



**The Commissioner for Human Rights
(Ombudsman) of the Republic of Azerbaijan**

2020 REPORT

**on the National Preventive Mechanism Activities
against Torture**

Baku – 2021

The report provides information on the activities, proposed recommendations, and suggestions given by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan in carrying out national preventive mechanisms derived from the United Nations (UN) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (*hereinafter* the Torture Convention) for the period of the 2020 year.

While functioning the national preventive mechanism activities of the Commissioner, the recommendations and suggestions given by the UN Committee for the Prevention of Torture (CAT), the Subcommittee on Prevention of Torture (SPT), the European Committee for the Prevention of Torture (CPT), the Committee on the Elimination of All Forms of Discrimination (CEDAW), the Committee on the Rights of the Child (CRC), the Committee on the Rights of the Child (CRPD), and recommendations to the periodic reports of the State of Azerbaijan made by the UN Human Rights Council Universal Periodic Review (UPR) Working Group have been considered.

The information, prepared on the basis of the analyses of the findings of the visits and statistical data, as well as the Optional Protocol to the Torture Convention, was attached as an Annex to the Report.

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FOREWORD

On December 2, 2008, the State of Azerbaijan ratified the Optional Protocol to the Torture Convention (OP), and the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was designated to function as a national preventive mechanism (NPM) arising from the Protocol according to the Presidential Order dated January 13, 2009.

The report, which was prepared by the Commissioner on the basis of the results of the year behind in accordance with the purposes of the OP, provides information on the measures carried out as an NPM.

The 2020 Report separately analyzed the specificities of the implementation of NPM functions in the course of military operations and global pandemics.

The cooperation of the Commissioner with the public institutions, civil society organizations, human rights defenders, lawyers, mass media outlets, international organizations, national human rights institutions (NHRIs) of other countries, and national and international experts facilitated the development of the NPM, establishing successful and constructive relations, fruitful discussions, trainings, and exchange of experiences (traditional and online).

The report also reflects the work, preventive visits and their findings, recommendations and suggestions, and their implementation status, as well as legal education and other measures based on the activity directions implemented by the NPM, along with the NPM activities carried out throughout 2020.

We do believe the issues that we raised and our recommendations and suggestions indicated in this report will contribute to the further improvement of country experiences and activities related to the relevant directions in line with national and international legal frameworks.

We would be grateful beforehand for any comments to be made to this report.

Sabina Aliyeva

The Commissioner for Human Rights
(Ombudsman) of the Republic of Azerbaijan

LIST OF USED DEFINITIONS AND ACRONYMS

AIDS – Acquired Immunodeficiency Syndrome **CAT** – UN Committee against Torture

CEDAW- the Committee on the Elimination of all Forms of Discrimination Against Women

CEP – The Code of the Republic of Azerbaijan On Execution of Punishments

Constitutional Law – the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

Ombudsman – the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan Convention

OPCAT– the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CSO – Civil Society **Organization**

CDPO – City District Police Office

CPD – City Police Department

CPO – City Police Office CPT

CPT– European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CRC -The Committee on the Rights of the Child

CRPD-The Committee on the Rights of Persons with Disabilities

DPD – District Police Department

DPO – District Police Office

Deprivation of liberty– any form of detention or imprisonment or the placement of a person in a public or private custodial setting, which that person is not permitted to leave on his/her will by order of any judicial, administrative or other authority

Detainee – person deprived of his/her liberty

ICRC – International Committee of the Red Cross

MLSPP –Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan

NGO – Non-governmental organization

NPM –National Preventive Mechanism against Torture

NPG – National Preventive Group of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

OPCAT –Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OSCE –Organization for Security and Co-operation in Europe

PU – Police Unit

SPT – Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture

TDP – Temporary Detention Place

Torture – torture and other cruel, inhuman or degrading treatment or punishment UN – United Nations

Chapter I

National Preventive Mechanism under the OPCAT

1.1. The OPCAT Requirements

As is well known, the purpose of the OP is to develop an implementation mechanism for conducting visits to places of deprivation of liberty by independent international and national institutions to prevent torture. The OP underlines the significance of constructive dialogue and specifies a preventive-avoidance attitude rather than a reactive approach to regulated attitudes. The innovativeness of the OP is also appeared in the fact that it does not reflect any new right or standard or the restoration of violated rights, but rather the prevention of violations of an existing standard, namely the right to freedom from torture.

The main idea of the noted document is to develop a system of independent and regular visits to monitor the treatment standards and detention conditions of all those, who are held in places of deprivation of liberty as the most convenient method of preventing torture. According to the OP, international and national institutions are set up, which include the Sub-Committee on Prevention of Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and national preventive mechanisms. The SPT is a new kind of treaty body in the UN.

In compliance with Article 17 of the OP, the NPM, which shall be maintained, designated, or established by each State Party at the latest one year after the entry into force of the present Protocol or of its ratification or accession under the respective norm, conducts regular visits to places where persons are deprived of their liberty at the national level to monitor the treatment issues and detention conditions.

The NPM mandate covers, at a minimum, the following:

- to regularly examine the issues related to the detainees;
- to make recommendations to the relevant authorities with a view to improving the treatment and detention conditions of detainees and preventing torture, taking into account the relevant UN norms;
- to make recommendations and observations concerning existing or draft legislation;

The guarantee of the functional independence of the NPMs as well as the independence of their personnel is the main precondition for successfully fulfilling the mandate.

OP grants the NPMs the following main powers:

- to access to all information concerning the number, treatment and condition of persons deprived of their liberty in places of detention as well as the number of places and their location;
- to access to all places of detention and their installations and facilities;
- to have private interviews with the persons deprived of their liberty without witnesses, as well as with any other person who may supply relevant information;
- to choose the places they want to visit and the persons they want to interview without any hindrance;
- to have contacts with the SPT, to send it information and to meet with it.

1.2. National Legislative Framework

The Republic of Azerbaijan signed the OP on September 15, 2005, and ratified it by law dated December 2, 2008.

Since the relevant law has been officially published, that is, since January 15, 2009, the OP has entered into force in relation to Azerbaijan.

The Ombudsman has been designated as an institution functioning as the NPM as enshrined in the OP with the Presidential Order.

By making additions and amendments to the Constitutional Law, the scope of the power of the Ombudsman as well as its independence were brought into conformity with NPM standards as stated in the OP; the transparent procedures for the establishment of the NPG and the requirements for its candidates were identified, along with matters of guarantees for their rights and impunity.

According to the Constitutional Law, the Ombudsman and NPM team have the right to access to any state and municipal body, military units, police stations, temporary detention places, investigation isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons cannot leave on their own will; to meet privately or when deemed necessary with participation of an expert or interpreter and interview in private detained persons, and any other persons who may provide relevant information; to get acquainted with and obtain copies of the documents confirming the lawfulness of detention and providing information on treatment and conditions of detention of persons mentioned above; to prepare acts and document the process and the results of the actions

undertaken without hindrance and prior notification. The power of the Commissioner to provide relevant recommendations to the competent authorities and to receive responses to these recommendations within the identified time limits is also proclaimed by the above-mentioned law.

In the last period, the legislative acts were advanced, and the powers mentioned above, which were granted to the Commissioner and the NPG, were also identified in the legal and normative acts in a timely manner with a view to effectively organizing their work.

Under the OP, the Commissioner has considered the recommendations made by the UN Human Rights Council UPR Working Group to Azerbaijan's periodic reports, as well as the recommendations and suggestions of the CAT, SPT, and CPT to organize the NPM work effectively.

1.3. NPM Activity Directions

The activity of the Azerbaijani NPM encapsulates the following four main directions:

- **Preventive visits** refer to visits carried out in a regular, scheduled, or unscheduled manner and without prior notice to places where persons cannot leave on their own will;

- **Legal analysis** refers to theoretical and practical analyses of the relevant work, information, recommendations, and suggestions, the existing and draft legislative acts, summing up the results, and producing the relevant recommendations;

- **Legal education** is the process of organizing legal education operations for the HRCA staff, NPG members, employees of the places where persons cannot leave on their own will, persons held in those places, and student-attendants of the relevant education institutions and academies, as well as preparing and dispensing visual materials to promote activities for the prevention of torture;

- **Public affairs and international cooperation** refer to the exchange of information with national, regional, and international organizations, as well as with NPMs of other countries, mutual participation at events, the organization of joint events, and the promotion of NPM activities in the media.

Chapter 2.

NPM Activity and Preventive Visits

2.1. Organization of Preventive Visits

According to Article 20 paragraph (a) of the OP, to enable the national preventive mechanisms to fulfill their mandate, the States Parties undertake to provide information on the number of persons deprived of their liberty in places of detention, as well as the number of places and their location, as stated in Article 4 of the OP.

Such information is obtained from the relevant public institutions based on the Ombudsman's request, and relying on those requests, the annual work plan is drafted and the visits are conducted accordingly.

If it is deemed necessary at the end of the year, the information for the next year is updated by making clarifications with the relevant authorities.

The preventive visits, which may be divided into two groups: scheduled and ad-hoc visits, are carried out without prior notice.

2.1.1. Scheduled visits

The scheduled visits are conducted in line with the annual plan approved by the Commissioner. The draft of the annual plan for the upcoming year is discussed by the NPG members at the end of each year, the outcomes are recorded, and the approved plan is presented to the Commissioner for approval. The confidentiality of the annual work plan is critical for the effectiveness of the visits. Therefore, confidentiality is ensured by the NPG members.

The sequence of inclusion of this or another facility into the work plan and the repeated visits there are carried out on the basis of the specificity of the type of that particular facility, records of its general condition and treatment in previous years, its territorial compatibility, as well as the information taken from analyses of the complaints received by the Commissioner.

The length of visits depends on the size of the institution, the number of persons in the place of deprivation of liberty, the type of facility visited, and other specificities, as well as the number of NPG members.

2.1.2. Ad-hoc visits

The ad-hoc visits are mainly conducted on the initiative of the Commissioner to follow-up on the implementation status of previously given recommendations; to prevent persecution of those who give information to NPG members in one form or another, to analyse the information given by the persons about the place of detention, where s/he was previously held and complaints received by the Commissioner or hotline (Call Center); and to investigate the information reported to the NPG members, to check on site the information spread through media and other issues interesting to the preventive group members.

2.2. Conducting visits

The effectiveness of the visits mainly requires three phases. So, taking that into account, the NPM of Azerbaijan conducts its visits at the three stages mentioned below:

- **First phase**-preparation;
- **Second phase**: conducting a visit;
- **Third phase**: post-visit (follow-up) phase

The preparation phase usually takes two working days, including collecting the necessary information, identifying the objectives of the visit, and determining the personnel of the monitoring delegation.

During this phase, in the process of collecting necessary data, the information received during previous visits or taken from other sources, the applications received by the Ombudsman, the sources spread through media and social networks, as well as the national legal and normative framework regulating the activity of the institution to be visited, and international standards are analyzed.

The objectives of a visit are determined on the basis of the general assessment of detention conditions and treatment standards, the study of specific cases related to detention conditions and treatment (e.g., the institution of disciplinary measures, the quality of health services, etc.), follow-up activities, such as checking the status of removal or failure to remove the findings of previous visits and the implementation of the recommendations previously made, and the definition of the scope of the questions of special importance and other issues.

While preparing for the preventive visit, the composition of the monitoring delegation is determined based on factors such as the number of members, their specialization, sex, etc., and other factors, depending on the objective of the preventive visit. The list of facilities to be visited and questionnaires, templates for the interview records with prisoners, questionnaire templates, and others are prepared.

Conducting a visit encompasses a number of stages:

First, an initial talk is held with the administration of the facility, during such a conversation, group members introduce themselves, and explain the purpose of the visit. Afterwards, some general information about the facility was obtained.

After the initial talk with the administration of the facility, group members monitor the area of the facility. In the course of this, conditions of detention in the facility, including the condition, size, capacity (occupancy), actual location, lighting, ventilation, and furniture supply of its building, individual cells or rooms, personal hygienic and sanitary conditions, nutrition issues, access to medical care, etc., are evaluated.

Later, the documentation is reviewed, and interviews with the persons deprived of their liberty are held in a collective, private, or confidential manner. Such interviews mainly depend on the objective of the visit. Taking account of the situation, the NPG members can determine the technique of the questioning or make corrections to the preliminary agreement on the spot.

A talk with the facility staff is also an essential part of a visit. The NPG members organize interviews with the staff members in charge in order to evaluate their approach to treating people deprived of their liberty. In some cases, the NPG also uses special questionnaires prepared for the facility personnel along with the interviews.

At the end of the visit, the NPG members held a final talk with the chief of the monitored facility to alert him of the findings. The administration is also informed about the issues that can be fixed locally, and relevant recommendations are given. Furthermore, the administration is informed that the findings will be reported to the higher instance authority.

The objective of the NPM is not only to conduct a visit to places of deprivation of liberty but also to take measures for improving the treatment and detention conditions of persons held there. That is the reason why the NPM of Azerbaijan takes the view that the post-visit phase is more critical than the visit itself.

Therefore, after the visit, a final report on the findings is prepared, and the relevant bodies are given recommendations on how to improve treatment standards and detention conditions.

Typically, when deemed necessary by the NPG members, a repeat visit is appointed and conducted to the facility shortly after the previous one to follow-up on the implementation of recommendations previously given.

2.2.1. *Institutions of the Ministry of Internal Affairs*

As part of the NPM mechanism of the Ombudsman, 61 scheduled and ad hoc visits have been conducted to temporary detention places and police stations.

Private talks with persons detained in these facilities were held; their detention conditions, as well as whether they were subjected to ill-treatment, while being brought under custody or throughout their detention period, were evaluated.

The Ombudsman and NPM members held talks with the administration and personnel of the district (city) police offices and carried out legal awareness work for them, where the NPM members specifically emphasized the importance of ensuring human rights and freedoms and discussed cooperation issues in this area.

Throughout the inspections in the district (city) police offices and departments, it was found that measures have been taken to further improve the existing custodial conditions to meet modern standards and to reconstruct and advance the material-technical base.

Within the NPM jurisdiction of the Ombudsman, an unannounced visit was implemented to the *temporary detention place of the Naftalan City Police Department (CPD)*.

The objective of the visit carried out with the participation of the Ombudsman was to investigate detention conditions and treatment standards, and to make sure the rights of the detainees were ensured in compliance with internal disciplinary rules and international standards.

In the course of the visit, cells, kitchen, interrogation, medical and warship rooms, and the walking area of the facility, as well as the current situation and documentation related to the organization of health services, nutrition, parcel service, access to walking, visitation, and phone calls, were monitored.

During the visit to that facility, the Ombudsman had a private conversation with the administratively arrested person held there to

investigate his detention conditions, treatment issues, and the situation with ensuring his rights.

At the end of the visit, conversations were held with the administration of the facility, and appropriate recommendations were made for compliance with the medical examination against the COVID-19 pandemic and the provision of detainees with disinfectants during their admission to the temporary detention facility.

During the talk with the head of the temporary detention facility, it was found that a preliminary medical examination of a person in police custody by a doctor took place in hearing of the custodial police officers.

However, according to clause 2.8 of the "Rules for providing medical and psychological assistance to arrested or detained persons, as well as their detention in medical institutions", approved by the Decision of the Cabinet of Ministers of the Republic of Azerbaijan dated April 18, 2013, a medical worker shall conduct his/her medical examinations in police custody out of sight of other persons (except for security reasons).

Taking into account the above factors, the head of the facility was recommended to ensure the confidentiality of medical examinations in line with the legislation, the employees of the facility were given comprehensive information about the Constitutional Law "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan", and a legal awareness talks on the rights and duties of the detained and arrested persons and internal disciplinary rules was conducted.

Within the NPM mandate of the Ombudsman, a visit was conducted to *the temporary detention place of the Binagadi District Police Office without prior notice.*

The preventive visit, which was carried out under the OPCAT and the Constitutional Law, aimed to investigate detention conditions and treatment issues and make sure the rights of detainees were ensured in accordance with internal disciplinary rules and international standards.

Meanwhile, cells, the kitchen, interrogation, medical, and warship rooms, and the walking area of the facility, as well as the current situation and documentation related to the organization of health services, nutrition, parcel service, access to walking, visitation, and phone calls, were inspected.

The unannounced visit to the 6th Police Unit of the Police Office in Binagadi District was carried out to assess the custody conditions and

treatment, as well as the situation with ensuring the rights of detainees in the facility in compliance with internal disciplinary rules and international standards.

During the visit the temporary detention facility and its area were monitored, and it was found that only one person was detained there, who did not complain about the treatment and custody conditions.

It was revealed that persons brought to the police custody are undergone the PCR test for coronavirus in the facility before transferring to the relevant institution according to the court decision and kept in that facility until the results will be announced. Consequently, the delays in test results lead to the over-detention of a person.

The NPG members conducted a visit to the *temporary detention place of the Khatai District Police Office* without prior notice.

The purpose of the visit was to investigate the complaint received by the Ombudsman, as well as evaluate the situation related to custodial conditions and treatment issues, and ensure the rights of detained persons in line with internal disciplinary rules and international standards.

In the frame of the visit, all cells and rooms of the facility, as well as the current situation and documentation related to the organization of health services, nutrition, parcel service, access to walking, visitation, and phone calls, were monitored.

During the visit, those who appealed to the Ombudsman were received confidentially to investigate the situation and ensure their rights.

Within the preventive mechanism mandate of the Ombudsman, the NPG members implemented an ad hoc visit to the *Detention Station for Administratively Arrested Persons of the Ministry of Internal Affairs (MIA)*.

Conditions of detention in the detention facility, the organization of medical assistance, nutrition, as well as access to visitation, phone calls, parcel service, and the station for ensuring the rights related to walking and documentation, were examined, and a number of requests were met on the spot.

A number of detainees held in this facility, including Z.S., were received confidentially to investigate the treatment issues.

The complaint by Z.S. to the Ombudsman was accepted, and the Office of the Prosecutor General Office and Ministry of Internal Affairs were requested by the Ombudsman to investigate the circumstances indicated in his complaint and take legal measures.

In the course of the investigation, it was found that Z.S. had undergone a medical examination at the MIA Hospital, and he was given the opportunity to meet with his family member. No problem was observed in ensuring his rights.

