of the Public Defender’s Office are not prevented from performing their duties.

TREATMENT

The Georgian Ministry of Internal Affairs truly plays a crucial role in protecting public safety and maintaining a good legal order in a democratic state. In implementing its functions, the police must respect the honor and dignity of citizens as members of the society and must not tolerate violation of human rights and freedoms. The extent to which human rights are protected in a given State depends much on how effective the police work is. In addition, the Georgian Ministry of Internal Affairs is responsible for each of its employee’s operation with the human rights standards.

The Georgian legislation determines the forms, methods and means of how the police should implement their functions. Under the Law on Police, all police officers are obliged to firmly adhere to the principles of protection and respect for human rights and fundamental freedoms, lawfulness, prohibition of discrimination, proportionality, discharge of discretionary powers, political neutrality and transparency of the police activity. Forms, methods and means of police work must not be such as to encroach on the right to life, inviolability of person and property rights or other fundamental rights and freedoms. In performing their duties, police members must not be inflicting damage to the environment. Torture, inhuman or degrading treatment are never permissible in carrying out police measures.

It is unfortunate that police officers are not always adhering to these principles and causing violations of human rights to happen. This conclusion is based on the monitoring results and the analysis of citizens’ complaints filed with the Public Defender’s Office during the reporting period. Pursuant to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹⁰¹ all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

In the course of its monitoring activities, the Special Preventive Group examines the treatment of detainees by the police both during and after arrest. In the reporting period the Public Defender received complaints from citizens about ill-treatment administered by police at the time of arrest. The Public Defender’s Office forwarded the materials about each of these allegations to the Chief Prosecution Office.¹⁰² The replies received from the Chief Prosecution Office suggest that none of the law enforcement officials possibly involved in ill-treating the citizens were prosecuted or tried by courts. This situation raises some valid concerns about effectiveness of how authorities

101 Adopted by the Resolution of the UN General Assembly No. 43/173 dated 9 December 1988.

102 For more details about some these cases, please see a sub-chapter entitled “Alleged excessive use of force by law enforcement agents”, p. 178.

are investigating these cases.

In 2013, 16,533 individuals had been detained in temporary detention isolators. 7,095 of these individuals had injuries of whom 359 alleged that they had been injured either during or after arrest. Only 111 individuals complained about how police treated them and their complaints were forwarded to the Prosecution Office for further action.

When monitoring the temporary detention isolators, the Special Preventive Group examined locally held protocols about external injuries found on the bodies of detainees. In some cases, the detainees were not complaining about the police behavior but indicated that they had been injured during their arrest. Sometimes the degree and the seriousness of injuries described were such as to reasonably lead to a conclusion that the individual had been subjected to ill-treatment. On a number of occasions, the detainees stated that they had been ill-treated by the police but refused to make any complaints either to the representatives of temporary detention isolators or on admission to the penitentiary institutions since, as they explained, they feared the proceedings in their case would go in an unfavorable direction if they'd start complaining about the authorities.

We would like to note a positive development that none of the individuals detained in temporary detention isolators and penitentiary institutions complained about any ill-treatment the employees of the isolators. As already mentioned, in some cases the prisoners alleged the police treated them violently but, when it comes to the staff of temporary detention isolators, the detainees said, they behaved correctly trying to take their needs into account as much as possible.

The monitoring showed that when an individual is brought to a temporary detention isolator with various injuries, the isolator administration will involve the prosecution office only if the detainee complains of the actions of the law enforcement bodies.

In terms of effectiveness of investigation into possible ill-treatment, the European Committee for the Prevention of Torture (CPT) has stated that when persons detained by law enforcement agencies are brought before prosecutorial and judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of a clearly expressed complaint, these authorities will be in a position to take action in good time if there are other indicia (such as visible injuries, a person's general appearance or behavior) that ill-treatment might have occurred.¹⁰³

The Public Defender has recommended many times that if the nature of the injuries on the detainee's body suggests that the person might have been ill-treated, the administration of the temporary detention isolator should, whether or not the detainee is complaining, notify a supervising prosecutor thereabout for the latter to examine the origin of the injuries. Unfortunately, the Public Defender's recommendation has not been fulfilled this far.

LIVING CONDITIONS IN TEMPORARY DETENTION ISOLATORS

We believe the living conditions of individuals detained in temporary detention isolators must be consistent with both national and international standards. Under Article 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, "all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting heating and ventilation."

Pursuant to the Order of Interior Minister No. 108 dated 1 February 2010 approving the "A model statute for temporary detention isolators, internal regulations of the isolators and additional instructions on the operation of the isolators", the floor space per each person detained under the administrative rule shall be no less than 3 square meters; the place of administrative detention shall have a window of such properties as to allow daylight in and provide natural ventilation; the place where administrative detainees are accommodated must also be provided with heating appropriate to seasonal requirements; individuals detained under the administrative rule must be provided with beds, mattresses, blankets and linen that are compatible with health requirements and are appropriate for normal sleep. Administrative detainees have the right to receive parcels, food and clothes. Individuals who have been sentenced to administrative detention for more than 7 days and nights as well as juveniles who have been sentenced to administrative detention for more than one day and night must be able to take a shower twice a week

103 14th General Report on the CPT's activities, 2004, par. 28.

and take a walk for at least one hour each day. In the isolators that have no special walking yard, the detainees may be taken out to take a walk outside the police division's administrative building or in the adjacent territory. Detainees must also be able to satisfy their natural needs in compliance with sanitary and hygienic norms, 24 hours a day. Toilets must be equipped with sanitation items. Individuals who have been sentenced to more than 30 days of administrative detention, upon their request, must be provided with hairdressing services. The administration of the place of enforcement of administrative detention does not have the right to force administrative detainees to shave their heads unless there is a medical indication or hygienic necessity to do so. Individuals who have been sentenced to administrative detention for more than 30 days as well as juveniles who have been sentenced to more than 15 days may be granted the right to receive two visits a month and have a ten-minute conversation once a month. Administrative detainees also have the right to subscribe for and/or receive any literature, magazines and newspapers at their own expense. They are entitled to send complaints, applications and letters. Pursuant to the above-cited ministerial order, administrative detainees may get registered as prospective students according to the rules established by the Georgian Ministry for Education and Science by applying for participation in the Unified National Examination. Furthermore, administrative detainees must be provided with all the conditions for not falling behind with the general education programme.

There are 37 operational temporary detention isolators in Georgia. Two of them are located in Tbilisi, and others are in the regions. In a majority of temporary detention isolators in the Georgian regions, ventilation systems are practically dysfunctional. Small-size windows are insufficient to provide natural ventilation and lighting. The cells are not heated properly. Walking yards are mostly out of order. For illustrative purposes, we provide some summaries of the situation existing in some of the temporary detention isolators.

The temporary detention isolator in Dusheti

The isolator does not have a walking yard. As the isolator staff explained, the detainees are taken out for walk to breathe in some fresh air outside the building but they have to sign an affidavit, which is a warning about the liability in case of fleeing. The cells are not ventilated. There is no sufficient natural or artificial lighting.

The temporary detention isolator in Mtskheta

The isolator has a walking yard which is unroofed and cannot therefore be used in rain or snow. There is no sufficient natural or artificial lighting in the cells. The toilets inside the cells are not isolated and it smells bad in the cells. The ventilation system does not ensure ventilation.

The temporary detention isolator in Gardabani

The isolator is located in the basement of the premises of the Gardabani District Police of the Kvemo Kartli Regional Division of the Ministry of Internal Affairs. The cells in the basement have no natural lighting or ventilation. No heating or artificial ventilation systems are functional. The shower room is unrepaired and unequipped. The cells do not have sufficient artificial lighting inside. The entire basement is humid. Instead of beds, the detainees have to sleep on wooden planks. The detainees in the cells have to wash their hands with water from a pipe that is designed to flush the toilet and is installed at the height of about 30 centimeters from the floor.

The temporary detention isolator in Marneuli

There are no tables and chairs in the cells. The floor is made of concrete. The natural and artificial lightings are insufficient. There are no water taps inside the cells and the detainees have to use water from the pipe designed for flushing the toilet; the pipe is located at about 25 centimeters above the floor. Detainees are provided with items of personal hygiene and linen by their family members.