At the end of the visit, a legal awareness event was conducted with the administration and staff in charge based on national and international legislation, and relevant recommendations were given.

Following the instructions given by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan and under the jurisdiction of the NPM against torture, an unannounced visit was carried out to the temporary detention place of the *Bilajari Railroad Police Department of the Main Traffic Police Department* of the MIA.

In the frame of the visit, all cells and rooms of the facility, the kitchen, and the walking area were monitored, as well as the current situation and documentation related to the organization of health services, nutrition, parcel service, access to walking, visitation, and phone calls.

During the talks with the management of the detention setting, relevant recommendations were made regarding the strict observance of medical examinations against the COVID-19 pandemic and the provision of disinfectants when the detainees are brought to the temporary detention place.

A scheduled visit was conducted to the *temporary detention place of the Ganja City Main Police Office*.

During the visit to the temporary detention place, the NPG members met with the 22 accused and one administratively detained person in a confidential manner, and inquired about their custody conditions, the treatment of them by the police officers during the process of investigation, the situation with the preliminary medical examination while bringing them to the facility and access to healthcare services when they needed them, as well as the legality of documents drawn up about them.

During the visit to the temporary place of detention, it was found that two persons accused of offense for the first time were placed with recidivists together in one cell. This contradicts the requirement of clause 2.31(3) of the internal disciplinary rules of the temporary detention place.

Also, it was found that the lower part of the walls in the cell of the temporary detention facility are in need of current maintenance due to moisture absorption. An act was drawn up with the participation of the

management of the facility regarding the detected defects, and recommendations were made to improve the custody conditions.

In 2020, the Ombudsman's NPG members conducted preventive visits to the temporary detention place of the Goygol District Police Department of the MIA.

The objective of these visits was to assess the detention conditions, treatment standards, as well as the situation with the detainees' rights, relevant documentation processing.

In the frame of the visits, a general evaluation of the detention conditions in the temporary detention facility of the Goygol DPD was conducted, and it was found that the sanitary rules in cells and other rooms were in compliance with the norms, were clean and tidy, and that the conditions allowed the rights and freedoms of detainees to be well ensured. During the monitoring of the walking area of the temporary detention facility, it was observed that one part of the area was covered to protect detainees from rain and sunlight, outdoor sport exercise equipment was installed, and the visitation room was supplied with a TV.

During the visits to the temporary detention place, detainees were received to investigate the situation and ensure their rights, including detention conditions, right to contact with relatives, right to medical examination, right to have a lawyer, and treatment by facility staff.

During the meeting, the detainees stated that they were not provided with a lawyer during the administrative investigation. During the review of the personal files of the detainees, no record or protocol regarding the refusal of a lawyer was found. According to CPT standards, this case shows that the provision of a lawyer's assistance, which is one of the main safeguards against torture from the first hours of arrest, is not organized and should be noted as a worrying point. Also, according to Article 65.3 of the Code of Administrative Offenses of the Republic of Azerbaijan, from the time the proceedings on the administrative offense case begin, the defender and the representative are allowed to participate in the proceedings on the administrative offense cases. In addition, according to Article 65 (3) of the Code of Administrative Offenses of the Republic of Azerbaijan, from the time of the initiation of the administrative offense case proceedings, the defender and the representative are allowed to participate in the administrative offense case proceedings.

In cases where an individual is subjected to an administrative arrest due to an administrative offense, the defender is allowed to participate in the administrative offense proceedings from the time that

person is administratively arrested. According to Article 91 (0) (7) of the same Code, if the administratively detained person does not have his own lawyer, the competent body (official) should present him with a list of lawyers affiliated with law firms located nearby the place of temporary detention, and should create an opportunity to contact and meet with the selected lawyer.

However, the lack of records on the provision or refusal of a lawyer in the personal file of the detained person raises serious doubts about the non-implementation of the provisions of the Code of Administrative Offenses.

During the first visit, M.T., who was found guilty under Article 535.1 of the Code of Administrative Offenses and was administratively arrested for 10 (ten) days according to the decision of the Goygol District Court, was held under detention in the temporary place of detention. The detainee asked for help, stating that he was harassed by the police when he was brought to custody, he was detained illegally for two days in the duty station, he was not allowed to use the bathroom in TDP, the parcel brought by his relatives was not completely delivered to him, and he was not given tea to drink.

During the visual inspection of the detainee by the NPG, no signs of injury were identified, and an act was drawn up with the participation of the detainee, and the requirements of the Law of Azerbaijan "On ensuring the rights and freedoms of persons kept in places of detention" were explained to him.

During the inspection of the registration journals in the temporary detention facility of the Goygol DPD, it was found there were records about the bringing of that person, who was administratively arrested, to the police department, as well as the medical book, which provided information that no injuries were observed by the doctor during his medical examination in the facility.

This issue was brought to the attention of the Deputy Head of Service Delivery of the Goygol DPD, and his views were listened to.

The deputy head of the Goygol DPD gave information that due to the spread of the coronavirus infection, several preventive measures were taken, such as the temporary suspension of meetings with the relatives of the detainees in the detention setting, the acceptance of parcels, and the provision of detainees with food three times a day in line with the norms and with a one-time bath.

Furthermore, it was stated that the complaints of the detainee regarding the food and tea norms will be considered, and his food norm will be increased. *The deputy head of Goygol DPD also stated*

that the complaint of the relatives of that person who was arrested administratively, that they submitted to the district prosecutorial authorities regarding the allegations of abuse against him while he was detained is being investigated.

During the examination of documents and personal files, it was found that the court decision in the personal file of İ. A, who was accused under Article 528 (1) of the Code of Administrative Offenses and administratively arrested for 10 (ten) days based on the decision of the Goygol District Court, failed to be sealed with an emblem seal in compliance with Paragraph 2.1 (1) of the temporary "Regulation Places for Administratively Detained Persons" approved by the Decision of the Ministry of Internal Affairs dated June 11, 2014. The head of the temporary detention setting was criticized due to the shortages, and consequently, the problem was solved by including the decision with an emblem seal in a personal file by the head of the facility.

The NPG members made recommendations to the employees of the Goygol DPD on how to further improve the documentation and detention conditions in compliance with the relevant legislation, including the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, internal disciplinary rules of the temporary detention facilities, as well as increasing the attention to the teaching of relevant topics in the vocational training courses launching for the staff of the facility to raise their awareness of the legislation.

During the inspection of the meeting room of the temporary detention place, it was found that a surveillance camera was installed in the room. This case should be considered a violation of the confidentiality of the meetings of detained or arrested persons with their lawyer. Thus, according to Article 19.1 of the Law of the Republic of Azerbaijan "On Ensuring the Rights and Freedoms of Persons Kept in Places of Detention", an arrested or detained person, from the moment of arrest or announcement of detention on remand against him, can meet with his defender and legal representative in private and confidentially, without limiting the number and duration of meetings.

Also, according to the case law of the European Court of Human Rights (ECtHR), the right of an arrested person to contact with a lawyer out of sight and hearing is a particularly important component of his right to legal aid, so that without the opportunity to consult and receive confidential instructions, this right would lose much of its benefit.¹

¹Case of S. v. Switzerland, (Application no. 12629/87; [13965/88](#)), para. 48

An ad hoc visit was conducted to the temporary detention place of *the Aghstafa DPD*.

The purpose of the visit, implemented in line with the requirements of the OPCAT and the Constitutional Law on Ombudsman of Azerbaijan, was to investigate the detention conditions and treatment issues and the situation with ensuring the rights of the accused and administratively detained persons in conformity with international disciplinary rules and international standards in the context of preventive measures against the new type of COVID-19 pandemics.

At the time of the visit, the NPM inspected the cells, visitation room, walking area, kitchen, interrogation room, medical room, worship room, and inventory storage; learned about the situation with the organization of healthcare services; access to food, drinking, cold and hot water; parcel service; walking time; and phone calls; as well as checked the documentation.

Meanwhile, 8 people held in the facility in Aghstafa were interviewed in private to assess their detention condition, the treatment of them by police officers, and other issues, and the documents confirming the lawfulness of detention were examined.

In the course of the visit, it was determined that due to the coronavirus pandemics in the temporary detention place of the Aghstafa DPD, the sanitary and hygienic norms were followed, the detainees who were brought to custody were taken for smear tests for COVID-19 by doctors, the employees were provided with medical face masks and disinfectant solutions, and regular preventive measures were continued.

Furthermore, it was found that the temporary detention facility needed to be repaired to improve its detention conditions.

A planned visit was implemented to *the temporary detention setting of the Dashkesen DPD*.

In the frame of the visit, four cells, two of which are administrative, a medicine cabinet equipped with medical supplies and medicines, a visiting room, a walking area, interrogation, a worship room, inventory

<https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22CASE%20OF%20S.%20V.%20SWITZERLAND%22%2D%22documentcollectionid%22:%5B%22GRANDCHAMBER%22.%22CHAMBER%22%2D%22itemid%22:%5B%22001-57709%22%5D%7D>

Case of Brennan v. The United Kingdom (*Application no. 39846/98*), paras. 58-63

<https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22brennan%20v%20unit%20kingdom%22%2D%22documentcollectionid%22:%5B%22GRANDCHAMBER%22.%22CHAMBER%22%2D%22itemid%22:%5B%22001-59722%22%5D%7D>

storage, a kitchen supplied with furniture and equipment, and other areas were inspected. It was also found that detention conditions in the temporary detention setting were in compliance with sanitary norms, and conditions were appropriate for ensuring their rights and freedoms; as well, the organization of healthcare services and the situation with the food system, accessibility to drinking, hot and cold water, parceling service, having time outdoors, visits, and phone calls were monitored.

During the visit, 2 people held in the temporary detention facility were interviewed in private, their detention conditions and treatment by the facility staff, as well as how their rights to healthcare, contact with relatives, and legal aid were ensured. The detainees did not complain about their detention conditions in the facility or their treatment by the facility staff.

However, the detainees raised their concern regarding the fact that they were not provided with a lawyer during the administrative investigation. During the review of their personal files, no record or protocol regarding the refusal of a lawyer was found. Regarding the mentioned issue, it was reported from Dashkesen DPD that the protocol drawn up on the refusal of a lawyer by the person who is being prosecuted for an administrative offense is stored in the materials of the relevant court and therefore is not in the personal file of the detained person.

Also, during the visit, the registry books were examined, and it was found that necessary custody records were adequately indicated in there; however, it was determined that "The Registry Book of the TDP on Gifts and Parcel" did not contain any records about gifts brought to the custody.

The head of the TDP was informed about the identified shortage, and he said that he would solve the problem.

An unscheduled visit was made *to the temporary detention place of the Goranboy DPD.*

NPG members received 7 detainees held in the detention facility individually, had talks with them, and inquired about their conditions of detention, medical supervision, access to food, and treatment by facility staff. The detainees did not complain about the conditions and treatment in the facility.

Furthermore, the detainees complained that they were not provided with a lawyer during the administrative investigation. During the review of the personal files of the detainees, the files did not contain any relevant records or protocol about a refusal from a lawyer.

An ad hoc visit was conducted to the *temporary detention setting of the Samukh DPD*.

During the visit, 3 people detained in the temporary detention facility were received in private to investigate their custodial conditions and the treatment of the facility's employees. The detainees did not complain about the detention conditions, treatment by the facility employees, medical examinations, or access to contact with their family members. In addition, although the person who was administratively arrested for a period of 15 (fifteen) days said that he refused the assistance of a lawyer during the administrative investigation, there was no protocol on the refusal of a lawyer in his personal file.

During the discussions with the employees of the facility regarding the detainees' rights, their detention conditions, registration issues, access to food, and medical supervision there, it was found that the daily food supply of the detainees was organized at the expense of the employees of the DPD of Samukh because the temporary detention facility of the DPD did not have a contract with any canteen and that the police department did not have a canteen as well; therefore, a relevant act was drawn up with the participation of the head of the detention facility regarding this shortage.

Under Article 20.1 of the Law on Ensuring the Rights and Freedoms of Persons Kept in Detention Facilities, the arrested and detained persons shall be provided with free three meals a day to comply with acceptable standards and hygiene requirements in terms of quality, in accordance with the food and household norms determined by the relevant executive authority. While preparing those meals, the age, health condition, and religious traditions of the arrested or detained persons should be taken into account.

A scheduled visit was made to the *temporary detention setting of Shamkir DPD*.

During the visit, 5 detainees held in the facility were received confidentially, and the situation with ensuring their rights and the issues of treatment were investigated. Detainees stated that they were not provided with a lawyer during the administrative investigation. During the review of their personal files, no records or protocols regarding the refusal of a lawyer were found.

In the course of the visit, it was found that the two first-time accused persons were kept together with a previously convicted person in one cell of the facility of Shamkir DPD in violation of clause 2.31.3 of the "Internal Disciplinary Rules of Temporary Detention

Facilities" approved by Decision No. 63 of the Cabinet of Ministers of Azerbaijan dated February 26, 2014.

In addition, it was observed that in cells there was a lack of informative materials for the arrested and detained persons regarding their rights and duties. The detected shortages were brought to the attention of the head of the detention facility, who consequently eliminated them on the spot.

Scheduled visits were made to the temporary detention facility of the Tovuz DPD.

NPG members had confidential talks with a total of 14 detainees during the visits.

During the visit, it was observed that the temporary facility of Tovuz DPD followed the sanitary and hygienic rules related to the COVID-19 outbreak; medical personnel took smears for the COVID-19 test from the detainees who brought them to the facility; employees were provided with medical face masks and disinfectant solutions, and preventive measures were taken on a regular basis. Furthermore, it was determined that the delays in responses to the COVID-19 test of up to a week violate the period established by the laws for the transfer of the arrested to the investigation isolator, which consequently causes difficulties.

Consequently, considering the above circumstances, it is recommended to cooperate with the Azerbaijani Management Union of Medical Territorial Units (TABIB) to ensure that the answers to the smears taken for the COVID-19 test from the detainees brought to the temporary detention place are given in a short time.

Also, during the visit, it was found that in the ice compartment of a refrigerator in the kitchen of the detention facility of Tovuz DPD, there was a syringe containing unpackaged and unsealed blood samples taken for examination. Therefore, the NPG members have drawn up the relevant act in the presence of the head of the facility of the Tovuz DPD.

According to Article 275 (6) of the Criminal Procedure Code of the Republic of Azerbaijan, samples taken for examination, with the exception of documents, shall be packed and sealed.

However, the storage of the unpackaged and unsealed samples taken for examination by the investigator of Tovuz DPD in the ice compartment of the refrigerator in the kitchen of the detention facility of Tovuz DPD should amount to a violation of the requirements of the legislation and to a violation of food safety due to the use of the

refrigerator as storage for blood samples, which should be used for storing food and food products.

An unscheduled visit was made to the temporary detention place of the Jalilabad DPD.

During this visit, NPG had talks with 28 detainees held there. The detainees complained about not being provided with a lawyer during the initial questioning, they were not informed of their rights, their families were not informed of their detention, and copies of relevant procedural documents were not presented to them.

Ad hoc visits were made to the temporary detention facility of the Lankaran City District Police Department (CDPD).

During the first visit, it was observed that there was overcrowding in the facility, and on the day of the visit, 37 people were detained in the facility, whose maximum capacity is for 28 detainees.

During the examination of the detention records, it was found that S.D.'s detention record did not contain the signature of the defender, whereas V.R.'s detention record did not have his own signature.

During the review of the personal files of another suspect D.A., it was found that the procedural time limit related to arrest and release was violated. Consequently, after the intervention of NPG members, that person was released from the facility..

A conversation was held with each of the detainees in the facility; they were informed of their rights, and the appeals of some of them addressed to the Ombudsman were accepted.

B.A., who was confidentially met during the next visit, said that he was not provided with contact with family members and to meet with a lawyer after he was brought to the Lankaran CDPD.

Scheduled visits were made to the temporary detention facility of the Salyan DPD.

The objective of those visits was to determine the scope of ensuring the rights and freedoms of the arrested or detained persons, as enshrined by the Constitution, the Code of Criminal Procedure, the Law of Azerbaijan on Ensuring the Rights and Freedoms of Persons Kept in Prisons, and other laws, assess detention conditions, and check issues related to treatment, access to food and medicine supplies, healthcare services, and other issues.

As part of the visits, confidential talks were held with 13 people detained in the facility. Their custodial conditions and treatment by the employees of the detention setting were monitored on the spot.

A visit was made to the temporary detention place of the Bilasuvar DPD. During the visit, the cells and rooms of the detention

establishment were inspected, and documents confirming the lawfulness of the detention of the detainees were checked.

During the visit, the NPG members had talks with each of the 10 detainees held in the facility, informed them of their rights and duties, and learned about the situation with ensuring their rights. During the conversation, it was found that the detainees were not provided with a lawyer, and family members were not informed by phone of their detention.

Visits were made to the *temporary detention facility of the Gabala DPD.*

In general, 11 confidential meetings were held during the visits.

During the visit, it was found that medical examination and assistance were carried out by paramedics of the emergency department of Gabala District Central Hospital in violation of clause 2.1 of the Rules for the provision of medical and psychological assistance to detained or arrested persons and their detention in medical institutions, approved by Decision No. 67 by the Cabinet of Ministers of Azerbaijan dated April 18, 2013. During the next follow-up visits, it was observed that the situation remained the same.

Visits were made to the *temporary detention setting of the Oguz DPD.*

The purpose of the visits was to investigate the conditions of detention and treatment, to make sure that the rights of the detainees were well protected, and to examine the relevant documentation. During the visits, it was found that mostly no one was detained, and only in one case was one person held in the facility. During the confidential talk with that person, he did not complain about the treatment by the employees of the facility.

Visits were made to the temporary place of detention of Mingachevir CPD.

During the visits, a total of 13 people were interviewed *tete-a-tete*, and no complaints were made regarding the detention conditions or treatment.

During the visit, it was determined that no records were made about the sanitary condition of the detained or arrested person (TDP) in the registry book on sanitary hygiene measures carried out in the facility.

A visit was made to the *temporary detention place of the Gakh DPD.*

Although current maintenance work is being carried out at the facility, the detention facility does not meet the relevant standards.

There are three double and four single cells. The size of cells is small; for this reason, it is impossible to create appropriate conditions. In double cells, the sanitary junctions are separated on one side by plastic materials. However, in single cells, this was not possible.

A visit was made to the *temporary detention setting of the Zagatala DPD.*

During the visit, face-to-face meetings were held with 6 detainees to investigate their conditions of detention and treatment. Z. Sh., who was administratively arrested for 10 days by the court's decision, said that he refused to eat and that his phone calls were prevented, however, while examining his personal file, it was found that his refusal to eat was not documented.

Visits were made to the *temporary detention place of Khizi DPD.*

In the course of the visits, the medical-sanitary part of the detention facility, cells, kitchen, and administrative rooms were inspected to evaluate the conditions, as well as the current situation with the organization of medical assistance, access to food, drinking, hot and cold water, outdoor exercise, visits and phone calls and the documentation were monitored.

The MPG had confidentially interviewed 5 people kept in that facility to investigate the treatment of them by the staff, the situation with ensuring their rights, and their concerns, and the documentation were investigated on the spot.

At the end, legal awareness talks were held with the management of the facility and responsible staff members, and appropriate recommendations were given.

Visits were made to the *temporary detention facility of the Gusar DPD.*

The objective of the visit, conducted under the requirements of the UN CAT and its Optional Protocol and the Constitutional Law, was to monitor the human rights situation in the facility, particularly the detention conditions and treatment of detainees, and the documentation to make sure that they are processed appropriately.

Throughout the visits, all the cells and rooms of the facility were inspected, and 11 detainees were interviewed in a confidential manner to gather information about the custody conditions and treatment rights and to make sure that their rights were well protected.

Visits were made to the *temporary detention setting of Khachmaz DPD.*

During the visit implemented as a part of the NPM activity of the Ombudsman, the NPG members checked cells and administrative rooms, the medical-sanitary part, and the kitchen of the facility.

The NPG totally confidentially interviewed 15 detainees to learn about their situation of their rights, the conditions of detention, and their treatment.

As a result of the examination of the documentation, the NPG has documented deficiencies. Thus, despite the fact that the person detained in the facility was transferred to the investigation isolator 4 days before the day of the NPM visit, no relevant record was made. In addition, despite the fact that another detainee was released according to the relevant decision a day before of the visit, no record was made in the registry book either.

During the awareness talk held at the end of the visit, NPG members gave appropriate recommendations to the facility director and staff on how to improve the documentation processing.

The objective of the visit made to the *temporary detention place of the Guba DPD* was to assess the overall human rights situation in the facility, including detention conditions and treatment issues, observe to what extent the rights of persons under custody were ensured, and check the documentation processing.

The NPG members had confidential meetings with 6 people held in the facility to investigate the treatment of them by the facility staff, and the situation of ensuring their rights.

Visits were made to the *temporary detention facility of the Shabran DPD*.

The objective of the scheduled visits conducted without prior notice was to assess to what extent the condition and treatment issues were addressed, the ensuring the rights and freedoms of detainees were respected, and check the documentation.

For this purpose, the cells, medical-sanitary part, kitchen and other rooms of the facility were inspected, the current situation regarding the organization of medical assistance, access to food, drinking water, hot and cold water, walking, visitings and phone calls were investigated and documentation status, and treatment issues were checked. A total of 14 detainees were interviewed to investigate the treatment issues, at the end of which their requests were heard.

At the end of the visits, legal awareness talks were held with the facility administration and staff, recommendations were given to ensure the rights of detainees were protected appropriately and to fulfill the internal disciplinary rules.

The European Committee for the Prevention of Torture (CPT) attaches great attention to staff training and underlines that trained police are the best guarantee against ill-treatment of detainees. Therefore, the Ombudsman suggests further expansion of legal education in the activities of Ministry of Interior bodies.

2.2.2. Institutions of the Ministry of Justice Penitentiary Service

Throughout 2020, 49 visits were made to institutions of the Ministry of Justice's Penitentiary Service.

The objective of the conducted preventive visits was to assess the human rights situation, including issues related to the treatment of detainees, the detention conditions, organization of medical assistance, accessibility to visitings, phone calls, food, clothes, ventilation and heating systems, ensuring the rights of detainees to appeal, receive legal assistance, etc.

During the visits to the penitentiary institutions, a confidential meeting was held with the detained persons, and the issues of their treatment, the conditions of detention, and the state of ensuring their rights were investigated. The requests of detainees to the Ombudsman were raised before the relevant institutions.

The Commissioner for Human Rights of Azerbaijan (Ombudsman), Sabina Aliyeva, and NPG members visited the *Investigation Detention Center No. 3* of the Ministry of Justice Penitentiary Service.

In the course of the meeting, a group of detainees, including Tofiq Yagublu, whose information about his refusal to eat a meal was spread, were confidentially interviewed.

During the interview, T. Yagublu justified his decision to refuse to take food due to his dissatisfaction with the court's decision. During the reception attended by a doctor of the Ombudsman's NPG, relevant recommendations were given to him to resume his food intake so that he does not have serious health problems, and to the management of the institution and the medical and sanitary department to maintain his health under control.

Furthermore, the detainees were informed of the Ombudsman's competences, and given legal advice on the raised issues; their appeals were accepted and some of their requests were met on the spot.

The Ombudsman's NPG members carried out a visit to *Penitentiary Institution No. 5* of the Ministry of Justice.

In the course of the visit, where a doctor member of the NPG participated, it was found that the medical-sanitary department of the facility was repaired, whereas the solitary confinement was *in need of capital repair*.

The detention conditions, treatment issues, and situation with ensuring the rights of prisoners to food, healthcare services, phone calls, visitings, and other rights were monitored on site. During private and confidential meetings, the prisoners were informed of their rights, the Ombudsman's competences and the requirements of the relevant legal framework.

As a part of the visit, the written appeals addressed to the Ombudsman were received and some of their requests were met on the spot.

In the end, the NPG members held legal awareness talks with the management of the facility and the penitentiary institution's employees, and the relevant recommendations were given to further improve the detention conditions and documentation.

Members of the NPG visited *Penitentiary Institution No. 6* of the Ministry of Justice Penitentiary Service.

During the visit, the Group members had private meetings with a number of prisoners, and their requests were listened to.

E. S. said that he refused to eat since he *disagreed with the decision of the Supreme Court, he was informed of his rights and provided with opportunities to appeal*.

NPG members visited *Penitentiary Institution No. 9* of the Penitentiary Service of the Ministry of Justice.

The objective of the visit was to meet with the inmates on the basis of random selection.

In the end, NPG members gave appropriate recommendations to the management of the facility in accordance with national and international legislation.

Within the NPM mandate, the Ombudsman conducted a visit to the *Baku Pre-trial Detention Facility* of the Penitentiary Service of the Ministry of Justice.

In the process of monitoring the facility, the Ombudsman met with the family members and relatives of the persons detained in the pretrial detention facility and listened to their appeals.

As part of the visit, the Ombudsman had confidential meetings with many accused persons kept in the pretrial institution, including

Süleymanov İlkin, whose criminal case is widely discussed in the media. Their conditions of detention in the pre-trial facility, the treatment issues, the situation with ensuring their right to food, medical assistance, phone calls, meetings, and other rights were investigated

During the visit, which was attended by members of the NPG, including a doctor, the detainees were explained their rights, as well as the requirements of the relevant legislation, their appeals addressed to the Ombudsman were accepted, legal advice was given on the issues raised by some of the detainees in connection with the investigation; a number of applications are provided on the spot.

In the end, the Ombudsman held a legal awareness talks with the management of the penitentiary facility, made relevant recommendations for better ensuring the rights and freedoms of the convicts, and the conditions of detention in line with national and international laws.

The Ombudsman, Sabina Aliyeva made another visit to the Baku Pretrial Detention Facility of the Ministry of Justice Penitentiary Service.

During this visit, organized in comply of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, several accused persons kept in the facility, including Fuad Gahramanli and Seymur Ahmadov were received confidentially and their requests were heard.

The appeal of F. Gahramanli's lawyer was investigated on the spot. The appeals of F. Fahramanli and S. Ahmadov regarding the treatment and conditions during their detention were listened to.

Within the framework of the visit, appeals addressed to the Ombudsman were received, legal advice was given on the issues related to the investigation process raised by the detainees, and a number of requests were satisfied on the spot.

As part of the next visit held by the NPG to the Baku Pre-trial Detention Facility, many accused persons kept in the pretrial institution, including Fuad Gahramanli, Mammad Ibrahim, Asif Yusifli, Bakhtiyar Imanov, Ayaz Maharramov, Telman Seyfullayev, Seymur Ahmadov, Ismayil Hasanov, Farid Abadov, Jeyhun Novruzov and Mahabbat Nagiyev were received confidentially, where their requests were heard. The interviewed persons did not complain about the treatment of the staff of the institution. Also, a number of issues they raised regarding the conditions of detention were investigated on the

spot, and some appeals were satisfied on the spot. They were informed of their rights, the requirements of the relevant legislation, including the competences of the Ombudsman. Furthermore, each of them was given legal advice on the issues they raised, and the written applications submitted by some of them were accepted.

Appeals were mainly about investigation procedures.

As part of the next visit carried out within the NPM mandate of the Ombudsman several accused persons detained in the Facility, including Afgan Sadigov, who refused to eat meal were received confidentially and their requests were heard.

During the confidential talk, A. Sadigov justified his decision to refuse food as he was dissatisfied with the *criminal case against him and a court decision*.

During the interview, held in the presence of a doctor member of the Preventive Group, relevant recommendations were given to him to resume his food intake so that he does not have serious health problems, and to the management, the medical and sanitary department of the facility to maintain his health under control.

In addition, it should be noted that this health condition was kept regularly under control by the management in collaboration with the medical-sanitary part of the Facility, and his family members were informed as well.

The issues of treatment of the accused, conditions of detention, food, medical assistance, accessibility to phone calls, visitings and provision of other rights were investigated on the spot.

The appeals received during this visit were also mainly about the progress of the investigations.

The Ombudsman conducted a visit to the *Prison under the Penitentiary Service under the NPM jurisdiction*.

During the visit organized in line with the OPCAT and Constitutional Law on the Ombudsman, the disciplinary cell, sanitary-medical part, canteen, kitchen, visitation and quarantine rooms, as well as other objects of the prison, were inspected.

Conditions of detention, issues of treatment, medical assistance, the nutrition system, accessibility to phone calls, meeting and the implementation status of prisoners' other rights were investigated on the spot. During the private and confidential meetings with the prisoners, including those who were sentenced to life imprisonment, their rights, the mandate of the Ombudsman and the requirements of the relevant legislation were explained.

During the visit, written appeals addressed to the Ombudsman were received, and a number of appeals were met on the spot.

In the end, the NPM group had legal awareness talks with the management and employees of the prison facility, and gave relevant recommendations on how to further improve detention conditions and documentation.

As a part of its NPM activities, the Ombudsman carried out a monitoring visit to the Treatment *Facility of the Penitentiary Service* of the Ministry of Justice.

The preventive visit, organized according to the requirements of the OPCAT and the Constitutional Law on the Ombudsman, aimed at examination of the appeals received by the Ombudsman, inspection of conditions of detention and treatment issues, and ensuring the rights of the treated convicts.

During the visit, the Ombudsman inspected the treatment units, departments, and wards of the institution, inquired about the condition of the patients, had individual conversations with them, and investigated the current situation regarding the conditions of detention, organization of medical assistance, provision of medicine, food system, gifts, walks, visitations, and access to phone contacts.

During the individual receptions and meetings, a number of convicts complained about the investigation and trial proceedings. Legal advice was given to each admitted person, and many requests that could be resolved were met on the spot. The Ombudsman promised her assistance in the resolution of the raised issues within the scope of her competence.

The status of implementation of the previously given recommendations was also checked in the course of the monitoring, which was carried out by the NPM Group, including a doctor member of the preventive team. It was found that there is *a lack of effective psychological and social services* in the medical facility.

During the monitoring, the interviewed persons did not complain about their conditions of detention in the facility, the treatment of the staff or the provided healthcare services.

Detainees expressed their gratitude to the Ombudsman for considering their rights and taking an interest in their situation.

In the end, the Ombudsman held legal awareness talks with the institution's management, medical staff and responsible employees, and gave her recommendations for strengthening control over the effective provision of access to medical care in accordance with national and international legislation, including European Penitentiary

Regulations, on how to eliminate difficulties indicated in applications for admission to the institution, and improve detention conditions.

The relevant institutions were informed about the outcomes of the visit and received applications.

Members of the Ombudsman's NPM Group implemented a preventive visit to the *Specialized Treatment Institution* of the Ministry of Justice Penitentiary Service.

In the course of the monitoring, detainees, numerous convicts were received confidentially and their requests were heard.

The interviewed detainees were informed of their rights, the requirements of the relevant legislation, including the Ombudsman's competences, each of them was given legal advice on the issues they raised, and the written applications submitted by some of them were accepted. The concerns were mainly about the progress of the investigation.

One of the interviewed detainees said that he was dissatisfied with the progress of the investigation against him, and for this reason, he refused to eat meals, and complained about his health condition.

It should be noted that, on the basis of the Ombudsman's previously made recommendation, medical supervision was organized within 24 hours, and psychological consultations are also carried out in the medical institution, providing access to medical services.

In the end, MPG members gave appropriate recommendations to the management of the treatment institution based on national and international legislation.

The MPG Members carried out monitoring at *Penitentiary Institution No. 17* of the Penitentiary Service of the Ministry of Justice.

The objective of the visit was to meet V. A., who was reported to have refused to take food.

V.A, who went on a hunger strike and justified his decision with the requirement to change the institution where he was serving a sentence, was interviewed, and he was informed of his rights and his appeal was accepted for an investigation. He did not complain about the treatment of the staff of the institution.

Two visits were carried out to the *Sheki Penitentiary Institution* during the year.

The first visit was conducted to ensure the rights of persons in this facility detained during the period of COVID-19 pandemic, and investigate whether preventive measures were taken.

The next visit conducted aimed at investigating the detention conditions and treatment issues, and monitor the situation with the ensuring the rights of persons detained in the facility.

A number of shortcomings were discovered during the inspection of the investigation and disciplinary cells. One of the main concerns was overcrowding. So, on the day of the visit, it was observed that 220 people were held in the investigation isolator, of which that maximum capacity was for 170 detainees, and 8 people were held in 6-person cells.

It was found that the bedding was dirty, and some of it was in an unusable condition. However, according to clause 5.6 of the internal disciplinary rules of detention centers, bedding (sheets, pillowcases, blankets, blanket cover sheets, and hand and face towels) must be changed at least once a week. Detainees stated during a confidential interview that the bedding had not been changed for a long time.

Furthermore, it was revealed that O.M., a minor, b. 01.12.2005, accused under Article 150.3.3 of the Criminal Code, was detained in cell No. 7 of the 3rd building of the pre-trial detention center together with adults., in violation of Article 5.11.2 of the Internal Disciplinary Rules of Pre-trial Detention Centers.

Scheduled and unscheduled visits were carried out to the Penitentiary Service *Pre-trial Detention Facility No. 2*.

During visits to all areas of the pretrial facility and the walking areas, inmate call points, parcel reception points, short- and long-term visiting rooms, a room equipped with special equipment for online reception, a kitchen, commissary, bathroom, medical and sanitary unit, and the disciplinary cell, the conveyances used for the transferring of detainees and convicts were inspected, and the current conditions were monitored.

It was found that the information boards on the rules for reception of parcels, meeting presentation rules, the list of items prohibited for giving or transferring to arrested persons, bringing as gifts, packing and sending in parcels, and the text of the relevant article of the Criminal Code of Azerbaijan and other normative legal acts that determine responsibility for providing (sending or transmitting) of the prohibited by hiding or in any other way, as well as the working hours of those rooms and the days of reception of citizens in violation of the clause 9.2 of the Internal Disciplinary Rules of Pre-trial Detention Centers at the parcel reception point in a way that visitors were unable to see it.

It was also observed that despite the requirements of clause 9.4 of these rules, when receiving parcels in the facility, 3 copies of the application, which should be filled out, were not filled out, and was satisfied only with 1 copy, and furthermore, there was a lack of box for medicines, contrary to the requirements of Annex No. 4 to the Internal Disciplinary Rules of Pre-trial Detention Centers.

During an inspection of the short-term visiting rooms, it was found that those rooms were not equipped with the necessary inventory (water carafe, glass, wall clock, clothes hanger), in violation of clause 19.13 of the internal disciplinary rules of the pre-trial detention centers (Annex No. 11), whereas, the inventory in the long-term visiting room was old and the room was untidy.

During the monitoring of the quarantine room No. 56, which is located in the III building of the Pre-trial Detention Facility, where the persons brought to the detention center for the first time are kept, it was observed that the cell did not meet the sanitary and hygiene norms, and was in need of major repair, had a concrete floor, and was not provided with any means for heating.

During the inspection of cell No. 57, located in the III building of the pre-trial detention facility, it was found that its floor was made of concrete. However, in line with clause 3.2 of the internal disciplinary rules, the floors of the cells must be covered with wood or matlax.

It was determined that there was no heating in cells No. 72 and 73 in the pre-trial detention facility, and there was no mattress in cell No. 73. While investigating the phone call points, it was found that there was no phone call record sheet provided for inmates in line with the internal disciplinary rules.

In addition, it was determined that there is no psychological assistance office in the facility. There was a need to organize psychological and social services and to expand and promote correctional work with new approaches based on individual work addressed to convicts rehabilitating in agriculture.

Under clause 41.5 of the European Prison Rules, the services of qualified dentists and opticians shall be available to every prisoner. Nevertheless, the lack of opticians in this pre-trial facility excludes this possibility.

Furthermore, it was observed that in cell No. 24 of the II building of the facility, a child (a person below the age of legal majority), was held together with three adults. As per the requirements of clause 5.11.2 of the Internal Disciplinary Rules, detention rules were violated, and the management of the pre-trial detention facility justified this

issue by asserting that a child detainee was held as such so that his actions could be controlled and not leave him alone. Consequently, the violation was eliminated.

It should be noted that the justification of the management of pre-trial detention facility No. 2 that children are kept together with others so that they are not left alone is unreasonable.

According to Article 35.4 of the European Prison Rules, where children are detained in penitentiary institutions, they shall be kept in a part of the facility that is separate from that used by adults unless it is considered that this is against the best interests of the child.