The temporary detention isolator in Rustavi

The cells in the isolator have no tables and chairs. The natural and artificial lightings are insufficient. There is some specific odor in the cells due to insufficient ventilation. The detainees have to sleep on wooden planks. The water taps are regulated from outside the cells, by the isolator staff. The detainees are getting items of personal hygiene and linen from their families. There is no shower room in the isolator.

Detainees are not allowed to receive filter cigarettes through parcels even though there is no normative act preventing the detainees from doing so or governing this issue in any other way. We believe this limitation is unnecessary

and the current bad practice is simply a remnant of old regulations that were aimed at preventing any sharp objects getting in the hands of prisoners as it was believed that a cigarette filter could be used to make such an item. Nowadays, the current regulations allow prisoners to have plastic-made items that are way easier to transform into sharp objects. Accordingly, it is difficult to justify the current limitation on filter cigarettes as a matter of either the fact or the law.

The temporary detention isolator in Lentekhi

The isolator is located in the police building in Lentekhi. It is separated from the rest of the building with iron bars and a wooden door. The isolator consists of two cells only. Each cell is designed for two individuals. At the time of monitoring, the light bulb in the cell was fused and the only light reaching cell was in part was the one coming from the police building. Because the cell has no window, the daylight penetrates only through the holes in the wooden planks mounted on the bars on the top of the cell. At the time of monitoring, there was one detainee in the cell who stated that he had not been subjected to any physical or psychological pressure. After his arrest, an ambulance team was called up because the detainee felt bad.

According to the detainee, he was receiving food and items of hygiene from his relatives. Water was provided with a bottle. No food was available locally. The cell had no ventilation or heating system. The wooden door of the cell was always open; only the bars were locked. The door would never get shut even if the detainee wanted to change his clothes. A toilet was located outside the cells, in the police building. The shower room was dysfunctional as there was no hot water supply.

The temporary detention isolator in Lentekhi is incompatible for accommodating detainees and therefore should be shut down.

Nutrition is one of the major problems of temporary detention isolators. Pursuant to the information received from the Ministry of Internal Affairs and our interviews with the detainees, the detainees are served meals thrice a day. The meals consist of sugar, tea, pâté, dry soup, bread and canned meat. According to official information, detainees in the temporary detention isolator no. 1 in Tbilisi and the isolators in Mtskheta-Mtianeti are served bread, buckwheat, macaroni in oil, boiled potatoes, pea soup, borsch (beetroot soup), cutlet, goulash, beans, fish, mashed potatoes, vegetable salad, fried vegetables and tea. We believe that, at the temporary detention isolators, where people serve their administrative detention which may last for as long as 90 days, it is important that the detainees be provided with proper food ration because eating pâté, dry soup and canned meat all the time for a long time period may cause problems with digestive system.

Recommendations to the Minister of Internal Affairs:

- **To set up new institutions specially designed for administrative detainees and suitable for accommodating such detainees for long periods of time, with consideration paid to a geographical principle;**
- **To install central heating in the cells at all temporary detention isolators; to provide the cells with proper lighting and ventilation, including natural lighting and ventilation;**
- **To isolate toilets at all of the temporary detention isolators;**
- **To create conditions required for maintaining hygiene at all of the temporary detention isolators, including by installing washstands and taps in the cells so that detainees can use water independently;**
- **To ensure that detainees have the opportunity of taking a walk outside to breathe some fresh air, every day, in a specially designed area;**
- **To remove the wooden planks from the cells in all of the temporary detention isolators and to provide each detainee with a bed of his own;**
- **To ensure that detainees in all of the temporary detention isolators are provided with proper food ration.**

CONDITIONS OF DISABLED INDIVIDUALS IN PENITENTIARY INSTITUTIONS, THE INSTITUTION FOR INVOLUNTARY PSYCHIATRIC TREATMENT AND TEMPORARY DETENTION ISOLATORS

Through 21 October – 13 November 2013, with the financial support of the Open Society – Georgia Foundation, the National Preventive Mechanism monitored the performance by the Georgian Government of its obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) in relation to disabled people in penitentiary institutions, the psychiatric institution and temporary detention isolators. It is for the first time in Georgia that the National Preventive Mechanism carried out such monitoring. Importance of this report is also mandated by the fact that on 26 December 2013 the Parliament of Georgia ratified the 2006 United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). This Chapter describes basic trends and recommendations revealed by the monitoring. The results of the monitoring are being prepared and will be published as a separate report in the near future.

The following institutions were selected for monitoring:

- Penitentiary Institution No. 5
- Penitentiary Institution No. 11
- Penitentiary Institution No. 12
- Penitentiary Institution No. 8
- Penitentiary Institution No. 2
- Penitentiary Institution No. 15
- Penitentiary Institution No. 17
- LLC “Academician B. Naneishvili National Center of Psychic Health”
- The temporary detention isolator of the Ministry of Internal Affairs in Gardabani
- The temporary detention isolator of the Ministry of Internal Affairs No. 1
- The regional temporary detention isolator of the Ministry of Internal Affairs in Kakheti

The actual monitoring was preceded by a several-month preparatory phase when we processed and analyzed all of the accessible academic and normative resources.

The monitoring showed that the needs of people with disabilities are not taken into account at pretrial detention facilities and institutions for sentenced prisoners, the institution for involuntary psychiatric treatment and temporary detention isolators. Problems revealed in each of these institutions will be discussed below in detail.

According to the monitoring results, statistical data about disabled individuals and their needs are not produced

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and maintained. In none of the institutions monitored did the administration provide the Special Preventive Group members with a full list of disabled individuals at their respective institutions. In fact, none of the monitored institutions has established criteria to identify people with disabilities.

For this reason, it was difficult or, virtually impossible, to check whether the number of the staff members of these institutions was sufficient to support the existing number of disabled individuals – a requirement that must be complied with by any institution having persons with disabilities, according to the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. In particular, pursuant to Principle 14, a mental health facility shall have qualified medical and other appropriate professional staff in sufficient numbers (this requirement equally applies to penitentiary institutions having persons with mental health problems (Principle 20, par. 2).

During the monitoring, disabled prisoners (convicted and remand prisoners) have not reported about any ill-treatment by the personnel after the election in October 2012. However, the monitoring group received numerous reports about alleged torture and ill-treatment before 2012. According to the prisoners, the acts of torture and ill-treatment often resulted in severe deterioration of health or even disability.

Prisoners with disabilities may have special health care needs related to their status. If these needs are not satisfied, their condition may sharply deteriorate in short time period perhaps leading to more limitation of their ability to look after themselves, move and perform other important day-to-day functions. To satisfy these needs, in addition to standard medical assistance, they will need physiotherapy, regular eyesight and hearing examinations, occupational therapy, etc. They also need access to tools and services such as wheelchairs, hearing aids, canes, orthotics, prosthesis, etc.

Often times disabled individuals also need assistance with their mental health. Increased mental health care needs have been noted among prisoners who have sensory disabilities (such as visual or auditory impairment) or problems with communicating with other prisoners as these are conditions which are isolating in themselves and such individuals may become victims of psychological abuse and bullying. Medical assistance becomes even more necessary when prisoners with disabilities lack access to a psychologist's consultation. Ensuring easy access to healthcare services to disabled prisoners is one of the recommendations of the United Nations.¹⁰⁴

Although recently the Georgian Ministry of Corrections and Legal Assistance has implemented a series of measures to provide prisoners with timely and effective medical services, the problem of medical assistance remains a major unresolved issue for convicted and accused prisoners with disabilities. The main source of the problem is that the Ministry has not yet identified the special needs of disabled prisoners, which are different from those of other prisoners. In none of the penitentiary institutions did the monitoring group find a single medical professional with updated and contemporary knowledge of how to handle medical problems of disabled individuals. There are no clear standards or guidelines to help these professionals correctly identify and satisfy the medical needs of such prisoners. Lack of these standards and approaches places disabled prisoners in a discriminated position.

Save few exceptions, no personal assistance services are available to disabled prisoners (both convicted and untried). In most institutions, bedfast patients (prisoners) are assisted only by and are fully dependent upon the good will of other inmates. Such policy places them in undesirable subordination making them vulnerable to improper manipulation, which may easily grow into oppression and violence.

Mental problems of prisoners are either identified by the prison staff belatedly or are not identified at all. Therefore, often times prisoners with mental disorders are punished for disobedience to the regime requirements.