During the visit, the NPG members found in the cells of the facility several shortcomings, such as the fact that the floor covering in cells was made of concrete, there was overcrowding, there was a lack of heating, the sanitary junction was broken, the mattress was brought from home, and the first-time offender was kept together with other detainees.

While checking the registration books of the detainees held in pre-trial facility, it was found that during the first month of 2020, 11 people were punished with holding in a disciplinary room. According to Article 60 of the European Prison Rules, any punishment imposed for a disciplinary offense must be in accordance with the law and the severity of any punishment shall be proportionate to the offense. Also, solitary confinement shall be imposed as a punishment only in exceptional cases and for a specific period of time, which shall be as short as possible. However, the punishment of being held in a disciplinary room for 11 times a month in this pretrial facility causes concern in terms of the treatment of the detainees.

During the monitoring of the interrogation and lawyer-inmate meeting rooms, it was found that for the purpose of control in those rooms, video cameras (CCTVs) were installed. This case should be considered a violation of the confidentiality of the meeting with the lawyer. Thus, according to Article 19.1 of the Law of the Republic of Azerbaijan "On Ensuring the Rights and Freedoms of Persons Kept in Places of Detention", an arrested or detained person may meet privately and have confidential communication with his defender and legal representative, without limitation in the number and duration of the meetings, from the moment of his arrest or the announcement of the decision on the selection of pretrial detention. Also, according to the case law of the European Court of Human Rights, the right of an arrested person to communicate confidentially with a lawyer is a particularly important component of the right to legal aid, as without

the possibility of consultation and confidential instructions, this right would lose much of its usefulness. (ECtHR, *S v. Switzerland*, App. No. 12629/87 and 13965/88, 28 November 1991, para. 48. See also, ECtHR, *Brennan v. the United Kingdom*, App. 39846/98, 16 October 2000, paras. 58-63)

The handcuffing of a detainee, as a special measure, for a long period of time (7 days) raises enough doubts about the adequacy and necessity of this measure in the current situation, so this situation should be noted as a concern in terms of inhumane treatment.

During the inspection of the medical-sanitary part of the pre-trial detention facility, despite the requirements of the internal disciplinary rules, it was determined that the registration of the daily medical examination of the persons transferred to solitary confinement for security reasons was not carried out, such registration was only carried out for those who were transferred to solitary confinement after being fined.

In the course of checking the registry books for visits to the pre-trial detention facility, it was found that the last registration in this book was made 3 days before the date of the visit. However, according to Clause 35.1 of the Internal Disciplinary Rules of Pretrial Detention Facilities, heads of pretrial detention facilities, their deputies, heads of service areas, senior inspectors (duty assistants of the chief), and medical staff of the medical and sanitary department visit the disciplinary cells and solitary confinement cells every day and take notes about it.

The management of investigation detention places inspects the conditions of detention of arrested persons, and takes measures to provide medical assistance to those who need it, eliminate identified deficiencies, and satisfy the well-founded complaints of arrested persons. The relevant records are made by the relevant persons in a special journal and in the medical records of the arrested persons. The fact that the last note was 3 days before the date of the visit shows that the management of the pre-trial detention facility did not fully comply with the duty to visit the disciplinary and solitary cells every day, which excludes the effective control of the rights and freedoms of the detainees in those cells.

In the course of the visits, a confidential meeting was held with the detainees, and the conditions of detention and treatment, and the state of ensuring their rights were inspected. Most of the interviewed detainees complained about the non-objective investigation, and some of them complained about the treatment by the staff of the institution.

Regarding the mentioned complaints, the relevant authorities have been requested.

Taking into account the observations made, it has been determined that the current conditions of Pre-trial Detention Facility No. 2 do not comply with international and national legal standards, as most of the cells do not fully ensure the rights and freedoms of the detainees held there. Therefore, it is necessary to improve the conditions and eliminate other noted deficiencies and speed up the construction of a new penitentiary complex in Ganja city in line with modern standards.

During 2020, consecutive visits were also made to *Penitentiary Institution No. 4 for Female Prisoners of the Penitentiary Service*. During the visits carried out by the Ombudsman and her NPG members, a number of inmates held in the facility were interviewed and their applications were accepted.

The next visit to the penitentiary institution was made on the occasion of June 1 - International Day for the Protection of Children. Here, the residential area intended for convicted mothers with babies was inspected, and issues related to detention conditions and treatment were investigated. Within the NPM jurisdiction, talks were held with detainees, who were informed of the Ombudsman's activities towards protecting the prisoners' rights, their rights and the mandate.

During the year, on the eve of significant days, visits were also made to the *Juvenile Correctional Facility of the Penitentiary Service Institution*.

In the course of the visits implemented by the Ombudsman and NPG members to this juvenile facility, the current detention conditions and treatment standards, as well as the state of ensuring children's rights were monitored.

During visits, confidential talks were held with children to investigate the treatment issues and their appeals have been accepted.

2.2.3. Institutions of State Security Service

The Ombudsman and her NPM Group members conducted visits to the Temporary Detention Place and Pre-trial Detention Facility of the State Security Service.

The purpose of these visits was to investigate the applications received by the Ombudsman, issues related to the treatment of the detainees by the staff of the detention facility, nutrition, and

documentation, accessibility to medical services, and to assess whether the rights of detainees are ensured in compliance with the national Law on Ensuring the Rights and Freedoms of Persons Kept in Places of Detention.

The relevant conditions have been created so that visits to the facility are carried out effectively. During the visits, detention conditions, and nutrition, and food supply were monitored, cells in the facility, the kitchen, and food storage were also checked; as well, the situation with ensuring medical assistance, walking time, phone calls, legal aid and other rights were evaluated.

Tête-à-tête meetings were held with the detainees in the monitored cells to investigate the treatment issues, their appeals were heard; each of them was given legal advice regarding the issues they raised; and they were informed of the powers of the Ombudsman and the requirements of the legislation. The interviewed persons did not complain about the treatment of the employees of the temporary detention place and pre-trial detention facility or the detention conditions of the institution, the quality of food, travel and medical care services.

During the next visits to the institution, along with other persons, detainees from Armenia, who were held there during that period were received individually, their appeals were heard, and they were informed of their rights by presenting them with legislative acts regarding their rights and appeal mechanisms in their own languages.

During the visit, held with the participation of the medical doctor and psychologist members of the NPG, it was observed that the necessary medical and psychological services were provided without any kind of discrimination, and the norms of international humanitarian law, particularly, the provisions of the Geneva Conventions, were complied with. These persons expressed their satisfaction with their treatment and detention conditions, health services, nutrition and the humane treatment they received.

In the end of the visits, discussions have been held with the management of the institution around the issues of how to further improve the detention conditions, healthcare services and documentation in compliance with the national and international legal standards.

2.2.4. Institutions of the Ministry of Defence

Under the Ombudsman's NPM jurisdiction, the NPG members conducted a visit to the *Guardroom of the Military Police of Baku Garrison* of the Ministry of Defense. During the visit, issues related to detention conditions and treatment were investigated, and learned about the situation in ensuring the rights of the detained servicemen.

In the course of the visit, to assess the detention condition, all areas of the Garrison, cells, administrative rooms, canteen, and bathroom were inspected; the existing situation regarding nutrition, access to drinking water, hot and cold water, medical assistance, and the issues related to walking, as well as relevant documentation were checked.

The NPG members had face-to-face meetings with four servicemen, detained in the garrison. The persons detained here have not complained about detention conditions or the treatment of the facility.

In general, it was also observed that separate parts of the monitored facility, were in need of repair in order to improve the detention conditions.

At the end of the visit, a legal awareness talks were held with the garrison staff, on national and international legal frameworks, and the Constitutional Law on the Ombudsman and the relevant recommendations were given.

2.2.5. Institutions of the Ministry of Health

Within the framework of the NPM mandate of the Ombudsman, 22 unannounced visits have been conducted to the subordinate institutions of the Ministry of Health.

A visit has been implemented to the *Republican Psychiatric Hospital* (public legal entity) of the Ministry of Health.

During the visit, it was observed that there was overcrowding in the wards, which was justified by the chief physician of the medical facility with the transfer of patients to other mental hospitals of the country due to the current repair works.

Moreover, it was also found that the number of medical and assisting personnel, including those who are in charge of the tasks with persons below the age of 18 and young people was low, and that

the rehabilitation services provided for the persons under the age of 18 and people with disability were unprofessional and weak.

It was also found that there was a need for organization of modern psychological and social services in the facility.

The deficiencies in the documentation regarding the forced hospitalization, to the majority of which the documents on the voluntary hospitalization and a survey have been enclosed, were also revealed. While examining the documents related to persons under the age of 18, there was a lack of applications and signatures by those patients and their legal representatives. Similar cases have been observed during previous visits. The management of the healthcare facility has been given repeated legal advice on how to overcome the shortages in the documentation based on the legislation and the requirements of the legislation have been explained. It was found that persons, who were treated in the facility and who were subjected to compulsory measures of a medical nature, were not taken for a walk in the open air.

During discussions, the management of the mental-health facility stated that, considering the fact that various things were thrown onto the territory of the facility from outside and the possibility of using those things by persons treated here to damage the environment and harm themselves, they restricted their walking in open air and added that no funds have been allocated for the creation of conditions.

From this perspective, failure to ensure the right to walk and approaches towards those people living in small wards are considered violations of rights, so it is appropriate to solve the issue by creating an appropriate protective zone around them.

The NPG members visited the *Clinical Psychiatric Hospital No. 2*.

The purpose of the visit was to investigate the detention conditions and treatment standards, the situation with ensuring the patients' rights in line with international standards, as well as the issues reflected in the application received.

In the course of the visit, it was determined that women patients were held in a common ward, where beds were placed very close to each other. The kitchen and sanitary junction (hygiene, lighting and etc.) were in need of repair.

The applicant M.A. said that his sister L.A. has been involuntarily placed in the Clinic Psychiatric Hospital No. 2 and is not registered; she was not given a diagnosis; and the placement was carried out based on the verbal information of her mother. To investigate issues indicated in the complaint, a chief physician and L.A.'s treating doctor

had meetings, and the issues related to treatment and registration have been investigated.

As a result of the investigation, it was determined that the patient has been placed in the clinic voluntarily, that she has been diagnosed with paranoid schizophrenia, and that the relevant information has been indicated in her medical history. L.A. has been discharged from the facility on the basis of her appeal and handed over to her relatives.

Some patients have been privately talked to in order to investigate the treatment issues.

Under the MPM mandate of the Ombudsman, the NPG members conducted a scheduled visit to the *Ganja Children Nursing Home* under the Ganja City Health Department.

During the conversation with the management of this residential treatment facility, it was learned that babies, mainly, who lost their parents or are coming from low-income families, or whose parent(s) are in a penitentiary institution, who were born out of wedlock, are placed here. It was determined that in the facility, which has a capacity of a maximum of 30 people, two categories of children, including infants and children under 3 years of age, reside. It was observed that in the first visit, there were 17 children, 24 in the second visit, and 26 in the last visit.

During the visits, the area of the facility, buildings providing administrative rooms and dormitories, a medical room, a laundry room, an old building where various supplies are stored, a kitchen, dining hall, and a food warehouse were inspected.

Since the building of the Ganja Children Nursing Home is old and in need of major repairs, it was observed that it does not meet suitable conditions for keeping babies deprived of parental care. For this reason, it is necessary to build a building that meets modern standards for the facility and equip it with the necessary inventory for infants.

Although children who have reached the age of 3, including toddlers suffering from diseases, should be transferred to other public child institutions, during the visit, it was found that two children born in 2018 and 2012, suffering from cerebral palsy, are kept in the nursing facility.

A visit was made to the *Ganja Interdistrict Narcological Dispensary*. The hospital, which covers Gazakh, Agstafa, Tovuz, Shamkir, Goygol, Samukh, and Goranboy districts, offers inpatient and outpatient treatment for people suffering from drug addiction and chronic alcoholism.

During the inspection, it was found that the administrative building, auxiliary buildings, kitchen, wards of the facility are in a completely unusable state, contrary to sanitary regulations. Furthermore, it was observed that there are no facilities (television, sports equipment, etc.) for organizing the leisure time activities of the people receiving treatment, and the bathroom is in old and unsanitary conditions.

1 (one) manat (AZN) per day is provided for the food supply of the persons, who are being treated here, therefore, it is necessary for the state to increase the funds allocated for this purpose to ensure the diversity of the patients' food ration.

In general, it is crucial to build a new building for the facility or to make a major repair to the dispensary, and to provide it with new inventory.

It is recommended to improve the registration work related to the activity of the dispensary, and to start to write a registry journal providing information on whether a person has or not any signs of injuries while accepted to the facility.

The Ombudsman's NPG members made unscheduled and scheduled visits to the *Ganja City Psychiatric Hospital* of the Ministry of Health.

The purpose of the unscheduled visit, organized on the basis of the requirements of the UN "Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Care", European minimum standards for detention and treatment of mentally ill persons, the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, and the Law "On Psychiatric Care" was to monitor the detention conditions and treatment in the mental care facility, ensuring the rights of persons residing in the facility, conducting documentation accordingly, as well as compliance with sanitary and hygiene rules during the COVID-19 pandemic.

The new building of the hospital was put into use on April 28, 2020. It was reported that the hospital needs qualified medical personnel, especially a doctor of clinical laboratory science, a radiologist, a diagnostic medical sonographer, a radiologist, a therapist, and a psychiatrist, in order to provide a number of modern medical equipments put into use at the institution.

During the next visit to the facility, it was found that the problem of a lack of qualified personnel had remained unsolved.

Taking into account the increased workload of doctors, there is a need to increase the number of medical and auxiliary personnel and the funds allocated for drug supply.

A scheduled visit to the *Gazakh Interdistrict Psychiatric Hospital* was implemented by NPG members.

As part of the visit, the administration building, wards, doctor's and nurse's rooms, dining hall, kitchen, food storage and other parts of the hospital were inspected.

During previous visits to the mental health facility, it was observed that some deficiencies discovered were eliminated, and a prayer room and a library were provided for the patients.

Also, it was determined that the hospital building is old and exposed to long-term natural wear and tear. The management of the facility reported that land has been allocated for the construction of the new building of the *Gazakh Interdistrict Psychiatric Hospital* in the district and that they are expecting the start of construction.

A visit was conducted to the *Guba Interdistrict Psychoneurological Center* of the Ministry of Health.

The goal of the visits was to monitor the detention conditions and treatment standards, the situation with ensuring the rights of persons who are being treated, as well as the processing of the documentation.

It was found that the 8 staff units of doctors available in the institution are completed with 4 doctors, and the medical staff consists of 11 people instead of 22 staff units.

During visits, to assess the conditions of treatment in the facility, the wards, kitchen and other administrative rooms were monitored; access to nutrition, drinking, hot and cold water, as well as documentation were checked. The NPG members confidentially questioned 4 people, residing in this facility to investigate the treatment issues and the situation with ensuring their rights.

In the course of the visit, it was found that the patients who have specific symptoms were tested for COVID-19 only, but this creates the possibility that for a person who is without symptoms, but infected with the coronavirus, will enter the institution.

In the end, the awareness talk was held with the management of the facility and staff in charge and the relevant recommendations, included renewing the food before its expiration dates.

The NPG members implemented an unscheduled visit to the *Salyan Interdistrict Psychiatric Hospital* of the Ministry of Health.

In the course of the visit, the wards and departments, dining hall, food storage, and other units of the mental health facility providing

services for the inhabitants of Salyan and other seven surrounding districts, such as Sabirabad, Saatli, Hajigabul, Shirvan, Neftchala, Jalilabad, and Beylagan, have been inspected; issues related to the organization of healthcare services, the current situation with the accessibility of nutrition, drinking water, walking, etc., and the documentation were checked, and shortages have been identified.

While inspecting the organization of the medical assistance, it was reported that there are 11 vacancies for doctor staff units and 20 vacancies for nurses.

The management of the facility explained this situation by saying that holders of those qualifications do not want to work here.

In the course of the visit, it was determined that there was a lack of air conditioning, TV did not work in the department for female patients, and there were problems with the heating supply in cold weather.

While checking the documentation, it was determined that in departments for female and male patients, in medical records, there were not signatures of a treating doctor, a patient or a witness.

Although the head of the department said that the documents were signed when they were submitted to the archive, five randomly selected medical records were checked, and only one of these documents had signatures and relevant notes.

It was found that the building, where the kitchen and food store are located is old and does not meet standards. It was observed that vegetable products were not properly stored in the food warehouse, and necessary recommendations were made.

Furthermore, the gas supply to the facility has been provided.

A scheduled visit was carried out to the *Lankaran Inter-Regional Psychiatric Hospital* of the Ministry of Health.

As part of the visit, a confidential meeting has been held with the patients residing in the facility to monitor issues of treatment and inspect various areas of the health institution.

In addition, during the monitoring in the departments for females and males, it was observed that in the kitchen the dishes were not washed cleanly, there was no detergent, and there were incomplete food examples; furthermore, in the women's part, the door of the bathroom was closed, there were few products in the food storage, and the rooms were in disorder, as well as deficiencies in the supply of food and medicine in some wards, which were also not adequately lit.

A scheduled visit to the *Lankaran Inter-Regional Narcological Hospital* was carried out.

During the inspection, the wards, meeting room, reception, disinfection and medical staff rooms, a bathroom, kitchen were inspected; issues related to storage conditions, medicine supply, nutrition, and heating supply were monitored.

In the end, relevant recommendations were made to the chief doctor and his staff regarding the improvement of the quality of work at the health institution.

The NPG members made an unscheduled visit to the *Sheki District Psychiatric Hospital*.

In a 200-bed facility, it was observed that in 4 person wards, 6 people were treated. The management of the institution justified such placement to control the patients treated here due to the small number of staff.

Moreover, despite the presence of a dentist in the hospital, it was found that the facility is not provided with dental equipment.

At the end of the visit, a legal awareness talk was held with the facility management and responsible employees, and the provisions of national and international legislative acts were brought to their attention.

Shortages identified during the monitoring visits were raised before the Ministry of Health and relevant state bodies, and the implementation status of the recommendations was checked on the spot during follow-up visits.

2.2.6. Institutions of the Ministry of Education

The NPG members conducted 25 unnoticed visits to the facilities under the Ministry of Education based on the Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, the Law of the Republic of Azerbaijan "On Children's Rights", including the UN Convention on the Rights of the Child (*hereinafter referred to as CRC*), the "Convention on the Rights of Persons with Disabilities (CRPD)", Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, SPT Recommendations, CPT Standards, and CRC (Committee) Recommendations.

Considering international experience, during the visits to educational institutions, the conditions of detention and treatment, as

well as the practical application of national and international standards in the relevant field, have been investigated.

In connection with the beginning of the new academic year, under the NPM mandate of the Ombudsman, the NPG members carried out scheduled visits to the *Full Secondary Boarding School for Children Deprived of Parental Care No. 2*, *Special Boarding Schools for Children with Limited Health Capacities No. 2 and 12*, and *Republican Special Boarding Schools No. 4 and 5* of the Ministry of Education.

The purpose of the visits was to monitor the detention conditions in these facilities, the preparation of public child-care institutions on the eve of the start of the new academic year, and the situation with ensuring the rights of the child.

In the time of visits to the establishments subordinated to the Ministry of Education, such as boarding schools for children with limited health capacities, boarding schools for children deprived of parental care, and gymnasiums, all areas of the boarding facilities, as well as the bedrooms, medical and classrooms, dining hall, kitchen, recreation rooms, and the whole area of the facility, were monitored; talks were held with the management and the employees of the facilities. It was found that classrooms were arranged in an appropriate way so that students could follow the rules of social distancing during the education process in the boarding facilities, and that the number of beds in the dormitory has been decreased to place them in line with the rules for distancing.

It was observed that the repair works in the Special Boarding School for Children with Limited Health Capacities No. 12 have not been completed, and therefore, the facility is not ready for the education process.

During the conducted visits, the issues of detention conditions that might be expediently solved have been raised before the education facilities, and recommendations for their provision have been put forward.

During the visits, NPG members held legal awareness talks with the management and staff of these educational institutions based on national legislation and international standards, including the CRC, and recommended increasing the scope of educational activities related to the implementation of children's rights and the COVID-19 outbreak, and improving activities and documentation in this field.

At the end of the visits, the monitored establishments were presented with educational materials related to the COVID-19 outbreak and other educational materials.

An unscheduled visit was made to the *Govlar City Integrated Training Boarding Gymnasium* of Tovuz district by the Ombudsman's NPG members. The objective of the visit was to study the conditions of detention and treatment in the boarding facility, to ensure the rights of the students staying here, and to oversee the processing of the documentation in an appropriate manner.

The director reported that the charter of the facility, approved in accordance with the "Sample Charter of General Education Schools" approved by the Cabinet of Ministers of the Republic of Azerbaijan, was submitted to the Ministry of Education for approval. It is necessary that the Ministry of Education approve this charter without delay.

Furthermore, it would be a valuable contribution to ensuring the rights of children from the vulnerable category if children with limited health capacities used of new and large bus with reasonable accommodations for them instead of the old one.

The Ombudsman and NPG members conducted an ad hoc visit to the *Guba Special Vocational School* of the Ministry of Education without prior notice.

The Ombudsman inspected all objects in the facility, included bedroom, recreation room, dining hall, kitchen, food storage, and general area.

In time of the visit, it was determined that detention conditions were not adequate for the children and that facilities allowing children to receive quality education, spend leisure time effectively, and acquire vocational skills were low.

Despite the fact that there were many staff units in the facility, it was observed that there was a lack of opportunities for the correction of the behaviors of children who had committed a socially dangerous act, including for their psychological, medical, and social rehabilitation, and that there was a serious need for the organization of these services.

It was also revealed that this juvenile correction facility, where children who have not reached the legal age for criminal responsibility are detained, did not meet the requirements of the Model Charter "On open and closed special educational institutions" approved by the Cabinet of Ministers' Decision No. 65 of 13 May 2003.

In the end of the preventive visit, the Ombudsman made recommendations to the management of the facility based on national and international standards, including the requirements of the UN CRC, for improving the provision of child rights and the activity in this field.

During the follow-up visit of the NPG members to the facility, it was observed that the shortage of necessary means and medicaments required for the first medical aid in the medical unit, which was found during the previous visit, has been overcome and all necessary equipment and medicines have been supplied.

Within the framework of the Ombudsman's NPM activities, monitoring visits have been implemented to *Integration Training Boarding Gymnasiums located in Ganja, Lankaran, Sheki and Siyazan cities and Lerik, Neftchala and Salyan districts* and subordinated to the Ministry of Education, as well as *Guba City Full² (11 grading education system) Secondary Boarding School for Children Deprived of Parental Care*. In the time of the visits, the classrooms, bedrooms, recreation room, IT cabinet, shower rooms, canteen, and food storage in the gymnasiums were inspected and the relevant documentation was checked. Furthermore, the sanitary situation in the boarding facilities in relation to the preventive measures for the COVID-19 outbreak was a subject of the inspection. In the course of the visit to the Siyazan city integration training boarding school, it was found that the facility was not fully ready for the new academic year; thus, the repair works in the gym hall have not yet been completed, the sanitary facilities were in poor condition and the school was generally in a state of disarray. During the preventive visits private conversations have been held with children of various age to investigate the treatment of them, and who were given legal advice.

2.2.7. Institutions of the Ministry of Labor and Social Protection of the Population

As a part of NPM preventive visits, three unannounced visits were conducted to the institutions subordinated to the Ministry of Labor and Social Protection of the Population.

As part of the Ombudsman's NPM activities of , the NPG Members conducted a preventive visit to the *Psycho-Neurological Social Care Facility No. 1* under the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan.

The objective of the visit, carried out in line with the requirements of the OPCAT and the Constitutional Law on the Ombudsman of Azerbaijan, was to inspect the detention conditions and treatment-

² "Full secondary schools" refers to a secondary school where compulsory education is for 11 years.

related issues, determine to what extent the rights of persons under care were ensured, in this facility.

During the visit, which was conducted with the participation of the doctor member of the NPM Group, all areas of the facility, including bedrooms, places intended for leisure times, dining halls, kitchen and general areas were monitored regarding the detention conditions.

Private interviews were conducted with the persons residing in the facility, as well as with the management and staff of the social-care facility to examine the treatment issues and the general situation in the facility.

Several shortages have been determined in connection with the detention conditions. Thus, it was observed that one of the 4-person wards had 5 beds, men and women were treated on the same floor, and seriously ill people were kept on the upper floors.

So, bearing in mind that the facility elevator was out of service, which may pose impediments to the evacuation of such a category of persons in emergency situations, it would be appropriate to keep seriously ill persons on the lower floors.

During the inspection of the 48-person dining hall of the facility, it was found that there were only 28 chairs, and there was a high probability of a queue during the dining hours. The management of the facility justified this by providing services to some of the patients in their wards. It was also found that in the facility, there was a psychiatric shortage.

In the end of the visit, the NPG members made recommendations to the management and staff of the facility on how to improve the detention conditions.

The NPG Members carried out a scheduled visit to *Ganja City Psycho-Neurological Social Care Facility No. 4, which is a public-legal entity*, subordinated to the Ministry of Labor and Social Protection of the Population.

It must be noted that a new building of this social-care facility has been open since 30 December 2019. The facility is a public-legal entity, that provides inpatient social and rehabilitation services to persons over 18 years of age with disabilities associated with mental and mild mental disorders and who are incapable of self-care due to disability, and to such unsupported persons who do not have a relative or a legal representative who are able to provide support. It operates in accordance with the Statute approved by the Minister of Labor and Social Protection of Labor on 25 August 2020. The issues of admission and discharge of patients from the facility are regulated by the "Rules

on the Placement of Persons (Families) in Difficult Living Conditions in State Social Service Institutions” approved by Cabinet of Ministers’ Decision No. 320 dated November 5, 2013.

During the visit, it was determined that the facility did not have a specialized doctor. Consequently, taking into account the sensitive activity direction of this healthcare institution, the lack of such a specialized doctor must be considered a key deficiency regarding its activity.

In addition, the NPG members brought the necessity of the implementation of sanitary-hygienic measures for the COVID-19 outbreak to the attention of the staff of the facility.

2.2.8. Institutions of the local executive authorities

Based on the Optional Protocol, 10 preventive visits have been conducted to the institutions subordinated to the local executive authorities and falling under the jurisdiction of the NPM.

Within the framework of the Ombudsman’s NPM jurisdiction, visits have also been conducted to child institutions subordinated to the city executive authorities of Baku and other cities of the country, including Ganjam Sheki and Lankaran cities.

The NPG implemented a scheduled but unannounced visit to *Baku City Children’s Home No. 1*.

The purpose of this visit was to learn how the living conditions and treatment by the staff of children of different age groups, who were residing in the facility were ensured, as well as to review to what extent the documentation was processed in an appropriate manner.

While checking the registration books, it was observed that the relevant record-registration books (accounting, medical and etc.) were in an adequate state. However, there were deficiencies in the personal files (documents) of children residing in the facility. Thus, although, according to Article 3.1.6 of the Model Charter of Children's Home Social Service Institutions created by the State and the municipality, a social worker shall prepare a report on the assessment and determination of the need for social service, which provides information on its form, type, place, and duration, as well as an individual plan for the provision of social services to a child, such plans have not been found.

Despite the fact that the general condition of the child facility was adequate, there was overcrowding.

It was also determined that a doctor, newly appointed to the Medical Unit of the child institution, built his activities in line with the norms; the necessary medicaments and medical equipment were supplied. In the facility, where there were one doctor and four nurses in total, the child residents of the facility have been subjected to a general medical examination every three months.

It was also found that the works for the organization of leisure time for children were ineffective, which was justified by the management by taking measures to prevent the outbreak of COVID-19.

Children residing in the facility are engaged in various workshops and classes. After the classes, during their leisure time, the children mainly watch Turkish soap operas.

In the end of the preventive visit, a survey among children over 10 years old was conducted in order to evaluate the level of knowledge and skills related to human rights and child participation. The outcomes of the survey were analyzed based on demographic and other descriptive indicators, which will be considered during the next visits.

In connection with the new academic year, the child institutions subordinated to the local executive authorities, including the Children's Homes No. 2 and 3, located in Baku, have been visited.

The objective of the visits was to monitor the living conditions and the situation with ensuring the rights of children in these facilities, as well as their preparedness for the new academic year.

In the time of the visit, it was determined that the detention conditions in Children's House No. 2 in Surakhani district generally needed to be improved, and Children's House No. 3 in Khatai district tolerated the circumstances that hinder the education preparedness of children.

During the visits, problems found in the facilities clearly showed the challenges hindering equal opportunities for children in education and ensuring their right to education. Because it was found that in the children's homes No. 1, 2 and 3 in Baku and Sheki Myxed Type Children's Home, the rights of children to education were not well-ensured due to the inadequate number or lack of appropriate technical facilities to join online education carried out due to the pandemic, or due to poor internet speed that seriously impeded the right to education.

Under the NPM jurisdiction, an unscheduled visit to *the Ganja Children's Home of the Ganja City Executive Authority* was conducted.

The objective of the visit was to monitor the preventive measures for the COVID-19 outbreak carried out in the facility, to assess its sanitary conditions, and inspect the rights, conditions of detention, and treatment standards of the children residing here and the documentation.

During the inspection of the area of the child home, it was observed that the construction works in a new building, started in December 2018, have been continued. In the time of the meeting with the residents of the children's home, it was observed that their general conditions (clothes, room temperature, bedding cleanliness, visual aids, etc.) were satisfactory.

The admission process of a child to the Ganja Children's Home, where children ages 3 to 18 reside, is carried out on the basis of a decree issued by the Executive Authority. Here, while checking the personal files to confirm the legality of the resident status, it was observed that the facility had drawn up the children's personal records.

In addition, due to the failure to observe the norms related to nutrition and clothing of children by the management of the facility since it does not meet the current demand and age characteristics of children, it was considered appropriate for the Cabinet of Ministers to re-review its own norms on "Nutrition standards for children in kindergartens, orphanages, and pre-school children's sanatoriums," approved by Cabinet of Ministers Decision No. 130 dated March 9, 1994, and the norms of provision of clothes, shoes, and soft goods for children in children's homes approved by Cabinet of Ministers Decision No. 15 dated January 17, 1994.

In the end of the visit, legal awareness talks were held with the Ganja Children's Home staff and children in the frame of the national human rights month-long campaign, annually running across the country between 18 May-18 June on the initiative of the Ombudsman, and they were informed about the Ombudsman's current NPM mandate. It was recommended to always be sensitive to the issues of detention and treatment in the children's home, to maintain social distancing to be protected from the coronavirus outbreak, and to strictly follow the rules of hygiene.

The NPG members conducted an unscheduled visit to the *Sheki Mixed Type Children's Home*.

The purpose of the visit was to learn how the living conditions and treatment by the staff of children of different age groups, who were residing in the facility were ensured, as well as to check on their rights

during the special quarantine regime carried out to prevent the COVID-19 outbreak and strengthen the fight against it.

During the visit, a bedroom, classrooms, and recreation rooms, dining hall, kitchen, food storage, and the medical room were inspected.

Following the quarantine rules, the randomly selected children, as well as the management of the facility, psychologist, health provider, and other employees, were interviewed to investigate the treatment issues. During the conversations, the director of the facility said that the pediatrician post has been unfilled for two years, no financial resources have been allocated for the purchase of drugs, and the staffing is not sufficient.

During the visit, it was found that the ventilation system in the food warehouse was inactive. The director justified this by citing the limited electricity allocated, which impedes the operation of the system permanently.

Chapter 3.

LEGAL ANALYSES

The legal analyses are a significant part of the work of the Ombudsman's NPM mandate.

Under the NPM jurisdiction, the cornerstone of the legal analyses is the analysis of the activity, the related collected materials, the received relevant recommendations and suggestions, the theoretical and practical analysis of the legislation in force or proposed to be adopted, summing up the results, and drafting proposals.

According to Article 19 of the OPCAT, one of the powers granted to the national preventive mechanisms is to prepare proposals and observations concerning existing or draft legislation and submit them accordingly.

Legal analysis is also important in terms of the implementation of the *Paris Principles*³ in the activities of the Ombudsman.

Such work also makes a significant contribution to the process of harmonization of the existing national legislation and practice with the international human rights treaties to which Azerbaijan is a state party, joining the state to internationally binding agreements and fulfilling those international norms, as well as to the preparation of reports and complementary reports in relation to the measures taken by the state under international conventions to submit to UN agencies, regional organizations.

As earlier mentioned in the report, during the meeting with persons who are held in the places, which persons cannot leave on their own will in the territory of Azerbaijan, the Ombudsman and the NPG members use special questionnaire templates, which have been used in the preparation of this chapter of the 2020 Report as well.

Issues related to ensuring the rights of persons held in temporary detention facilities.

The practice shows that issues related to violations of legislation, conditions of detention, and treatment in TDPs are unique. In TDPs, contacts with the outside world are particularly restricted. These places are not designed for long-term detention, and therefore, have minimal amenities. From this perspective, indeed, appropriate guarantees for detainees, including procedural guarantees, are of particular importance.

³ Principles relating to the Status of National Institutions adopted by the UN General Assembly Resolution No. 48/134

The right to access to a lawyer: ***The right to*** access to a lawyer, the right to contact, the confidentiality of visits with a lawyer during *initial arrest and while under police custody*, and the possibility of a lawyer being present during interrogation are crucial safeguards against the possibility of ill-treatment of detainees.

Based on experience from around the world, it has been shown that the majority of maltreatment occurs right after a deprivation of liberty (temporary detention). As a result, having access to legal counsel while in police custody is a crucial deterrent to mistreatment.

In accordance with the CPT's experience and national practice, agrees that in exceptional cases there can be some delays in detainee's access to a lawyer of his choice. *However, this in no case, should lead to the violation of the right to contact a lawyer or the right to legal counsel.* The police should take appropriate steps to ensure the constitutional right of the detainee to receive the assistance of a legal counsel as soon as possible. This is the right of the detainee, as well as the direct duty of the police.

The right to a lawyer, together with the right to inform a third party of their choice about their arrest and the right to see a doctor, is important as a key safeguard to prevent ill-treatment, as well as to provide effective legal remedies that allow allegations and evidence of ill-treatment to be presented.⁴ The ECtHR may consider failure to implement safeguards to be a "deficiency in the investigation" in the future.⁵

In practice, several problems related to the right to legal counsel for persons detained in police custody remain unsolved. From this point of view, in particular, in a number of cases, appeals related to the *Main Organized Crime Department of the Ministry of Internal Affairs* were received. Most of the complaints received by the Ombudsman's Call Center, which were made by lawyers, were about the *Main Organized Crime Department*.

During the preventive visits organized by the NPG to the *TDP of the Goygol District Police Department*, the detainees said that they were not provided with lawyers during the administrative investigation. While examining the detainees' personal files, no note or protocol about the refusal of the service of a lawyer was found.

Pursuant to Article 65.3 of the Code of Administrative Offenses of the Republic of Azerbaijan, from the time of the initiation of proceedings on an administrative offense, the defender (a lawyer) and

⁴ *Bati and Others v. Turkey*, ECHR Judgement, 3 June 2004

⁵ *Algür v. Turquie*, ECHR Judgement, 22 October 2002 [in French]

the representative are allowed to participate in the administrative offense proceedings. When someone is placed under administrative arrest for the administrative offense, the defender is allowed to participate in the administrative offense proceedings from the time that person is administratively arrested.

According to Article 91.0.7 of the same Code, when an administratively detained person does not have his own lawyer, the competent body (official) should present him with a list of lawyers operating in the legal institutions in the area of the place of temporary detention, and create an opportunity to contact and meet with the lawyer of his choice. However, the absence, in the detainee's personal file, of notes on the provision or refusal of a lawyer created reasonable doubts about the non-implementation of the provisions of the Code of Administrative Offenses.

During the visit organized to the *TDP of the Dashkesen District Police Department*, the detained persons also said that in the course of the administrative investigation, they had no access to a lawyer. During the checking of the personal files of detainees, no note or protocol about the refusal of a service of a lawyer was found. Regarding this matter, it was reported from Dashkasan DPD that the protocol drawn up on the refusal of a lawyer by the person who is being prosecuted for an administrative offense is stored in the relevant court materials and therefore is not in the detainee's personal file.