Prisoners' manipulative behavior or protest reactions (such as injuring or poisoning themselves, swallowing different things, etc.) are regarded by the personnel as urgent psychiatric incidents. Because of the lack of professional training, they are unable to prevent auto- and hetero-aggressive behavior or locally assess/manage risks. For this reason, they simply call the ambulance to transfer such prisoners immediately to a psychiatric hospital where the prisoners refuse to receive treatment voluntarily, for various reasons. Because there is no established list of circumstances, in which case a patient must be provided with involuntary treatment, prisoners are then returned back to the institution – something that is heavily frowned at by the administration. Because of protracted diagnostic and legal procedures, convicted and remand prisoners with serious mental disorders are transferred to the National Center of Mental Health with a delay of 2-4 months on average, for involuntary inpatient psychiatric treatment.

104 United Nations Office of Drugs and Crime (2009). Criminal Justice Handbook Series, Handbook on Prisoners with disabilities. ISBN 978-92-1-130272-1.

Prison administrations are complaining that they have been experiencing serious difficulty in looking after prisoners with mental problems after the closure of the Medical Institution for Accused and Convicted Persons.

It has become especially difficult to provide necessary psychiatric aid to remand prisoners with mental illnesses. They seldom receive a psychiatrist's consultation and fulfillment of their treatment regime requirements usually depends upon the willingness of the prisoner itself or the support of his/her co-inmates.

The penitentiary system has no standards on initial psycho-physical assessment of prisoners and management of problems identified. Initial medical examination of prisoners in penitentiary institutions is performed by family doctors. A psychiatrist's consultation is provided only when it is already late, when patients actually show signs of acute psychosis demonstrating manifestly inadequate behavior. Mental problems generated by arrest as well as relatively mild psychic disorders remain unnoticed.

Analysis of prisoners' medical files showed that prisoners' psycho-physical health assessment on admission is formalistic; no multi-profile evaluation is performed. Somatic, psychological/psychiatric, social and legal needs remain unidentified. Accordingly, no actions are planned and implemented to deal with the problems revealed.

A serious problem in the penitentiary system is the established practice that beneficiaries demand excessive doses of psychotropic medications and, if denied, demonstrate aggressive and manipulative behavior. A majority of prisoners taking psychotropic medications are suffering from accompanying personality disorders and somatic problems.

Excessive use of psychotropic medications by prisoners is an abnormal practice connected with drug addiction and personality disorders. The penitentiary healthcare system does not provide prisoners having personality disorders with quality and effective mental health services. The imprisonment regime is not differentiated or adapted to needs of prisoners with personality problems; this results in deterioration of the patients' mental health restricting their psycho-social aptitude on the one hand and complicating the work of the medical personnel and the prison staff on the other hand.

The penitentiary system does not ensure beneficiaries with adequate psychiatric/narcologic assistance and appropriate psycho-social rehabilitation. No psycho-educational work is carried out and, despite the high risk that addiction to benzodiazepines either already exists or may develop soon, prisoners are not offered gradual reduction in the use of drugs and some replacement psycho-social measures.

The monitoring showed that, in the penitentiary institutions, prisoners are provided psychiatric assistance without their informed consent, which hinders the establishment of a positive therapeutic relationship between the doctor and the patient, which is especially important in a prison setting where a prisoner cannot freely choose his own doctor. "Patients should be provided with all relevant information (if necessary in the form of a medical report) concerning their condition, course of treatment and medications prescribed."¹⁰⁵

In the course of monitoring, the monitoring group identified a series of cases where persons with mental problems were not receiving adequate treatment and their condition was most likely deteriorating.

The Committee for the Prevention of Torture (CPT) considers suicide prevention a matter falling within the purview of prison healthcare services and suggests that special attention be paid to training the personnel in recognizing indications of suicidal risk and following appropriate procedures. In this regard, the CPT notes, the periods immediately before and after trial and the pre-release period involve an increased risk of suicide. According to CPT, medical screening on arrival is important as this could relieve some of the anxiety experienced by newly admitted prisoners.¹⁰⁶

When a prisoner is admitted to a penitentiary institution, the examining doctors are entering a note in the relevant section of the prisoner's medical card about post-self-injury scars found but the doctors are not interviewing the prisoners about the origin of these wounds. Nor are the prisoners questioned about having any suicidal thoughts or aspirations to help recognize the likelihood of suicidal behavior in the future. Suicides and para-suicides are not differentiated and, hence, no appropriate psychiatric/psychological assistance and observation are offered.

The healthcare personnel and the staff of the institutions are not equipped with algorithms for the management of aggressive behavior, depression or stress and have not had any professional training in these matters.

105 CPT's Third General Report, paras. 45-49.

106 CPT's Third General Report, paras. 57-59.

Lack of medical and psycho-social rehabilitation mechanisms for prisoners is the penitentiary's one of the major problems which entails severe implications for prisoners with disabilities, since their health and functioning ability directly depend on the availability of rehabilitation services. The same is true for disabled prisoners who have an after-stroke condition and need rehabilitation to retain mobility of their limbs and to avoid complete loss of independent movement ability. Disabled prisoners with amputated limbs or injured backbones are facing the same difficulties. Disabled prisoners' limited functioning (for example, the fact that they stay in beds for long periods of time and are unable to look after themselves) is a direct result of unavailability of rehabilitation programmes. Had rehabilitation services been provided even to a minimum extent, their illnesses would no longer have such destroying impact. As the UN Convention on the Rights of Persons with Disabilities mentions, disability results from not only illness or condition but also the difficulty of having to interact with an unadapted environment (where no rehabilitation services are provided) which gradually develops into more limitations.

The monitoring revealed that disabled prisoners' access to a complaints mechanism (that is, a box for complaints) is limited: in some cases, prisoners are not aware of the complaints procedure or, those who are aware of it, cannot physically write a complaint and place it in the box. The toilets and washstands in the cells are inappropriate for persons with disabilities (wheelchair users) to satisfy their physiological needs and maintain personal hygiene with due respect for human honor and dignity.

Disabled individuals are not involved in any handicrafts and other specific occupation learning courses offered in the penitentiary institutions. The existing educational/handicraft programmes do not take into account the needs of disabled people.

Within the monitoring, special attention was paid to the situation at the National Center of Mental Health. The Center provides involuntary inpatient psychiatric assistance within a State Programme for Mental Health. The inpatient services imply the following:

“Treatment and provision with additional services (such as protection and security) of patients who have been committed to placement in a hospital for involuntary psychiatric assistance by a court under Article 191 of the Code of Criminal Procedure; additionally, patients undergoing an inpatient treatment course will be provided with meals and items of hygiene as well as with urgent surgical services and therapeutic dental services.”¹⁰⁷

The monitoring revealed a series of problems at the National Center of Mental Health. The first group of problems relate to placement of individuals in the hospital for involuntary psychiatric assistance. In particular, based on a report of a panel of psychiatrists, the administration of a psychiatric institution will apply to the court with a template application the form of which is approved by the Order of the Minister of Labor, Health and Social Protection No. 89/N dated 20 March 2007. The only reasoning of the request contained in the application is the text of Article 18(1) of the Law on Psychiatric Assistance¹⁰⁸ cut and pasted from the Law verbatim; the author of the application is required to simply underline one of the criteria for committing an individual to involuntary psychiatric assistance. However, these criteria are too general allowing broad interpretation. Patients who have been subjected to this procedure are complaining of the fact that, when deciding whether to extend their stay at the hospital for involuntary psychiatric assistance, courts are not taking their views expressed at the court hearings into account. The above-described law and practice open up the possibility of both unlawfully placing individuals in mental hospitals for involuntary assistance and unlawfully extending their stay at the hospitals even when this is no longer necessary. Establishing a person's identity is another problem issue.

When patients are admitted to a mental hospital, no individual short- or long-term treatment plans are devised; the patient's strengths and weaknesses are not evaluated and, accordingly, no preventative measures are contemplated. Patients' aggressive behavior directed against themselves or others are usually prevented by subjecting them to physical restraints and injections of hypnotic anti-psychosis drugs.