Detainees held in the *TDP of the Shemkir DPD* were not also provided with a lawyer during the administrative investigations. During the check of the personal files of the detainees, no record or protocol on the refusal of a lawyer was found.

A similar situation was observed at the time of the preventive visits conducted to the *Samukh and Bilasuvar DPD*.

It should be noted that in the case laws of ECtHR against Azerbaijan, the delay in contacting with a lawyer was indicated as one of the critical elements of the procedural violation of Article 3 of the relevant Convention.⁶

Taking into account all the above, the Ombudsman emphasizes the importance of ensuring the rights of detainees to receive legal assistance and to meet with their lawyers and recommends organizing targeted awareness events the employees in the concerned area and strengthening the control.

Furthermore, considering the significance of the lawyering institution in the protection of human rights, the Ombudsman put

⁶ *Mammadov (Jalaloglu) v. Azerbaijan*, ECtHR Judgement, 11 January 2007

forward recommendations to the competent bodies for increasing the number of lawyers in the country, increasing the amount of payments made to them for legal aid at the expense of the state, and supporting their activity.

Common and comprehensive registration system:

Both international experience and national legislation and the analysis of visits show that if a unified and comprehensive control registration is carried out on a detainee, all aspects of detention and all actions taken (time and reasons of detention, information on rights, records on injuries, contact with his relatives and a lawyer), food, interrogation, transfer, and release), the protection safeguards of detainees will be strengthened. The detainee's lawyer should also have access to these registration documents when needed.

There are still deficiencies in the documentation related to the detained persons.

During the monitoring of the documentation and personal files in the *Goygol DPD*, it was found that the court decision, approved by the decision by the Ministry of Internal Affairs of Azerbaijan dated 11.06.2014, attached to the personal case of I.A., who was found guilty under Article 528.1 of the Criminal Code of the Republic of Azerbaijan and was administratively arrested for 10 (ten) days based on the decision of the Goygol District Court, was not sealed with a coat of arms in violation of the requirement of clause 2.1.1 of the "Temporary Regulations on Detention Centers for Administrative Detainees" approved by the Ministry of Internal Affairs. The NPG members objected to the head of the TDP in this regard. Consequently, the defect was removed by the head of the facility by adding the sealed Court decision to the personal case.

Despite the fact that appropriate records were made in the registry books, which was found during the examination in the *Dashkesen DPD TDP*, the gifts brought to the facility were not recorded in the TDP's book for "Registration of gifts and handbills".

In the time of interrogation in the *Jalilabad DPD*, detainees stated that they were not provided with a lawyer during the initial interrogation; they were not informed of their rights; their next of kin were not informed about their detention; and copies of relevant procedural documents were not provided to them.

While checking the arrest records in the *Lankaran CDPD*, it was revealed that the arrest record (protocol) of one of the detained persons did not have the signature of the lawyer, and the arrest record (protocol) of the other person did not have his own signature. During

the inspection of the documents of D.A., it was determined that there was a violation of the procedural period related to arrest and release, and only after the intervention of the NPG Member, that detained person was released.

In the *Zagatala DPD TDP*, even though Z. Sh., who was detained for ten days by the corresponding court decision, said that he refused to eat a meal and that his phone conversations were obstructed, while checking his personal file, it was observed that the fact of food refusal was not documented.

In *Khachmaz DPD*, an appropriate act was drawn up regarding the defect discovered during the review of the documentation. Thus, no relevant record was made, though the detainee held in the facility was transferred to the investigation isolator four days before the day of the visit. In addition, despite the fact that another detained person was released according to the relevant decision a day before the day of the visit, no record was made in the registry book.

In this regard, the attention to the issue of registration and documentation should be increased, and control should be strengthened. .

Being informed of the rights. The legal framework of the Republic of Azerbaijan has established many avenues for the right of detainees to be informed of his/her rights, as well as an obligation to do so. These norms are reflected in the Constitution, the main law of the country, as well as in the Criminal-Procedural Code and the Law on Police.

Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.⁷

The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.⁸

⁷ 12th General Report on the CPT's activities, para. 44

⁸ The European Code of Police Ethics, para. 55

In that sense, the Ombudsman concluded that it is the NPG's responsibility to investigate, during monitoring, which information the persons detained received.

During the visit to the *Shamkir DPD TDP*, it was determined that there are no informative materials regarding the rights and duties of the persons detained and arrested in the cells.

During the visit, a meeting was held with 28 detained persons at *Jalilabad DPD TDP*. The detained persons stated that they were not provided with a lawyer during the initial interrogation; they were not informed of their rights; and their close relatives were not informed about their detention; and copies of relevant procedural documents were not presented to them.

The Ombudsman reiterated that she believes it vital to increase attention to the matter of providing information to detained persons.

Right to contact family members. The Ombudsman defined it as a duty for the NPG members to investigate during the visits the right of detainees to contact their family members.

As a rule, international standards provide for the release of the detained person's information to "a third party of his choice".

During the visit, 10 persons detained in *Bilasovar DPD TDP* were interviewed and informed of their rights; and the situation regarding ensuring their rights was investigated. During the talks with them, it was found that the detained persons were not provided with a lawyer, and their family members were not informed by phone about their detention.

In the time of the preventive visit, in *Jalilabad DPD TDP*, the detainees informed the NPG members that their close relatives had not been notified about their detention.

Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.⁹

A detained person's right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the very outset of police custody.¹⁰

The Ombudsman is concerned over the shortcomings found in practice regarding the rights of the detained person to communicate with his/her family members, which are recognized by both national

⁹ The European Code of Police Ethics, para. 57

¹⁰ 12th General Report on the CPT's activities, para. 43

legislation and international standards, and emphasizes the significance of taking serious action to address the aforementioned shortcomings.

Issues related to detention conditions.

In the *Goygol DPD TDP*, T.M., who was accused under Article 535.1 of the Code of Administrative Offenses of Azerbaijan, and administratively detained for 10 (ten) days by the decision of the Goygol District Court, said that after being brought to the police custody, the parcel brought by his relatives were not fully delivered to him.

Regarding the issues mentioned above, the deputy-head of the Goygol DPD stated that due to the preventive measures implemented against the spread of the pandemic, the visits, and the receipt of gifts and parcels for persons held in the facility, were temporarily suspended, and that the detainees were provided with food three times a day according to the norms.

During the inspection of the visiting room of TDP, it was observed that a CCTV was installed in that room. This case should be considered as a violation of the principle of confidentiality of the meetings with the lawyer of the detained or arrested persons kept in the TDP. So that, under Article 19.1 of the Law on Ensuring the Rights and Freedoms of Persons Held in Places of Detention, an arrested or detained person may meet privately and have confidential communication with his lawyer and legal counsel, without limitation the number and on duration of the meetings, from the moment of his arrest or the announcement of the decision on the selection of pretrial detention. In addition, according to the case law of the ECtHR, the right of an arrested person to speak confidentially to a lawyer is a particularly important component of the right to legal aid, which would lose much of its benefit without the opportunity to consult and receive confidential instructions.¹¹

In the course of the visit to the *Samukh TDP DPD*, it was revealed a difficulty in the organization of food for the persons detained in the facility due to the lack of a contract signed between the TDP and any canteen, and that a police department did not have a canteen.

Under Article 20.1 of the Law on Ensuring the Rights and Freedoms of Persons Kept in Places of Detention, arrested or detained persons are provided with free food three times a day, which meets modern hygiene requirements and food standards in terms of quality, in accordance with the food and material standards established by the

¹¹ Brennan v. The UK, EctHR Judgement dated October 16 2001

relevant executive authority. The age, health condition and religious traditions of the arrested or detained persons should be taken into account when preparing those meals.

During the visit to the *Lankaran City-District Police Department*, it was found that the institution was overcrowded, and 37 people were detained in the TDP, of which the maximum capacity was for 28 people on the day of the visit. The main reason for this is large number of regional and specialized courts in the area. This creates serious difficulties in terms of detention conditions..

However, the police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.¹²

Although the current maintenance works are being carried out at the Gakh DPD TDP, the temporary detention place does not meet the relevant standards. There are 3 double and 4 single cells in the facility. The size of cameras is small. In the two-person cells, the sanitary junctions are separated from one side by plastic materials. In single cells, it was not possible to separate sanitary facilities.

The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours:

- in the order of 7 square metres,
- 2 metres or more between walls,
- 2.5 metres between floor and ceiling.¹³

In the course of the visit to the *Gabala DPD TDP*, it was determined that medical examination and medical assistance are carried out by the paramedics of the emergency medical department of Gabala District Central Hospital against part 2.1. of the "Rules for providing medical and psychological assistance to arrested or detained persons, as well as their detention in medical institutions", approved by decision No. 67 of the Cabinet of Ministers of Azerbaijan dated 18.04.2013. During the follow-up visits, it was observed that this situation was not changed.

¹² The European Code of Police Ethics, para. 56

¹³ 2nd General Report on the CPT's activities, para. 43

The right to seek medical attention for those held in TDPs need to be recognized by law. That is to say, a doctor should be contacted immediately if a person requires to have a medical examination. Furthermore, the right to see a doctor should also include the right to undergo a medical examination by a doctor of his choice if the arrested person wishes.

Persons deprived of their liberty by the police shall have the right to have a medical examination by a doctor, whenever possible, of their choice.¹⁴

Issues of restriction of the right to liberty and unlawful detention by the police:

As a result of the analysis of the activities of the Ombudsman and the NPG members, and 24-hour Ombudsman's Call Center, violations of procedural norms by the police was revealed that in a number of situations, including police custody went beyond the legal limit.

This Ombudsman requested the relevant state institutions for verification of the allegations reflected in the complaints about the violation of the right to freedom, and in many cases, she achieved ensuring the right.

The applicant G.K., calling to the Ombudsman's Call Center, stated that his spouse was detained in Police Unit No. 35 of the Khatai District Police Office for four days without any reason by the employees of the Unit and asked for taking appropriate measures. During the investigation, it was determined that the person was held in custody beyond the limit provided by law, and his release was ensured.

In addition, the Khatai District Prosecutor's Office was addressed in order to verify the allegations reflected in the complaint, as well as to prevent similar cases in the future.

The Ombudsman's Call Center has also received complaints about detention by the Main Organized Crime Department under the Ministry of Internal Affairs. The lawyers specifically highlighted in their appeals that they had difficulties meeting with their clients, and obtaining information about the grounds and reasons for detention.

In a call to the Ombudsman's Call Center, a lawyer A. complained that he was created an obstacle for his meeting with the person detained at the Main Organized Crime Department, and requested help in this regard. The complaint was investigated by NPG members and the defender's request was granted.

¹⁴ The European Code of Police Ethics, para. 57

The length of time that detainees are held in the custody of the police and other law enforcement agencies is restricted by legislation and procedural rules. However, in practice, the time spent by such persons in police units and offices surpasses the time frames specified by the procedural laws. Although the police authorities try to excuse these law violations with different justifications, the rights of detainees are violated in any case.

G.F., was detained in the TDP of the *Imishli DPD* for more than 10 days; following an appeal to the Ombudsman's Call Center and the intervention of the NPM, he was transferred to the Pre-trial Detention Facility No. 3 of the Penitentiary Service of the Ministry of Justice.

During the visit to the *Tovuz DPD TDP*, it was found that the delays in the results of the swabs taken for the COVID-19 test from the detained persons brought for up to a week, which is contrary to the period established by the legislation for the transfer of the detainees to the pre-trial detention facility, caused difficulties.

Restriction of freedom by the police should be short-term. After the short period specified in the law, the person detained by the police must either be released, or must be personally brought before a judge for a decision on the continuation of detention.

Investigation of cases of ill-treatment:

As part of her duties as NPM and mandate, the Ombudsman conducted on-the-spot investigations into complaints of possible ill-treatment in places where detained persons cannot leave of their own will, including during preventive visits to MIA institutions. By immediately reacting to the appeals of each admitted person, as well as the arrested and detained persons, their family members, and their lawyers, the conditions of detention or treatment issues in those settings, the appointment and conduct of forensic examination, and the condition of ensuring the rights of the detained persons are investigated. The General Prosecutor's Office, the Ministry of Internal Affairs, and the Ministry of Justice and other competent institutions were appealed accordingly; investigations were conducted and the appeals were answered in all cases.

In accordance with the requirements of the Constitutional Law and the Optional Protocol, the Ombudsman contributes to the protection of the right to protection of people's honor and dignity by performing functions related to torture and ill-treatment and determining the scope of circumstances that may create conditions for torture and ill-treatment.

Post-factum assessment of ill-treatment is based on the generally accepted principle of competence. Thus, investigative bodies should have full authority to determine the facts of the case and, if necessary, to reveal and punish those responsible.

The Ombudsman recalls the relevant law enforcement agencies the importance of conducting investigations and legal assessments during the investigation and legal evaluation of allegations of ill-treatment in accordance with the principles of effectiveness, independence, accuracy, comprehensiveness, reasonableness and speed, in accordance with the CPT standards, in addition to the national legislation.

Detention conditions and treatment issues in penitentiary service institutions. The Ombudsman continued her works protecting the rights of persons held in penitentiary institutions and convicts, including investigating appeals and conducting visits to penitentiaries.

Transfer to a penal institution and conditions of detention. Deficiencies related to conditions of detention in some institutions of the Penitentiary Service still remain. The need for repair work manifests itself in different forms in different enterprises. In some cases, there is a need for complex repair and construction works (Investigation Isolator No. 2), while in a number of institutions (The disciplinary cell in the Penitentiary Institution No. 5), there a need to carry out repair works in certain parts.

As it is known, incarcerations in themselves have serious restrictive features in terms of norms and rules of detention conditions. In this regard, the fact that the conditions of detention do not fully meet the norms in such facilities can lead to additional restrictions and deprivations.

From this point of view, the situation of incarceration in Penitentiary Institution No. 5 of the Penitentiary Service causes concern.

The CPT pays particular attention to the issue of detention of inmates in conditions similar to solitary confinement for any reason (including disciplinary purposes). Solitary confinement (in this case disciplinary cell) can under certain circumstances amount to inhuman or degrading treatment, and in this respect all forms of solitary confinement should be as short as possible.

The Ombudsman considers it important to monitor and improve the detention conditions in the penitentiary institutions of the

Penitentiary Service and calls on the Ministry of Justice to increase attention to this issue.

In some cases, there is a need to use isolation as a protective measure. In this case, the regime of solitary confinement of an inmate should be less restrictive than the regime applied to the inmate isolated as a disciplinary sanction.

In the case of transfer to a incarceration, it should not be indefinite, prolonged and repeated.

During the visit to the Pre-trial Detention facility No. 2 in the Ganja city, the registration journals of those detained in the incarceration was reviewed; and it was found that 11 people were sent to the incarceration as a disciplinary sanction during the first month of 2020.

It should be encouraged to make efforts to stop or limit the use of solitary confinement as a form of punishment.¹⁵

It is recommended that the recourse to solitary confinement in penitentiary institutions should be the last resort, based on world practice and CPT standards.

Furthermore, the existence of deficiencies related to material conditions and supplementation in some institutions of the Penitentiary Service was determined during the visits carried out by the NPG.

During the visit to the *Sheki Penitentiary Institution*, it was observed that the bedding was dirty and some of it was unusable. During a confidential interview with the detainees, they said that the bedding had not been changed for a long time.

According to clause 5.6 of the internal disciplinary rules of pretrial detention facilities, bedding should be changed no less than once a week.

Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.¹⁶

As in the past, in 2020, Pretrial Detention facility No. 2 was "distinguished" by defects related to detention conditions. The shortcomings related to sanitary and hygiene norms should be noted, in particular. In this regard, we once again reiterate the necessity of the finalization of the construction works of the new penitentiary institution in Ganja city, which is underway, as soon as possible.

¹⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: UNGA Resolution 43/173, 9 December 1988, Principle 7, A/RES/43/173

¹⁶ European Prison Rules, Rule 24

Separation of categories of persons. The principle of separation, according to which different categories of persons between convicted and accused (untried) persons are segregated, aimed to ensure their protection and recognition of their specific needs or status.

Those people are usually separated due to the following indicators:

- based on gender and age, that is, women are separated from men; minors from adults;
- Based on the legal status, the convicted persons are separated from those who are arrested and detained;

The mentioned indicators are universal. National legislation and international standards may, of course, provide for additional criteria.

According to international practice, separation of convicts should also be based on an objective assessment of the risk for the convict. If convicts are in need of protection, they should be able to apply for separate detention. Some convicts may need to be kept separately due to specific threats to their safety from other convicts, for example due to their ethnic origin, religious beliefs, and sexual orientation.

In some circumstances, separate detention may adversely affect different categories of convicts. This issue was taken into consideration by NPQ during its preventive visits.

In the pre-trial detention facility of the *Sheki Penitentiary Institution*, it was found that a person named O.M., (b. 2005), was held together with adults.

Also, a minor, named A.M., was kept together with three adult persons in *Pretrial Detention Facility No. 2*.

Pursuant to Article 5.11.2 of the Internal Disciplinary Rules of Pretrial Detention Facilities, minors and adults should be held separately.

Minor offenders should be kept separately from others and treated according to their age and legal status in terms of detention conditions.¹⁷

In all detention facilities, juveniles should be separated from adults, unless they are members of the same family. Under the controlled conditions, juveniles may be brought together with carefully

¹⁷ Human Rights Committee General Comments on the implementation of the International Covenant on Civil and Political Rights, para. 13

selected adults as a part of special programme that has been shown to be beneficial for the juveniles concerned.¹⁸

Children should be detained in an establishment designed for their protection as much as possible from harmful influences, considering their age-specific needs.¹⁹

The Right to refuse food.

The applications regarding refusal of food by an arrested or detained person received by the Ombudsman, calls recorded at the Call Center, investigations conducted during visits, and analysis of information in mass media show that in recent years, including during the reporting period still remain.

In the applications, main problems were related to the dissatisfaction with biased investigation, and the administration to justice can be cited as the main reasons for the "hunger strike".

In 2020, Tofiq Yagublu, about whom the information on his refusal to eat circulated through media, was received in the facility where he was detained, and his health state was kept under control, and the Ombudsman dealt with this issue within her powers.²⁰ At the next stage, according to the court's decision, the pre-trial detention measure against T. Yagublu was changed to house arrest.

We can give the reception by NPG, the detainees Emin Sagiye²¹, Afgan Sadigov²², Vugar Aliyev and other persons who refused to take food as another example. .

The NPG members investigated the appeals related to refusal of in the Baku Pretrial Detention Facility, Investigation Isolator No. 3, Penitentiary Institutions No. 6 and 17, the Specialized Treatment Institution under the Penitentiary Service of the Ministry of Justice.

The analyzes reveals that there is a need to resolve certain issues in the laws and practice around food refusal.

So, in practice, the staff of the penitentiary service and the management of the institution ask the convict who refuses to eat to write a special application addressed to the management of the

¹⁸ UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990; para. 29

¹⁹ European Prison Rules, Rule 11

²⁰<https://www.turan.az/ext/news/2020/9/free/politics%20news/az/127375.htm>

²¹<https://www.amerikaninsesi.org/a/emin-saqiyev-19-g%C3%BCnd%C3%BCr-acl%C4%B1q-edir-t%C9%99l%C9%99bl%C9%99ri-dinl%C9%99nilmir-/5571889.html>

²² https://apa.az/az/sosial_xeberler/Ombudsman-Aparati-fqan-Sadiqovla-bagli-mlumat-yayib-618079

institution about this. They do not consider the refusal of food to be de jure without such an application being written and registered. *However, the legislation does not specify such a requirement.* Article 42 of the Law of the Republic of Azerbaijan "On Ensuring the Rights and Freedoms of Persons Kept in Places of Detention " defines the measures to be taken when an arrested or detained person refuses to eat.

Application of specific instruments. The question of the use of instruments of restraint and the reasonable limits of such use among the circumstances that may lead to torture and ill-treatment is of particular importance.

All means of restraint allowed should be used only in exceptional cases. According to the generally accepted international approach, restraints applied to convicts should be used for the shortest possible necessary period of time, the use of restraints (also the use of force) should be recorded, and the management should be informed about it immediately.

Instruments of restraint, such as handcuffs, chains, and straitjackets, should never be used as disciplinary sanction (punishment). Exceptions may be made for the following circumstances:

(a) as a precaution against escape during a transfer, provided that they are removed when the prisoner appears before the judicial or administrative authority;

(b) due to medical reasons based on the physician's report;

(c) by the order of the facility director to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician and report to the higher administrative authority.²³

During the preventive visit, it was found that S.O., who was detained in the solitary confinement located in the Pretrial Detention Facility No. 2 under the Penitentiary Service, was placed in a solitary cell for 7 days to prevent self-harm by the decision of the facility director based on the information given to him, the detainee was handcuffed, and also that a cut mark was observed in his throat area.

The management of the pre-trial detention facility reported that the detainee was handcuffed in accordance with the "Instruction on Security Measures in the Penitentiary System of the Republic of Azerbaijan and the Rules of Their Application" and based on the act drawn up. During a private conversation of the Ombudsman's NPG

²³ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 33-47

members with that detainee, he said that he cut his own throat as an act of protest against the biased court decisions against him, and that no violence was committed against him by the facility staff.

Since the application of special means to the detainee for a long period of time raises enough doubts about the adequacy and necessity of this measure in the current situation, this case is noted by the Ombudsman as a worrying point in terms of inhumane treatment.

The allowed instruments and methods of restraint shall be authorized by law and other normative act. Such means shall not be used longer than necessary.²⁴

In those rare cases when resort to instruments of physical restraint is required, the prisoner concerned should be kept under constant and adequate supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. Finally, a record should be kept of every instance of the use of force against prisoners.²⁵

The Ombudsman calls for the minimization of cases of use of special means of restraint and the full observance of the guarantees necessary at this time, and emphasizes that she will keep in mind the issues of the application of restrictive means in her activities within the MPM mandate.

Registration as a protective measure: United and systematic registration is an important protective measure. Such registration allows to ensure the transparency of the work of state authorities. On the other hand, full and comprehensive registration acts as an important guarantee in ensuring the protection of persons deprived of their liberty.

During registration monitoring, the identity of the convict (arrested person), the reasons for deprivation of liberty, the duration of imprisonment, the time the convict was brought to the institution, the time the person left the institution (for investigation and court hearing) and returned there, the health of the person when leaving the place of deprivation of liberty and arriving there and issues such as his physical condition, bringing him before the court, disciplinary measures are the subject of investigation.

In *Pre-trial Detention Facility No. 2 under the Penitentiary Service*, it was found that if 3 copies of the application must be filled out at the time of receiving a gift, it was settled on only 1 copy of the application,

²⁴ UN Standard Minimum Rules for the Treatment of Prisoners, Rule 40

²⁵ 2nd General Report on the CPT's activities, para. 53

contrary to the requirements of clause 9.4 of the Internal Disciplinary Rules. Moreover, it was discovered that there were deficiencies in the registration regarding the transfer to the disciplinary cell, the last registration was made three days before the visit. However, according to Article 35.1 of the Internal Disciplinary Rules, heads of pretrial detention facilities, their deputies, heads of fields, senior inspectors, and medical workers must visit the disciplinary and solitary cells every day and take records.

The importance of registration issues for the effective protection of arrested persons has been mentioned as an absolute condition in international standards.²⁶

The Ombudsman reminds the importance of unified comprehensive and efficient registration system in penitentiary institutions.

Issues of training the employees of the Penitentiary Service.

In order to carry out criminal-executive functions and protect inmates' rights, the Penitentiary Service staff' training is crucial. One of the most important needs of the day is for qualified individuals who know and can accurately fulfill the legal obligations.

The prison personnel shall possess an adequate standard of education and intelligence. After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.²⁷

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in issues related to juveniles.²⁸

The variety of educational conversations aimed for Penitentiary Service staff needs to be increased.

The program on conditions of detention and treatment in penitentiary institutions during the trainings conducted by the Academy of Justice should be significantly expanded, according to the Ombudsman.

Psychiatric institutions. Psychiatric institutions are regarded as the most so-called favorable places of custody for the violation of the rights of those held and treated there according to the generally

²⁶ Human Rights Committee General Comments on the implementation of the International Covenant on Civil and Political Rights, paras.20, and 11

²⁷ UN Standard Minimum Rules for the Treatment of Prisoners, Rule 47

²⁸ UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, Rule 85

accepted international experience. Thus, persons whose freedom is restricted in these institutions are deprived of the opportunity to adequately understand and choose the necessary knowledge and habits to defend their rights. From this point of view, the issue of conditions of detention in psychiatric institutions, issues of treatment, as well as guarantees necessary for the protection of rights, have kept their relevance in any period, including in pandemic and special quarantine conditions.

Lack of staff in psychiatric institutions remains a problem. For one reason or another, young medical personnel are not interested in choosing the field of psychiatry, including working in state medical institutions. Here, the primary causes might be attributed to psychiatric's remuneration and social security difficulties. In general, it should be stressed that there aren't many medical and auxiliary personnel, especially when it comes to children and teenagers.

The Ombudsman recommends applying new approaches based on international experience in the concerned field and taking significant actions to implement critical changes in this area.

We can conclude that the old practice is still frequently used in a number of the topics, the Ombudsman has chosen as the focus of her investigation thanks to monitoring work implemented by the NPG. *It should be said with regret that the Republican Psychiatric Hospital No. 1 still has an isolation room.*

The Ombudsman once again recalls the recommendations made by the CPT about the refrain from the use isolation rooms and special equipment.

There is a need to apply new approaches, since the creation of community-based programs for people with mental disorders, this type of accommodation, the expansion of opportunities to engage in labor in the area outside the ward, taking into account the skills and interests of patients, and doing appropriate work in this area can contribute positively to the effectiveness of treatment. In the experience of Greece, Portugal and other European countries, in terms of the effectiveness of treatment and rehabilitation measures, the application of community-based programs is given a lot of space. It would be appropriate to take into account the geographical location of facilities, including in those which are newly built, as well as benefit from the relevant international experience.

It should be emphasized that certain institutions are overcrowded. In international standards, difficulties with living space and density are some of the most prominent.²⁹

In some instances, there are problems related to length of stay of some patients in mental health facilities based on their diagnosis, their discharge, and the refusal of relatives to provide care at home.

For example, the members of the NPG conducted an ad hoc visit to the *Psychiatric Hospital No. 1.*, to investigate the allegation that patient A.H. was placed in the facility without any reasonable justification. The NPM delegation had a confidential meeting with the patient. In addition, a lawyer of the patient appealed to the Ombudsman requesting for assistance in re-examining that patient, who involuntarily placed to the mental health facility according to the decision of the Baku Court of Appeal, by the doctor-psychiatrist commission and discharge. Consequently, the Ombudsman requested the Ministry of Health for checking the allegations indicated in the complaint and taking appropriate measures. Considering the appeal of the Ombudsman, the patient A.H. has brought before the Physician Advisory Commission and discharged from the hospital based on the final decision of the Commission.

It is necessary to draw more attention to the aforementioned problems and to create standards aimed at controlling relevant practices.

The Ombudsman points out the importance of increasing the quota in social service institutions for accepting patients who are kept in psychiatric hospitals, who have completed their treatment but are not accepted by their family members and relatives, and who continue to be maintained in psychiatric institutions.

It is necessary to improve the coordination work between the Ministry of Health and the Ministry of Labor and Social Protection of the Population for the transfer of patients who are kept in psychiatric hospitals, whose treatment period has ended, but who are not accepted by their family members and relatives, and who remain in such facilities, to social service institutions.

In the course of monitoring and investigations, in a number of cases, we got information about cases, where the relatives of patients tried to keep them in the hospital for embezzling the benefits set by the state. So, in some circumstances, patients who are in remission and discharged home are deliberately deprived of medication by their

²⁹ CPT Standards. Key Points of General Reports. p 63 CPT/Inf/E (2002) 1-REV.2015

family members, and as a result, patients whose condition deteriorate are sent back to mental health institutions, which ultimately result in the recovery of this benefit and the confiscation of the amount.

In order to prevent such negative situations, the Ombudsman recommends to place persons from this category in social service institutions under the Ministry of Labor and Social Protection of the Population, to keep them there under the supervision of social workers, and to make necessary changes in the normative and legal acts in this regard, and to develop the necessary procedures.

The analysis conducted by NPG also demonstrates that there are not enough qualified social workers in the country to assist those who have been released from mental facilities.

Among the current problems, it must be noted the requirement of regular inpatient treatment for the determination of disability, as well as the associated issues in practice. A person with impairments will thus be denied benefits if they do not receive an inpatient evaluation in accordance with the "Disability Determination Criteria" standards. Furthermore, it should be noted that long-term inpatient therapy is not often necessary in most situations. A visit to *Psychiatric Hospital No. 2*, for instance, revealed that 200 people were waiting for inpatient care.

Therefore, it is proposedd to revise the "Criteria for Determination of Disability".

Covid-19 outbreak and the rights of detainees:

In 2020, the COVID-19 pandemic had a significant impact on all areas of life, including ensuring human rights all over the world.

During the pandemic and special quarantine regime, the Ombudsman highlighted the significance of the increased attention to the issue of ensuring human rights, issued the relevant public appeals.

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CPT states that monitoring by independent bodies, including the National Preventive Mechanisms (NPMs) and the CPT, remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine. All monitoring bodies should, however, take every precaution to observe the 'do no

³⁰ Report Information Agency, (online news portal) <https://report.az/hadise/ombudsman-koronavirus-epidemiyasi-ile-bagli-xalqa-muraciet-etdi/>

³¹https://apa.az/az/sosial_xeberler/Ombudsman-KIV-lr-v-sosial-sbk-istifadcilrin-muracit-unvanlayib-591876

harm' principle, in particular when dealing with older persons and persons with pre-existing medical conditions.³²

In this light, the preventive visits have been carried out on the basis of a special schedule, and during these visits, the issues of protection from the pandemic and ensuring the human rights of detainees in such specific situations were inspected.

The Ombudsman and the NPG Members implemented scheduled and unscheduled to the penitentiary institutions of the Penitentiary Service of the Ministry of Justice (the Baku Pre-trial Detention Facility, penitentiary institutions Nos. 10 and 17, Pre-trial detention facility No. 2, and the Sheki Penitentiary Institution), as well as the institutions under the Ministry of Internal Affairs (the Detention Center for Administratively Detained Persons and temporary detention places), health and social service institutions for the purpose of checking the implementation of preventive measures for coronavirus disease and sanitary conditions.³³

During visits attended by a doctor member of MPG, it was observed that at the entrance of those establishments, the temperature of the admitted persons was measured by a medical worker, and persons were provided with a special disinfectant solution to clean the hands. Convicts and detainees were informed on a daily basis, and medical examinations were conducted.

Also, it was found that according to the relevant rules approved by the Penitentiary Service, sending parcels and visitings of other persons with the convicts and detainees in **penitentiary institutions** have been restricted as a part of preventive measures.³⁴

During the pandemic, the importance of ensuring the human rights of detainees has become even more pronounced.

First, it has once again been made evident how crucial and relevant the subject of prisoners' access to medical care and sanitary facilities, particularly in jails and penitentiary institutions, is.

In accordance with Article 22 of the Law of Azerbaijan "On Ensuring the Rights and Freedoms of Persons Kept in Places of Detention", medical examinations, treatment-preventive measures, and sanitary-hygiene and preventive measures for the pandemic in

³² CoE CPT Statement of Principles relating to the treatment of persons deprived of their liberty in the context of coronavirus disease (Covid-19) pandemic, Principle 10, <https://shorturl.at/ruyOT>

³³ Azvision az (online news portal), <https://azvision.az/news/207378/-azerbaycanda-mehkumlar-koronavirus-yoxlanisindan-kecirilib.html>

³⁴ Sitat News (online portal), <https://sitat.news/ombudsman-apatimehkumlara-sovqatlarin-gonderilmesi-ve-onlarla-gorus-mehdudlasdirilib>

places of detention are carried out in line with the legislation. In addition, medical assistance and psychological aid provided to such persons, as well as the rules relating to their detention in medical institutions, are determined by the relevant executive authority.

In this regard, the Ombudsman considers that “the pandemic period” must be learned and analyzed by the relevant bodies, including the Main Medical Institution of the Ministry of Justice, and discussed in coordination with the Ministry of Health and other relevant bodies to make amendments and additions to the existing legislation.

Article 31 of the Law on “Sanitary-epidemiological Safety” of Azerbaijan stipulates the public’s control over the fulfillment of the sanitary legislation, and taking sanitary hygiene and anti-epidemic measures.

The Ombudsman strongly believes that public control over this field must be strengthened, the number of persons included in the public control commissions under the relevant state bodies must be increased, and experts in the relevant field must be admitted to such commissions.

The issue of the absence of doctors working night shifts in the Penitentiary Service institutions and limiting their activities only to working hours has remained a concern. It should be noted that even though this issue was raised by our Institution in the past, the Ministry of Justice did not evaluate it as an actual problem. *Bearing in mind that the COVID-19 pandemic has created new realities and challenges, it is necessary to re-evaluate this issue, at least during the pandemic.*

The Ombudsman considers it indispensably necessary to further increase the scope of the vaccination campaign carried out across the country and to involve more people in this campaign, including those kept in closed institutions according to the special schedule. There is a need to take measures to enlighten the people detained in such institutions.

In cases requiring immediate and short-term response, this mechanism has shown itself in a positive way, and it has allowed for the protection of the many convicts’ rights, including the right to health.

Considering the appeals of the prisoners and their family members, the Ombudsman made requests to the Pardon Issues Commission under the President of the Republic of Azerbaijan. Also, the Ombudsman started to participate in the meetings of the reorganized Pardon Issues Commission.

During the pandemic period, 2072 prisoners have been granted conditional early release, 422 inmates have been transferred to

precinct penitentiary institutions, 10 convicts have been released due to serious illness, 334 convicts have been exempted from punishment, the sentences of 591 inmates have been reduced, and 906 accused persons who have been remanded in custody, have had their sentences changed.

Considering the amnesty appeals addressed to the country's President by convicts over the age of 65 and their family members who need special care because of their age and health due to the spread of a new type of coronavirus infection in the world, taking into account the health condition of the convicts, their good behavior during sentence, and based on humanism principles, convicts were granted pardon by the Presidential Decree "On pardoning a number of convicted persons" dated April 6, 2020. In general, the decree was applied to 176 prisoners.

Taking into account the Ombudsman's appeals, 10 convicts were pardoned and released from the unserved part of the sentence.

Furthermore, as the other important aspect, it should be noted that the application of alternative methods and means to the challenges that have arisen in connection with the provision of a number of rights provided for in the legislation in order to eliminate them.

Considering the requirements of the special quarantine regime to tackle the pandemic, some rights of detainees during the year have been restricted. For instance, restrictions on detainees' rights in places of detention and convicts to meet with their relatives have generated some debate in this regard.³⁵

CPT states that any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of Covid-19 should have a legal basis and be necessary, and restricted in time. Such measures applied to these persons should be proportionate and respectful to the human dignity and they should receive comprehensive information, in a language they understand, about any such measures.³⁶

Furthermore, any restriction on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication).³⁷

In this sense, the Ombudsman put forward a concrete recommendation.

³⁵ Interpress. ge (online news portal), <https://interpress.ge/read/11311>

³⁶ Supra note 6, Principle 4

³⁷ Supra note 6, Principle 9

Bearing in mind the positive effect of videocalls between the prisoner and his relatives on their correctional process by strengthening their relationships, saving transportation costs for the meeting (particularly for those who live far away), the importance in preventing the entry of the prohibited items into the facility, and international experience of communicating through video, which is widely used in other countries, the Ombudsman recommends making an addition pertaining to the provision of videocalls for those who cannot come for a short-term visit to the Code of Execution of Punishments of Azerbaijan.

It should be noted that the Ombudsman raised this issue in numerous ways before (application of the Skype program based on the Polish experience), but, unfortunately, it was not considered. Consequently, the special quarantine regime once again showed the not only theoretical but also practical importance of the Ombudsman's suggestions and recommendations.

CPT recommends that as close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.³⁸

During the past year, regarding the incoming appeals, the Ombudsman regularly requested the investigation or judicial authorities for choosing non-custodial sentences as alternatives to imprisonment.