The way psychiatric incidents are managed contravenes the requirements of contemporary psychiatry and the national standards of disease management. Treatment with psycho-drugs is carried out using high doses of old-generation psychotropic substances for long periods of time and in combination with not-recommended medications – a practice that contradicts modern standards accepted in psychiatry.

107 2013 State Healthcare Programmes, Annex 11: “Mental health” (Article 2, paragraph 2).

108 A person will be committed to involuntary inpatient psychiatric assistance if, because of his/her mental disorder, he/she is unable to make conscious decisions and it is impossible to provide him/her with psychiatric assistance unless he/she is placed in a hospital. In addition, one of the following requirements should be met: a) delayed assistance will endanger the life and/or health of either the patient or others; b) there is a risk of the patient inflicting serious pecuniary damage to himself/herself or others.

The mandatory lab and instrumental examination required for the management of side effects of psychotropic drugs-based treatment is not performed. Usually, a treatment course is nothing more than cramming patients with psychotropic drugs. Patients are not involved in psycho-social rehabilitation programmes, which would facilitate their going back to the society and re-adaptation.

The institution's administration does not have statistical data about disabled patients undergoing court-ordered psychiatric treatment courses. Patients' social status does not get identified; even if a patient is staying at the hospital for a long time period, no one gets interested in a patient's social status and whether the patient can enjoy any benefits associated with his social status.

Outpatient psychological clinics are unprepared for accepting patients with chronic psychiatric disorders and psycho-social abnormalities. Community-based psychiatric services, mobile psychiatric assistance and home care services are not available. There is a lack of social housing and the supporting system is undeveloped.

Such patients are social outcasts, completely isolated from the public. They get discriminated due to the fact that they have mental illnesses. They are not getting adequate psychiatric assistance and are not enjoying the benefits afforded to disabled people.

Recommendations:

To the Minister of Corrections

- To ensure that statistical data about disabled prisoners are produced and maintained;
- To develop a mechanism for identifying disabled prisoners and assessing their needs;
- To ensure implementation of the minimum standards such as the principles of accessibility and reasonable accommodation in the penitentiary system;
- To ensure that eligible prisoners are granted disability statuses according to their condition;
- To ensure that the penitentiary healthcare staff responds to the special needs of disabled prisoners;
- To elaborate standards of care for disabled people adjusted to prison environment;
- To introduce disability-related specialized services;
- To implement a disabled prisoners' rehabilitation programme to prevent deterioration of their health, further reduction of their functioning ability and their turning into bedfast patients.

To the Minister of Labor, Health and Social Protection

- To provide disabled prisoners with adequate psychiatric assistance;
- To develop individual plans for working with disabled prisoners;
- To introduce psycho-social treatment and rehabilitation services that are structural, systemic and results-oriented;
- To revise the role and functions of the security department of the National Center for Mental Health;
- To take active steps to eliminate delayed stay of patients at the hospital for involuntary psychiatric treatment;
- To take active steps to extenuate the current strict regime at the National Center for Mental Health and to offer more open services.

RIGHTS OF CHILDREN IN SMALL FAMILY-TYPE CHILDREN'S HOMES

According to the Resolution of the Parliament of Georgia No. 912 dated 30 July 2013 concerning the Report of the Public Defender about Human Rights and Freedoms in Georgia in 2012, the Georgian Parliament took note of the Report as of very important factual information about the wholesale violation of human rights in 2012. Also, the Parliament agreed with the recommendations of the Public Defender to the Minister of Labor, Health and Social Protection resolving:

- That, given the high number of children living in poverty, the Minister shall develop a unified, practically usable and real-life-adapted standard for improving the supervision over the growing and development as well as health of the beneficiaries of small family-type children's homes; to make the number of family-type homes proportionate to the overall number of the beneficiaries;
- That the Minister shall ensure that information about services provided to children is collected according to the requirements of the Childcare Standards, by way of elaborating internal regulations and other required components for the family-type children's homes; for the purpose of preventing violence and inhuman treatment against children subjected to State care, the Minister shall take effective measures to actively facilitate their reintegration into the families.

Results of the monitoring conducted by the Public Defender's Special Preventive Group in 2012 showed that, despite the correct systemic measures implemented by the State in the area of orphan care, the conditions of living at small family-type children's homes are not meeting the requirements under the Childcare Standards. The monitoring report states that

“Especially noticeable is the lack of unified and clear State control mechanisms. It seems like after handing the management of small family-type children's homes over to private organizations the State has somewhat lost its interest in improving childcare standards for children in need of care.”

Our representatives have discovered a series of problems in the course of their scheduled monitoring visits to children's homes. Further visits are necessary with a view of evaluating these problems and getting the relevant State authorities pay attention to them.

In February 2014, the Public Defender's Special Preventive Group monitored 30 small family-type children's homes, including those in Tbilisi (13 homes), Rustavi (2 homes), Dusheti (1 home), Akhmeta (1 home), Telavi (3 homes), Mtskheta (2 homes), Khashuri (4 homes), Gori (1 home), Kaspi (1 home), Gardabani (1 home) and Lagodekhi (1 home).

The monitoring was carried out by two groups each consisting of 5 experts. The groups were staffed with representatives of the Public Defender's Prevention and Monitoring Department and the Center for Children's Rights (4 employees in total) and 6 invited experts from the National Preventive Mechanism (psychologists, a psychiatrist, two general practitioners, a social worker and a lawyer).

In monitoring the small family-type children's homes, we used standards laid down in both international instruments and the national legislation to compare the existing situation against. In the course of monitoring, each group was using the Childcare Standards to evaluate the situation at the children's homes. In addition, our monitoring experts examined the quality of the services provided to and treatment of the children, their physical and mental health, the infrastructure and the sanitation/hygiene conditions at the children's homes. We also evaluated

the implementation of the Public Defender's recommendations issued after its monitoring of the small family-type children's homes in 2012.

The monitoring revealed systemic violations that can be mended only through zealous efforts and a method-based approach. We would like to stress the shortcomings that could not be eradicated during the reporting period. In particular, the educators' qualifications and the quality of psychologic/psychiatric services provided to children under State care remain a problem.

Problems existing in this area will be dealt with in detail in a separate comprehensive report about the monitoring of small family-type children's homes, which is scheduled to be published in 2014.

PHYSICAL ENVIRONMENT

Pursuant to the United Nations Convention on the Rights of the Child,¹⁰⁹ every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. States are therefore obligated to ensure adequate conditions to children to meet their obligation under the cited provision. For full-fledged development, children need to be raised in conditions that are close to a family environment.

After the children's educational institutions were replaced with small family-type children's homes, the beneficiaries' conditions of living have significantly improved. The way their individual needs are responded and the surrounding infrastructure are now near to family environment. The buildings and the yards are clean. The yards are fenced. Floor space per each beneficiary is 6 square meters. Almost all of the homes are equipped with central heating, furniture, household equipment, inventory, items of hygiene, telephone, natural and artificial lighting, bathrooms and toilets of acceptable standards, kitchens and dining rooms. Each child has his/her private space and drawers to keep their clothes and items. All windows are furnished with curtains. The bedrooms are equipped with modern wooden beds, linen, wardrobes, bedside tables, writing tables and chairs.

In some of the children's homes, however, our monitoring groups detected problems needing to be addressed in a timely manner. For example, the location of some of the children's homes makes it difficult for the children to access formal/informal education facilities and healthcare services; ceilings and walls are damaged because of leakage of precipitation through the roof;¹¹⁰⁻¹¹¹ the windows and the doors are no longer fit for purpose and are unable to hold stable temperature in the building, the vent hoods in the kitchen and the bathroom are dysfunctional, the inventory has not been renewed since 2007 and the children have to keep their personal items on chairs;¹¹² the light bulbs in the children's rooms are out of order and the children have to prepare their lessons under the light of table lamps.¹¹³ No Internet connection is available. Since there is no 24-hour water supply, the administration collects water in a tank located in a 15 square-meter room where the ceiling and the walls are musty; the temperature in the building does not meet the established requirement; the exhaust from the natural gas combustion unit of the central heating system goes outside through the wall but the tube is so short that the exhaust penetrates into the rooms creating the danger of people getting intoxicated. For this reason, the children have to keep their windows shut.¹¹⁴

One of the children's homes in Tbilisi¹¹⁵ is surrounded by a territory of a car repair shop. On the territory, there are cars parked awaiting repair, painting and other repair works are ongoing, engine parts are washed with oil, there is a specific strong odor around. Also, in the vicinity, in about 80 meters, there is a natural gas fuelling station.

In almost all of the small family-type children's homes toothbrushes are kept in shared cups without any signs on them to discern their owners.

During the monitoring it was found out that at many of the small family-type children's homes the children do not

109 Convention on the Rights of the Child, Article 27(1).

110 "My Home", Kipshidze Street No. 9, Tbilisi.

111 "Divine Child Georgia", Village Galavani, Mtskheta.

112 "Partnership for Children", Apt. 40/21, 7th Floor, Building 1, 11th Micro-rayon, Rustavi.

113 "Bres Georgia", G. Orbeliani Street No. 6, Telavi.

114 Association "Biliki", Shola Street No. 1, Khashuri.

115 The Beam of Hope, "Caritas Georgia", Eristavi Street No. 2, Tbilisi.

have their own towels; bathrooms¹¹⁶ and toilets¹¹⁷ are not ventilated; the same situation exists at all of the homes run by the “SOS Children’s Villages Georgia” Association; the vent hoods are dysfunctional and the entire premises is filled up with food smell;¹¹⁸ there is a strong odor of sweat and dirt in the rooms.¹¹⁹

There is a shared squat toilet in the yard without a flushing tank and a washstand.¹²⁰ There are no relevant items of hygiene in the toilet. The building does have a shared bathroom with showering equipment and a toilet with an area of 3.7 square meters inside the premises but, because of the existing conditions, an additional bathroom and a toilet are required.

In a majority of small family-type children’s homes, the litter bins are not covered. This is true for the bins located both in the yards and inside the buildings. The beneficiaries do not have toys appropriate for their age. The children’s homes do have sports equipment and storage places for such equipment.

Two of the children’s homes in Tbilisi¹²¹ are located on the second storey reachable by unroofed stairs from the outside. The stairs are furnished with ceramic tiles. Since the stairs are not roofed, the tiles are very slippery when it is snowing or raining.

The monitoring groups revealed that many of the children’s homes do not have evacuation plans; those that do have such plans,¹²² they are outdated. Firefighting equipment is usually located in scarcely visible areas. The educators and the beneficiaries are virtually unaware of threats posed by natural calamities or of the means and methods of minimizing or avoiding such threats.

No telephones are available at the children’s homes in Gldani Village,¹²³ Gori¹²⁴ and Khashuri¹²⁵. At the children’s home in Rustavi,¹²⁶ a telephone is installed in the corridor, which cannot be used to call cellular service subscribers. Because of bad quality TV signal, the children are no longer watching the TV.¹²⁷

Recommendations:

To the Social Services Agency of the Ministry of Labor, Health and Social Protection

- **To furnish the small family-type children’s homes with all the necessary amenities to with a view of providing decent conditions of living for the children;**
- **To provide small family-type children’s homes located in the regions with Internet access and properly working television signal;**
- **To establish constant supervision over maintenance of norms of hygiene;**
- **To train the educators in the management of natural calamity risks;**
- **To elaborate a unified evacuation plan for small family-type children’s homes;**
- **To equip the small family-type children’s homes with firefighting equipment.**

116 Association “Biliki”, Tavzishvili Street No. 20, Gori.

117 Association “Biliki”, Shola Street No. 1, Khashuri; Association “Biliki”, Imereti Street No. 20, Khashuri.

118 The Beam of Hope, “Caritas Georgia”, Eristavi Street No. 2, Tbilisi.

119 Shamanauri Street No. 94, Dusheti.

120 Telavi Education and Employment Center, 1st Lane, Vazha-Pshavela Street No. 1, Akhmeta.

121 The Beam of Hope, “Caritas Georgia”, Eristavi Street No. 2, Tbilisi.

122 My Home, Kipshidze Street No. 9, Tbilisi.

123 “Caritas Georgia”, 26 May Street No. 41B, Village Gldani1.

124 Association “Biliki”, Tavzishvili Street No. 20, Gori.

125 Shola Street No. 1, Khashuri; Association “Biliki”, Imereti Street No. 20, Khashuri.

126 “The Child and the Environment”, Baratashvili Street NO. 19/30, Rustavi.

127 “The Child and The Environment”, Baratashvili Street No. 19/30, Rustavi.

THE RIGHT OF THE BENEFICIARIES TO HEALTHCARE

According to Article 9(1) of the Childcare Standards,¹²⁸ beneficiaries should be raised in an environment where a healthy way of life is encouraged and due attention is paid to their health.

Provision of medical service to children at children's educational institutions is governed by Article 135 of the Law on Healthcare, which stipulates that the State shall ensure provision of medical services to orphan children, children in need of parental care and children with physical and mental defects.

Monitoring of the small family-type children's homes revealed both systemic problems with child healthcare and individual cases of lack of access to medical services.

MEDICAL DOCUMENTATION

When allocating a child (beneficiary) to a small family-type children's home, submission of medical documentation is mandatory. One of such documents to be submitted is a health certificate (Medical Documentation, Form No. IV-100/A).¹²⁹ Our monitoring groups detected a number of cases where beneficiaries had been admitted to children's homes without the mentioned document.¹³⁰ Some of the educators have explained the lack of the required medical document by the fact that the beneficiaries did not have their citizen's ID card. Often times the medical documentation about beneficiaries available at the children's homes are incomplete, contain scarce information and do not accurately reflect the actual health status of the beneficiaries.

Whenever children are moved from one children's home to another, their medical documentation is usually transferred with a delay, which makes provision of healthcare services to these children difficult.¹³¹ In some cases, information about children's medical history and health status was not available at all.

Unlike the monitoring results in 2012, we think a positive development in the reporting period was that the small family-type children's homes did have Forms No. IV-100/A (a medical document which gets filled out when a beneficiary is admitted to an inpatient clinic for any reason). Although these forms did not always contain full information, it was still possible to discern consultation issued by the physicians.

The role of social workers in the management of children's healthcare issues remains a problem. In most cases, sections entitled "health status" in the Individual Development Plans drafted by social workers are filled out only formalistically.¹³² Different plans use identical language to describe the beneficiaries' health conditions – a fact that most likely indicates that these descriptions are not an accurate representation of the real health status of the children. This leads to concluding that social workers and educators are not cooperating between each other.

As in the previous year, information about immunization was unavailable again. Pursuant to the Childcare Standards, a service provider shall facilitate the process of the beneficiaries' immunization and preventative medical check-up. We think that information about immunization must be part of the Individual Development Plans available at small family-type children's homes.

ACCESSIBILITY OF HEALTHCARE SERVICES

According to the Childcare Standards, a service provider shall ensure that beneficiaries have access to immunization and preventative medical check-ups.¹³³ It should be noted that, compared to the previous years, this obligation

128 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards.

129 Article 6, Order of the Minister of Labor, Health and Social Protection No. 52/N dated 26 February 2010 approving "Terms and conditions of admission to and discharge from specialized institutions".

130 The Way of Future, 6 beneficiaries; Khashuri, Shola Street No. 1, 2 beneficiaries; Caritas Georgia, Bezhanishvili Street No. 8, Caritas Georgia, Ati Mnati, 1 beneficiary.

131 Examples are Caritas Georgia, Bezhanishvili Street No. 8, two beneficiaries; "The Beam of Hope", one beneficiary; Village Gldani, two beneficiaries.

132 For example, the "Biliki" Association, Children's Home, Khashuri, Shola Street No. 1; Caritas Georgia, Children's Home "Beam of Hope".

133 Article 9(2)(a).

is better understood and accepted. Educators employed by the children's homes are more zealous and their endeavor to monitor the health of the beneficiaries and to have them undergo through preventative medical check-ups are appreciated.

Sometimes outpatient clinics where the beneficiaries of small family-type children's homes are registered are located far away making it difficult to monitor the health status of these children.¹³⁴ Furthermore, in some cases, beneficiaries have to wait in queue all day long to have an appointment with a physician.

Beneficiaries of children's homes are provided with outpatient services usually at primary healthcare centers, according to a geographical principle. Inpatient services are provided at children's hospitals in Tbilisi and medical centers in the regions.

Healthcare services provided to beneficiaries of small family-type children's homes are financed through State-issued insurance vouchers. However, similar to what we have been saying in our previous reports, the voucher-funded insurance does not cover or take into consideration the specific needs and peculiarities inherent in teenagers and adolescents; this is something that eventually affects the whole effectiveness of available medical services. The monitoring revealed that in some cases, when children needed medical assistance, the actual provision of the assistance was delayed due to the insurance-related problems.

In the period of adolescence, endocrine and puberty disorders are not uncommon. Sometimes eyesight correction and wearing of glasses become necessary. Medical tests are usually sponsored by provider organizations. The insurance does not cover dental and orthodontic services. There is a practice of providing dental services to beneficiaries at private dental clinics; such dental services are covered by the organizations running the children's homes on contractual basis.

We positively evaluate the fact that, thanks to the efforts of some providers, a number of beneficiaries are provided with expensive medical tests and surgeries.

MANAGEMENT OF INFECTIOUS DISEASES

Pursuant to the Childcare Standards, service providers shall make their internal regulations available to any interested person. The internal regulations, inter alia, must contain rules on how to avoid catching infectious diseases. Basic rules (to frequently vent the rooms, to wash hands, etc.) are sometimes posted in the educators' rooms but most times they are stored in binders. Some of the children's homes do not have internal regulations in writing at all.

If beneficiaries get infected with infectious diseases, the children's homes are unprepared to isolate the infected children from others to avoid infection spreading. Only the children's homes run by "SOS Children's Villages Georgia" have additional rooms for purposes like this. Anti-flu immunization was carried out within the 2013 State Programme for the first time. A majority of children's homes population was immunized against influenza.

DRUG SUPPLY AND MONITORING OF MEDICAL TREATMENT

Access to medical services implies the ability to be consulted and treated by physicians. Effectiveness of treatment greatly depends on the patients' compliance with doctor-prescribed rules of drug administration. Small family-type children's homes have first aid medications and prescription drugs. A majority of educators does not have a clear understanding about when painkillers should be administered and their side effects.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- To ensure that medical documentation is produced and maintained in a complete manner;
- To ensure that beneficiaries are timely provided with adequate medical services;

134 Small Family-Type Children's Home "Virtue", Bezhanishvili Street No. 8, Caritas Georgia.

- To verify the health status of beneficiaries of small family-type children's homes; to inspect whether the appropriate medical documentation (Form No. IV-100/A-S) is maintained and whether diagnosing and treatment are adequately carried out;
- To help increase physical activity of the beneficiaries and implement a healthy way of life in small family-type children's homes;
- To fully observe infection control requirements and to make educators and beneficiaries aware of contagious diseases;
- To ensure that small family-type children's homes store medications safely and document any sending or receiving of medications.

NUTRITION AND DAILY RATION

Pursuant to the Childcare Standards, small family-type children's homes providing 24-hour services are obliged to feed the beneficiaries with healthy food four times a day. The monitoring revealed that the children's homes do not always fully observe nutrition norms. As in the previous year, there is a lack of information about healthy, safe and sufficient nutrition. A majority of educators say that they have no guidance or normative documents to follow to ensure that the children get sufficient and balanced nutrition, which should be age-sensitive and should include all the ingredients it should include.

According to the information we received from the Department for Social Protection of the Ministry of Labor, Health and Social Protection, the Government has not issued any nutrition-related guidance to the service providers because there are no established standards governing food rations. In fact, in determining children's daily food ration, the educators use their "family experience". At almost all of the children's homes, bread consumption is above the accepted norms. Usually, the children's homes' administrations simply do what children ask for feeding them mostly with sausages, frozen khinkali and sweets. This practice contravenes the principle of the best interest of the child, which is to live a healthy way of life.

Children under State care must be provided with sufficient amount of food taking into consideration their age requirements. The monitoring showed that food menus at a majority of small family-type children's homes are not meeting these requirements. Often times one may doubt whether some of these menus are truly an accurate representation of the actually offered nutrition. Usually the written menus provided by the children's homes are formalistic and uniform; the list of meals is long but does not match the actually served food. The ration is imbalanced. Three instead of four meals are provided. The meals are overly stuffed with sausages. The children's homes are not keeping records about food consumed/not consumed/replaced. It is hard to discern whether the "sufficient amount of food" requirement under the Childcare Standards was met. The menus are not adapted to the beneficiaries' schooling timetable. However, we want to mention some good practice applied by the "My Home" children's home: the nutrition system is well organized; the home employs a cook; meals are provided four times a day and the feeding hours are consonant with the beneficiaries' schooling timetable.

At one of the children's homes, food products were not proportionally distributed. The menus did not include fruits but we did find some fruits in the warehouse (apples, oranges and mandarins).

At another children's home we detected the following violation: during interviewing the beneficiaries, we found out that the educator's (foster father's) relatives were often times eating together with the beneficiaries, at the children's home; as a result, the beneficiaries were not getting sufficient amount of food.

According to the Childcare Standards, service providers (small family-type children's homes) shall not use restrict food as a measure of discipline. In this regard, we have detected various violations; for example, pursuant to the regulations at one of the children's homes, "If a child consciously skips the breakfast, we will not keep the meal for him/her, but they can always take a bite at the kitchen."

As the beneficiaries told us, "if a child does not wash his/her plate, he/she will be punished. The punished child will have to go to his/her room on the second floor and stay there until he/she apologizes and agrees to wash his/her plate; sometimes the punishment will last until the evening and the punished children will remain without their supper."

Accessibility of food products and food safety

Food products for small family-type children's homes are purchased by the home administrators on the basis of contracts concluded with trade centers and individual groceries. Food products will be purchased only if an electronic waybill can be issued. But this is usually impossible in the regions. Only one shop in the entire local community may be able to issue electronic waybills. Wherever electronic waybills cannot be issued, the only solution is to confine the choice to the food products offered by such shops. This limits accessibility to and diversity of available food products. Further, the children's homes have no budget for miscellaneous items to spend at their discretion.

It turned out that the educators are not quite aware of the legally required information about the food products they are purchasing. Often times the educators do not know what information they should pay attention to when buying food products. They say they buy these products "in a regular way" or "the same way we'd buy them for the household".

At some of the small family-type children's homes, our monitoring groups detected that the shelf life of some of the food products such as chicken and minced meat had been expired. No "best by" dates were shown on meat products, minced meat, chicken drumsticks, frankfurters and fish. In kitchen cupboards, cereals and beans are stored without expiration dates indicated. We also noticed that some leftovers from the previous meals were used to cook the dinner.

Water safety

Pursuant to the Convention on the Rights of the Child, the child must be provided with adequate amount of food and potable water. Under the Childcare Standards, service providers must provide beneficiaries with sufficient amount of safe water 24 hours a day. Persons running the children's homes do not know whether the water children are consuming is safe. In the regions, the children's homes get water from wells. Water is collected in reservoirs with special filters installed and are distributed throughout the premises from there. Representatives of children's homes usually cannot recall the last time these water tanks were cleaned. Some of the children's homes were not able to provide water safety certificates. At some of these homes our monitoring groups were explained that they were not using the tank water either for drinking or for cooking the meals. The water from the reservoirs is used systematically but no sanitation measures are implemented and the water quality is never checked. This practice endangers the good health of the children's homes' beneficiaries.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- To add food regulatory norms to the Childcare Standards articulating the principles of healthy nutrition of children and adolescents and norms concerning balanced nutrition and food safety;
- To train the educators in children's upbringing and development, food safety and balanced nutrition; to train the children and the adolescents in healthy food issues; to elaborate and disseminate relevant guidebooks to children's homes with due consideration paid to the requirements of the Childcare Standards;
- To implement measures to make sure that food products are purchased without undue obstacles;
- To periodically check the water quality.

CHILDREN'S MENTAL HEALTH

In the course of the monitoring we found out that individuals involved in the upbringing of children under the State care have low knowledge of and qualification in the area of children's psycho-social development. The State

is not ensuring that children's mental health be maintained in good order; the children's susceptibility to stress is not taken into account and no State programmes are run to provide the children with psychological/psychiatric assistance and appropriate psycho-social rehabilitation. Lack of these measures results in complicated adaptation to the existing social environment, emotional and behavioral disorders, difficult and violent behavior and, sometimes, even in the turning of these children into criminals.

Psychological assistance is confined to individual consultations of psychologists. The children's mental problems are identified with delay or remain unidentified at all. Psychiatric assistance is provided only after the situation has grown into an actual crisis.

The State is not providing the children under its care who have been victims of violence with psycho-social rehabilitation and legal protection. There are no State standards governing children's psychological assistance.

NEEDS IDENTIFIED AT INDIVIDUAL SMALL FAMILY-TYPE CHILDREN'S HOMES (MENTAL HEALTH)

The situation at the "Way of Future" (a charity home run by the Poverty Reduction and Urgent Assistance Foundation) is unfavorable for the beneficiaries' psycho-emotional and cognitive development. Children are not treated with individual approach. The staff lacks appropriate knowledge, experience and skills to manage the beneficiaries' behavior. No behavior management model exists and the upbringing process is chaotic. The monitoring group noticed the educators' violent attitude to the beneficiaries, in particular, the use of physical force against and disregard of the needs of the children. Discriminatory attitude has also been noticed. The educator we interview was unaware of any traumas experienced by the children under his/her care. The number of educators is disproportional to the number of children. No records are maintained to allow finding out what services are provided to the beneficiaries. The staff does not possess skills required for identifying mental health needs of the beneficiaries. Therefore, the children's situation in this regard is unfavorable. During the monitoring, we were unable to find out whether the children's home is served by a psychologist. According to the educator, a psychologist is visiting the children on a systematic basis but none of the children corroborated this was true.

The situation at a small family-type children's home run by the Association "The Child and the Environment" (located at Baratashvili Street No. 19-30, Rustavi) is unfavorable for the beneficiaries psycho-emotional and intellectual development. The children are not dealt with using an individual approach and the attitude to them is formalistic.

Although the educators have been trained in violence prevention and children's rights, they do not possess the knowledge, experience and skills to manage the beneficiaries' behavior. The institution does not have a clear model of behavior management. Some of the beneficiaries we interviewed feel being disregarded. Some of the children are happy with the conditions at the house and the staff's attitude towards them – something that may be indicating unequal treatment of the beneficiaries.

The system of punishments and rewards is completely based on either threats (that the staff will call the police) or limitation of access to the computer. This doubles the risk of children developing difficult behavior and computer addiction.

The staff does not have an understanding of general issues of mental health. Except in very serious urgent cases, they are unable to identify and timely respond to problems. We believe the children's right in this regard is being violated.

Based on the impression of our monitoring experts after they monitored a small family-type children's home located in Kurdgelauri (run by the Humanitarian Charity Center "Apkhazeti"), we think the situation calls for a deeper examination. The tensed relations inside the personnel and the demonstrated occurrences of emotional pressure upon the adolescents create unfavorable psychological environment for the beneficiaries.

Recommendations:**To the Ministry of Labor, Health and Social Protection**

- **To screen the children under State care on mental health; to provide the beneficiaries with adequate psychological/psychiatric assistance through psycho-social programmes;**
- **In order to timely identify children’s psychological/psychiatric problems, to ensure that all staff involved in the upbringing of children receive continuous training;**
- **To develop and implement operational mechanisms to overcome violence against children.**

THE RIGHT OF THE CHILDREN AT SMALL FAMILY-TYPE CHILDREN’S HOMES TO EDUCATION

The right of the child to education is affirmed by both the international law and the domestic legislation. Under Article 28 of the United Nations Convention on the Rights of the Child, the child has the right to education and the State shall facilitate the implementation of this right on the basis of an equal opportunity.

The Georgian Law on General Education determines the State policy and goals in the area of general education. Among others, the Law lays down the principles of openness and equal access to general education, inclusive learning, etc. These obligations are especially important when it comes to children under the State care.

The monitoring of small family-type children’s homes elucidated the trend that a majority of beneficiaries who are school pupils need additional preparation, especially in technical subjects and foreign languages. Some of the service providers are managing to satisfy these needs by offering additional classes through volunteering teachers. However, similar opportunities should be made available to all of the beneficiaries at other children’s homes as well, wherever needed. The Association “SOS Children’s Villages Georgia” handles this issue well enough.

It should be noted that small family-type children’s homes are assisted by various organizations in terms of educational needs but despite this none of these homes are meeting all of the beneficiaries’ requirements. Whether or not the beneficiaries’ education needs are satisfied should not depend only upon individual organizations’ charity and the State should develop a systemic approach to the matter.

The beneficiaries are usually focused on acquiring some vocational knowledge. They want to be more or less prepared for independent life when they attain their majority. On the one hand, we certainly welcome their eagerness, but, on the other hand, focusing only on employment, solely based on earning some own money, may result in disregarding the child’s best interests and diminished motivation to continue to cognize the world. It should not be an end itself for the service providers and the beneficiaries to give/receive a mandatory and a vocational education, which is a commonly accepted trend at a majority of small family-type children’s homes.

In the context of the right to education, another important obligation of the service providers is to connect beneficiaries having special learning needs with appropriate educational institutions or professionals.

The monitoring showed that children’s homes’ personnel usually unaware of inclusive learning methods. They do not know how to respond to the requirements of children with special needs.

In addition to identifying beneficiaries who need individual learning plans, it is important to actually implement these plans. To this end, the children’s homes must cooperate with the relevant educational institutions and then oversee this process. The school also has its role to play. During the monitoring we noticed that schools were neglecting their duties in this regard.

Another duty of the service providers have is systematically keep an eye on the beneficiaries’ attendance at the lessons at educational institutions. For example, there is a high level of truancy among the beneficiaries of the Gori and the Khashuri children’s homes. It is also an obligation of the service providers to detect the beneficiaries’ problems at school or college. This concerns both educational needs and the beneficiaries’ social integration into the educational institution’s community. Some educators are prepared to go ahead with this task, some are hesitant. As we found out, in some cases the educators did not know whether their beneficiaries had any problems their teachers or fellow students.

The monitoring showed that the absolute majority of the children's homes' beneficiaries is unaware of their rights under the United Nations Convention on the Rights of the Child. We believe it is necessary to raise the beneficiaries' and the educators' awareness of children's rights.

PREPARING THE JUVENILES FOR INDEPENDENT LIFE

According to the recommendation of the Council of Europe Committee of Ministers, the State must provide children leaving care with an assessment of their needs and appropriate after-care support in accordance with the aim to ensure the re-integration of the child in the family and society.¹³⁵ In its concluding observations concerning Georgia, the UN Committee of the Rights of the Child recommended Georgia to introduce measures to ensure and provide follow-up and after-care to young people leaving the care centers.¹³⁶

In its 2012 Report to the Georgian Parliament, the Public Defender addressed the Minister of Labor, Health and Social Protections with a recommendation to draft an effective programme to support the beneficiaries who are leaving the small family-type children's homes due to attainment of their majority in starting their independent lives, including by providing them with a residential space and helping them in getting employed.

The monitoring has made it clear that Georgia has not implemented appropriate measures in this regard. The children's homes, unlike the previous years, have been more active in planning the beneficiaries' future. However, the State must make effective steps in this direction.

The service providers (the children's homes) are trying to give vocational education to the beneficiaries by using own resources and involving various charities. We welcome the fact that some of the children's homes have managed to find jobs for their beneficiaries and pay for their rent until they become fully independent. However, it would not be a surprise to say that, due to scarce funding, not all beneficiaries have access to such opportunities.

The Childcare Standards oblige service provider to prepare children for independent life and help them leave the care center. The Standards require social workers to also be involved in this process. The reality, however, is that the entire burden lies on the provider organizations and their fundraising efforts. Moreover, the provider organizations do not have clearly articulated programmes for preparing their beneficiaries for independent life. There are no specific structures or personnel to implement such programmes.

Pursuant to the Guidelines for the Alternative Care of Children adopted by the UN General Assembly, clear policies and rules should exist on how to ensure the beneficiaries with appropriate aftercare and follow-up. Young people leaving the care facilities should have access to social, legal and health services together with appropriate financial support.¹³⁷

THE BENEFICIARIES' RIGHT TO LEISURE

The monitoring showed that leisure and recreational opportunities for the beneficiaries at small family-type children's homes vary depending on the service providers' resources on the one hand and the educators' involvement on the other hand. It should be noted the right to seasonal rest is ensured to all of the children's homes' beneficiaries, as required by the Childcare Standards.

The beneficiaries' ability to be involved in opportunities (sports and art activities) at their local community level, among other factors, depends on the location of their respective children's homes and the actually available opportunities. Therefore, in selecting places for stationing children's homes, especially in the regions, it is important to take into consideration whether the beneficiaries will have access to such opportunities. We noticed this is especially a problem with some of the children's homes, which will have to be fixed at some point in the future with a view of complying with the established standards.

¹³⁵ Recommendation No. Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions, Basic Principles.

¹³⁶ The Committee on the Rights of the Child, forty-eighth session, CRC/C/GEO/CO/3, recommendation no. 37.

¹³⁷ Guidelines for the Alternative Care of Children, The UN General Assembly, 64/142, Rules 131, 136.

The monitoring revealed a trend that many educators use restriction of access to a computer as a “method” of punishment. For example, at a small family-type children’s home run by the Caritas Georgia Charity Foundation, the children were banned from using the computer for one and a half month. At the children’s home entitled “The way of future”, the children reported that they were not allowed to use the computers because “only adults can work on a computer”. At the children’s home in Akhmeta, they have completely banned using computers because, according to the foster father’s explanation, it was “harmful”. Our monitoring also revealed that not all of the children’s homes have Internet connection – something directly related to the educational needs of the beneficiaries.

Only the children’s homes run by the Association “SOS Children’s Villages Georgia” and the “My Home” Charity Foundation have libraries suitable for the beneficiaries age requirements and interests.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- To actually fulfill its obligation in regard to planning and implementing games and events as well as to create physical conditions necessary for rest and recreation (toys, books) and to involve all of the children’s homes’ beneficiaries in informal education;
- In determining locations for small family-type children’s home, to take into account the needs of the beneficiaries and the resources available in the local community;
- To train the staff of small family-type children’s homes in drafting individual learning plans for beneficiaries with special educational needs and in seeing to implementation of these plans;
- To ensure that the service providers and the educational institutions cooperate with each other in identifying the beneficiaries educational needs;
- To provide the beneficiaries with the opportunity to attend more trainings in the subjects as necessary, making sure that the trainings are systemically organized and are qualified; to help raise the beneficiaries’ motivation;
- To raise the beneficiaries’ and the educators’ awareness of the rights of the child and the mechanisms for the protection of these rights.

To the Government of Georgia

- To elaborate State-supported mechanisms to help juveniles who have left the State care system with getting employed as well as to assist them financially until they reach full independence; to educate the beneficiaries about planning their future and choosing their occupation.

RECORD KEEPING

Article 3(3) of the United Nations Convention on the Rights of the Child stipulates that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities. The Childcare Standards determine a list of documents, which must be produced and maintained by the service providers and must be made available by them to any interested person.¹³⁸

As a result of the monitoring conducted at small family-type children’s homes, we detected the following problems related to record keeping:

Pursuant to the Childcare Standards, a small family-type children’s home must have an upbringing/educational

¹³⁸ Article 1, Technical Regulations approved by the Resolution of the Government of Georgia No. 66 dated 15 January 2014 approving the Childcare Standard.

programme as a basic tool to be guided with.¹³⁹ Our monitoring showed that, in most cases, the children's homes do not have such programmes as a single document.

Some of the children's homes either do not have internal regulations or where they do have such regulations, they are defective.

With a view of receiving feedback, there are complaints boxes installed at children's homes. Both complaints boxes and comments boxes are usually empty. The children's homes are keeping journals to register any measures implemented in response to feedback or comments received. Where they do have such journals, they are kept formalistically or are empty. At some of the children's homes, journals on any measures taken in response to feedback received contain some entries but there is no indication as to when the measures were implemented or what the result was.

Accident registration journals are often times empty as well, which creates the impression that they are maintained only formalistically.

In some cases educators denied any occurrence of accidents but the documents maintained at their institutions (handover journals, personal files, Medical Form No. IV-100/A, notices about medical appointments) prove to the contrary.

For the most of time, the journals to register measures implemented in response to violence are empty as well.

The small family-type children's homes must be maintaining journals for the registration of admissions to and discharges from specialized institutions.¹⁴⁰ In contravention of the established standard, these journals are not always filled out in a complete manner.

Journals for registration of temporary leaves from the children's home are kept also in violation of the established rules.

Individual approach to services

Article 25 of the Convention on the Rights of the Child prescribes the need for a periodic review of the treatment provided to children under care and obliges the States Parties to protect the right of children placed under the care of competent authorities to have the care conditions evaluated periodically.

Within the monitoring, the Special Preventive Group examined the beneficiaries' personal files maintained by the children's homes. Although all of the files include decisions of local competent authorities admitting the children to a children's home or extending their stay at the children's home, the beneficiaries' documents are often times incomplete. In particular, the individual development plans and individual servicing plans are drafted formalistically containing scarce and incomplete information. The plans do not describe in detail objectives to be achieved, activities to achieve the objectives, achievement indicators and timetable. The plans do not envisage the beneficiaries' individual needs, objectives and activities. The language used in the plans is usually the same for all plans. Any results achieved or implementation progress are not indicated in the plans. The records do not provide information about the views of the children, their caregivers and the service provider about the plans and the progress of their implementation. Whether the beneficiaries' were consulted about their own plans cannot be discerned from the records.

We would like to note that that it is the obligation of social workers, before the child is actually allocated to a children's home, to inform the service provider as much as possible about the prospective beneficiary's case. As the educators say, normally, this does not happen in reality.

At children's homes run by the Association "SOS Children's Villages Georgia", we identified that State-employed social workers have delegated their rights and obligations to other social workers employed within the "Family Enhancement Project". Sometimes the social workers of the Association pay visits to the beneficiaries' biological families at their own initiative to study the children's family conditions despite the fact that they know they are not authorized to do so.

¹³⁹ The Childcare Standards, Article 1(2)(a,b).

¹⁴⁰ Annex 3, Order of the Minister of Labor, Health and Social Protection No. 52/N dated 26 February 2010 approving "Terms and conditions of admission to and discharge from specialized institutions".

Protection of confidentiality

Under the Childcare Standards, the beneficiaries' personal data must be protected. Normally, the small family-type children's homes have no rooms specially allocated for individual consultations. However, conversations and meetings with the beneficiaries take place in the beneficiaries' or the educators' rooms; these meetings are conducted in an environment respectful of the confidentiality principle.

Beneficiaries' personal files are properly stored by children's homes. Usually, the educators keep the beneficiaries' documentation in their rooms or in safes, locked. The documentation is kept away from children. After a beneficiary is no longer a beneficiary, his/her documents will be stored where archives are kept.

Requirements concerning the personnel

Pursuant to Article 16 of the Childcare Standards, there shall be sufficient number of personnel with appropriate qualifications involved in the upbringing of the beneficiaries.

Salaries and work conditions of individuals employed at children's homes remains a problem.¹⁴¹ Because of hard work conditions, there are frequent changes in the personnel. Reportedly, one of the main reasons of people leaving jobs at children's home is the problem with taking a vacation. In particular, the voucher funding is insufficient to cover both the educator's vacation and the replacement staff's salary. As one of the educators told us, they are not offered any incentives, which negatively affects their motivation.

Inclusive service

According to the monitoring results, beneficiaries of children's homes are not discriminated against in any form in the course of provision of the services to them. However, they are badly influenced by the stereotypes existing in the broad public about children under State care.

Transportation is another problem. Senior children need to travel to the regional centers to access the required resources. Transportation becomes more complicated when it comes to junior age children. Educators, too, are unable to provide transportation to the center on their own since the available human resources at the children's homes are not usually enough for that.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- To train the personnel of small family-type children's homes in drafting individual service plans for beneficiaries in a complete manner and to ensure that the beneficiaries and the educators are consulted with during the drafting process;
- To supervise the fulfillment of obligations under the "Rules of allocating functions and duties of social workers and service providers at small family-type children's homes";
- With a view of better protection of confidentiality, to develop a template form of consent to be issued by persons authorized to issue personal information about the beneficiaries of small family-type children's homes;
- To provide the employees of children's homes with periodic qualification trainings and thematic courses;
- To provide the personnel of the children's homes with adequate salaries, vacation and insurance; to introduce an employment incentives system for them.

141 For more information, see the Public Defender's report for the year of 2012, pages 253-4.