The implementation of measures in this regard paved the way for the elimination of overcrowding in detention places and penitentiary institutions during the *pandemic and special quarantine regime*, and is important from humanistic, economic, and criminological perspectives.

In this regard, the enforcement of non-custodial sentences should be broadly referred to.

The new legal reforms initiated by making fundamental changes to the criminal legislation with the Presidential Decree dated February 10, 2017 "Improvement the penitentiary system, humanization of penal policy, and enhancing the use of alternatives to punishment and

³⁸ Supra note 6, Principle 5

coercive procedural measures not associated with social isolation", aimed at decriminalizing offenses.

In 2020, the pre-trial detention measure for 906 persons held in investigation isolators of the Penitentiary Service has been changed.³⁹

The work of the Probation institution at the national level has led to positive developments. Thus, compared to the previous year, there was an increase in the use of electronic monitoring bracelets, a total of 2603 convicts were provided to wear such bracelets.⁴⁰

The Ombudsman takes the view that it is necessary to continue with the practice of the courts of choosing alternative sentences, and encouraging the use of non-custodial sentences.

As the fifth aspect, it should be noted that the problem of overcrowding in a part of the institutions where detained persons cannot leave on their own will, and which fall under the jurisdiction of the NPM is of special relevance, especially during the pandemic and the special quarantine regime.

Based on the outcomes of the NPG monitoring visits, the overcrowding in numerous institutions still remains a concern.

Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.⁴¹

International standards previously did not specify the minimum area of the building or the minimum area in square meters per inmate. However, in relatively recent times, the CPT has changed its approach in this regard. The organization recommends that the size of solitary cells should not be less than 7 square meters, and for multi-person cells, 10 square meters for 2 prisoners, 21 for 5 prisoners, 35 for 7 prisoners, and 60 square meters for 12 prisoners.

The Ombudsman once again notes the importance of repairing the institutions that the detained persons cannot leave of their own free will, especially the institutions subordinated to the Penitentiary Service, and speeding up the work in investigation isolators and penal

³⁹https://apa.az/az/sosial_xeberler/Pandemiyaya-gor-otn-il-906-nfrin-barsind-secilmishbs-qtiimkan-tdbiri-dyisdirilib-626031

⁴⁰<http://ikisahil.com/post/oten-il-2603-mehkuma-elektron-qolbaq-tetbiq-olunub>

⁴¹ CPT 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, para.46

institutions that have been under construction or planned for a long time.

The Patriotic War and Ombudsman's activity under the NPM mandate:

In order to prevent the military aggression of Armenia on the territories of Azerbaijan and to protect the rights and freedoms of the civilian population, the Ombudsman continued her activities in the field of protection of human rights and promotion of international legal norms during the counter-offensive operations carried out starting from September 27, 2020.

According to Article 5 of the Constitutional Law "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan", the declaration of a state of emergency or martial law does not cease or restrict the activities of the Ombudsman.

During the 44-day patriotic war, the Ombudsman carried out regular visits to densely populated areas affected by Armenian aggression, had meetings with the victims, monitored the destroyed houses and other infrastructure, and met with state authorities and civil society organizations to address individuals' current problems caused by destruction.

In the course of these visits to those areas, the monitoring was continued.⁴²

Furthermore, during the preventive visits implemented to other institutions, Armenian military servicemen held there have also been accepted, their requests have been heard, and the rights and application procedures have been explained by providing them with legislation in their own language. The privately received persons were medically examined in the presence of a medical doctor and psychologist members of the Ombudsman's NPG. It was found that they were provided with the necessary medical and psychological assistance without any kind of distinction in relation to them, and international humanitarian law (IHL) norms, including the Geneva Conventions were observed.

These persons expressed their satisfaction with the treatment and detention conditions, health care services, nutrition, and thanked for such a human attitude towards them. Within a short period of time, these persons have been extradited by the State of Azerbaijan to their own country-Armenia.

⁴² Trend News (online news portal), <https://az.trend.az/azerbaijan/society/3308457.html>

Chapter 4.

LEGAL EDUCATION

One of the activities of the Ombudsman NPM is the organization of legal education work addressed to the persons who are detained in places that they cannot leave of their own free will and service personnel.

The educational activities on the national and international legal frameworks, OPCAT norms and other international standards have been continued in orphanages and boarding institutions, academies of the law-enforcement authorities, military units, pre-trial detention facilities, and penitentiary institutions throughout 2020.

During the preventive visits organized on the basis of national and international standards, legal education was provided for service employees in the institutions of Penitentiary Service, TDPs, educational, healthcare, and other facilities, as well as the persons detained in those institutions; legal advice was given on the issues raised.

During such events, the provisions of OPCAT were promoted, information on the Ombudsman's NPM mandate and the measures undertaken under this jurisdiction were provided.

In the course of the visits conducted to the state children's institutions, a survey was conducted among the children who reside there. The survey, which was conducted among children over 10 years old, aimed at evaluating the level of knowledge and skills about children's rights and checking child participation. Similar surveys were conducted in October-December 2020 among 123 children from the vulnerable population group, including 53 girls and 70 boys, in six institutions located in Baku, Ganja, Guba, and Lankaran cities.

Such surveys are important in terms of improving awareness of children's rights.

On the initiative of the Ombudsman, under the NPM jurisdiction, cooperation with educational institutions, carrying out training of staff of law-enforcement authorities, including the Justice Academy under the Ministry of Justice, and awareness-raising activities increasing legal knowledge were conducted were continued.

As a part of this activity, lectures on topics "Ombudsman's role in the protection of human rights" and "Activity of the NPG of the Ombudsman of Azerbaijan" were made and these they were addressed to judicial candidates, who participated in the initial long-

term training courses at the Justice Academy, and persons who were accepted to the service in justice authorities, and penitentiary service and forensic expertise center. The lectures were delivered by the NPG members of the Ombudsman.

The trainees were informed of the Ombudsman institution's designation as performing NPM functions at the national level in order to prevent human rights violations, restore the violated rights, and ensure the implementation of the OPCAT, its regular preventive visits conducted to places where persons cannot leave of their own will to carry out the relevant activities more effectively, recommendations and follow-up visits to assess the implementation status with examples from national and international legislative acts, as well as the experience of local and foreign international organizations.

Taking into account the pandemic conditions, distant legal education activities were maintained in educational institutions, that train law-enforcement officers. The next training, coinciding with the period of "Human Rights Month" announced by the Ombudsman, was organized by the Academy of Justice in an online form on the topic "Activity of the Ombudsman as a National Preventive Mechanism" for those newly admitted to the Forensic Expertise Center.

In the lecture given by the head of the NPG, the trainees were given extensive information the reforms implemented in the national legislation of the Republic of Azerbaijan, that took into account the Ombudsman's initiatives and proposals, the Ombudsman's activities to protect human rights and NPM jurisdiction, treatment issues based on international standards, and methods for looking into detention conditions.

The extracts from the standards set forth in the "Istanbul Protocol", an OHCHR manual that discusses forms of inhuman treatment and effective investigation and documentation of torture, and punishments, SPT recommendations, and the CPT's General Reports were taught in a comparative manner with national legislative acts.

The educational publications on various issues of human rights, produced by the Ombudsman Office in 2020, as well as related to preventive measures against the COVID-19 pandemic that published by the UNICEF Country Office, which included posters, bulletins, booklets and leaflets were distributed to places where persons cannot leave on their own will, , including the penitentiary service's penal and correctional facilities.

In addition, posters in Azerbaijani and English languages were handed at the places visited with the informaton on how to contact the Ombudsman's newly established 916 Call Center.

Chapter 5.

Public Relations and International Cooperation

In 2020, within the framework of the Ombudsman's NPM activities, the work was continued in the direction of exchanging information and experience with the general public, NGOs, mass media, regional and international organizations, NPMs of other countries, ensuring mutual participation in events, and organizing joint events.

Both the general public at the national level and the international community were regularly informed about the Azerbaijan NPM's work. In this respect, a total of 43 press releases were published in the media in 2020, of which 35 were about preventive visits and 8 were about legal awareness activities and other events.

Press releases, as well as reports related to NPM activities, information on the composition of the NPG, and relevant normative-legal acts, are placed in the special columns created on the Ombudsman's official website in both Azerbaijani and English. The reports were not only placed on the official website but also submitted to relevant state institutions and international organizations.

During the visits and legal awareness events organized within the framework of NPG activities, including meetings with relevant state institutions, discussions on legislation, and the process of preparing relevant reports, the participation of members of civil society and experts was regularly ensured.

International cooperation. In the capacity of an NPM, the Commissioner for Human Rights of the Republic of Azerbaijan, is interested in close cooperation with the UN and its Treaty Bodies, including the SPT, as well as the Council of Europe, the CPT, the European Union, the Organization for Security and Cooperation in Europe (OSCE), the Association for the Prevention of Torture (APT) and other international organizations, as well as the NPMs of other countries, and also conducts exchanges of experiences.

The International Committee of the Red Cross (ICRC) Country Representation and the Ombudsman Institution resumed their cooperation last year as well. As it is known, the ICRC visits places of detention and deprivation of liberty located on the territory of the Republic of Azerbaijan to assess the circumstances of confinement and the treatment of detainees. In the course of their visits, the ICRC meets with the detainees and convicts talks to them privately, without witnesses. During such visits, some detained persons request a

meeting with representatives of the Ombudsman Office. The Ombudsman receives several letters regarding such appeals during the year, and the names of the persons mentioned in the letters are included in the meeting lists, and those persons are visited by the NPG during the next visits.

Cooperation with UNICEF in the framework of NPM activity.

The partnership between the Ombudsman Institution and the UN Children's Fund (UNICEF) was maintained last year, and a new Joint Action Plan was signed. The Joint Action Plan has outlined the framework of the actions that the two institutions will carry out together, and fruitful cooperation has been developed in this direction.

In accordance with the Action Plan for joint cooperation between the Ombudsman Institution and UNICEF, social workers and lawyers were involved last year to support the child component of the National Preventive Mechanism.

The activity was organized in three main directions: visits, call center and increasing children's participation. The goals set for the preventive visits were as follows:

- identification of facilities that have not been visited for a long time, where defects were found in previous visits, and facilities with a high-risk factor and including them in the list of scheduled visits;
- achieving positive developments in the protection of the rights of children staying in institutions as a result of the visits.

In order to achieve the stated objectives of the visits, the following activities were carried out:

- The monitoring reports were electronically registered, and facilities with a high-risk factor were identified and added to the list of scheduled visits;

- The thematic topics and questions to be used during visits to child institutions, questions that can be addressed to children, and methods that can be conducted to detect cases of violence have been prepared.

In 2020, within the framework of the activities of the Ombudsman's NPM for the prevention of torture, 40 scheduled and unscheduled visits were made to 24 state child institutions in Baku, as well as in the cities and districts covered by the Ombudsman's Ganja, Sheki, Guba, and Jalilabad Regional Centers. In 9 of such visits, the participation of the UNICEF experts was ensured. As a result of the monitoring visits, the relevant institutions were informed about the defects.

Chapter 6

Recommendations and Suggestions

In order to effectively protect the rights of those in custody, the Ombudsman as NPM recommends the following based on her analysis on the outcomes of the work.

Regarding to the legal and normative acts

(1). To add a provision to the Code of Execution of Punishments of the Republic of Azerbaijan, which specifies the organizing of video meetings for those who are unable attend a short-term meeting;

(2). To clarify the norm regarding the refusal of detained or arrested persons, as well as convicts (convict - under the Penal Code), to accept food in Article 42 of the Law "On Ensuring the Rights and Freedoms of Persons Kept in Places of Detention" and the Code of Execution of Punishments of Republic of Azerbaijan;

(3). To develop a mechanism for ensuring the participation of persons serving sentences in penitentiary institutions in the university entrance exams and, therefore, to make an apropos addition to the Code of Execution of Punishments of the Republic of Azerbaijan, considering the rules of the UN Standard Minimum Rules for the Treatment of Prisoners, specifying the provision of the further education of all prisoners capable of profiting thereby, as well as conditions that are created for the participation of detainees in the Correctional Facility of the Penitentiary Service in the final exams;

(4). To establish an effective mechanism for the placement of persons suffering from mental health problems or with serious deteriorations in their mental health during the period of serving sentence, in psychiatric institutions, and for this purpose, to revise and re-adopt the "Rules for medical certification of convicts suffering from serious diseases that prevent them from serving their sentences", approved by the decision No. 4-N of the Collegium of the Ministry of Justice of the Republic of Azerbaijan dated November 29;

(5). To adopt the corresponding program on "Rehabilitation and Socialization of Prisoners in Penitentiary Institutions" in order to rehabilitate of convicts in penitentiary institutions, develop their personality and reintegrate them into society after release;

(6). To accelerate the adoption of the bill "On the Protection of Patients' Rights" in order to reliably ensure the rights of patients;

(7) To adopt a new strategic document in accordance with the requirements of the modern era, taking into account the expiration of many items of the "National Program for Action To Raise Effectiveness of Protection of Human Rights and Freedoms in the Republic of Azerbaijan" approved by the Presidential Decree dated December 27, 2011;

(8) To replace the phrase "first-time offenders (persons who committed a crime for the first time)" with the phrase "persons who are suspected of having committed crimes for the first time " in Article 2.31.3 of the Internal Disciplinary Rules of Temporary Detention Places.

(9) To change the phrase "first-time offenders (persons who committed a crime for the first time)" to the phrase "persons accused of committing a crime for the first time (first-time accused)" in Article 5.11.3 of the Internal Disciplinary Rules of Pretrial Detention Places.

Suggestions to the Ministry of Internal Affairs

(1) To eliminate the problems encountered in the practice regarding the right of persons put in custody by the police to meet with their lawyers (legal counsels); to conduct educational activities and strengthen control;

(2) To strengthen control over the unified and comprehensive registration system (database), documentation and registration work;

(3) To inform the detainees about their rights and strengthen control over the issue of the communication with their family members;

(4) To take significant actions against cases of custody by the police beyond the periods specified in the legislation;

(5) To avoid using solitary confinement, which contravenes modern requirements and standards;

Suggestions to the Ministry of Justice

(1) To conduct analytical work about the pandemics and quarantine regime by the Ministry of Justice; to study international experience, and prepare “a road map” to overcome the problems;

(2) To apply new approaches regarding public control; to increase the number of members of the public control commission;

(3) To take steps to ensure that doctors work on the night shift (at least until the end of the pandemic) in penitentiary institutions;

(4) To increase the number of complex measures for the vaccination of prisoners;

(5) To address the issue of overcrowding in penitentiary institutions, and expedite the building of the institutions that are currently under construction;

(6) To recourse to the experience of transfer to incarceration in penitentiary institutions as little as possible;

(7) To strengthen control over the matters of separation of various categories of persons;

(8) To avoid the practice of writing an application in the name of the head of the institution, which is not provided for in the legislation and made to formalize the refusal of food only after that;

(9) To minimize the use of special tools in the institutions of the Penitentiary Service;

Suggestions to the Ministry of Health

(1) To take actions towards the abandonment of isolation rooms in mental health institutions;

(2) To take measures to abandon the practice of applying special (restraint) tools to patients in psychiatric institutions;

(3) To eliminate problems related to the length of stay of patients in psychiatric institutions based on their diagnosis and their discharge and develop standards in the concerned areas;

(4) To improve the coordination work regarding the transfer of patients detained in psychiatric hospitals, whose treatment period has ended but who are not accepted by their family members and relatives and who are forced to stay in psychiatric institutions, to social service institutions under the Ministry of Labor and Social Protection of the Population;

(5) To improve the detention conditions at the Psychiatric Hospital No.2;

Suggestions to the Ministry of Labor and Social Protection of the Population

(1) To increase the quota in social service institutions for accepting patients who are kept in psychiatric hospitals, who have completed their treatment but are not accepted by their family members and relatives, and who continue to be maintained in psychiatric institutions.

(2) To revise the “Disability Determination Criteria”.

STATISTICAL INDICATORS

Annex 1

Diagram 1. Distribution of preventive visits carried out as NPM by institutions

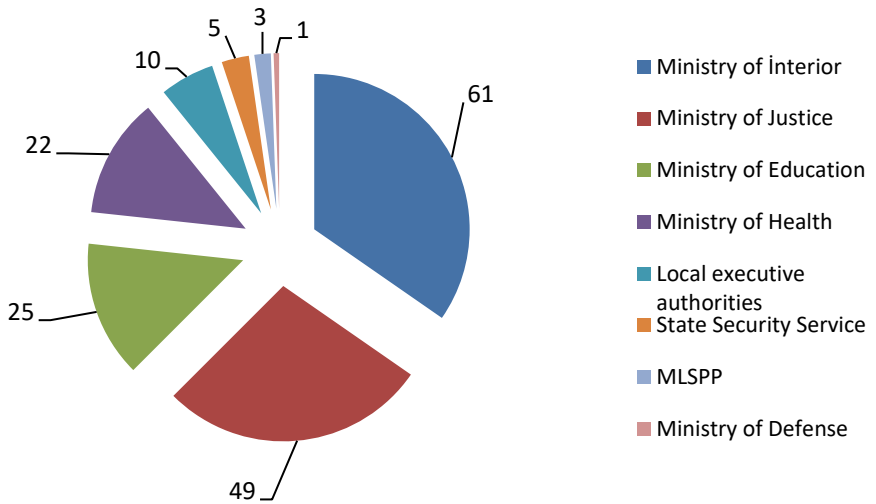


Diagram 2. Number of visits conducted by NPM in 2020

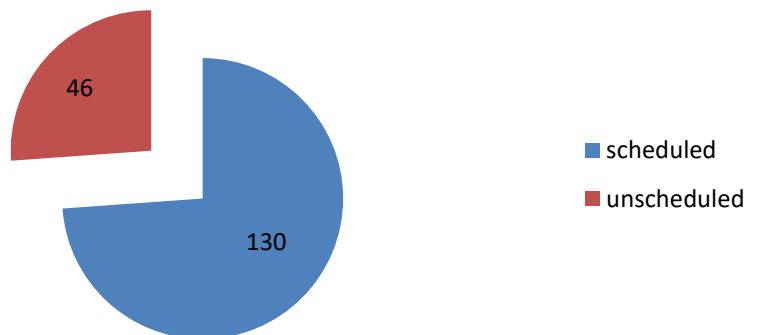
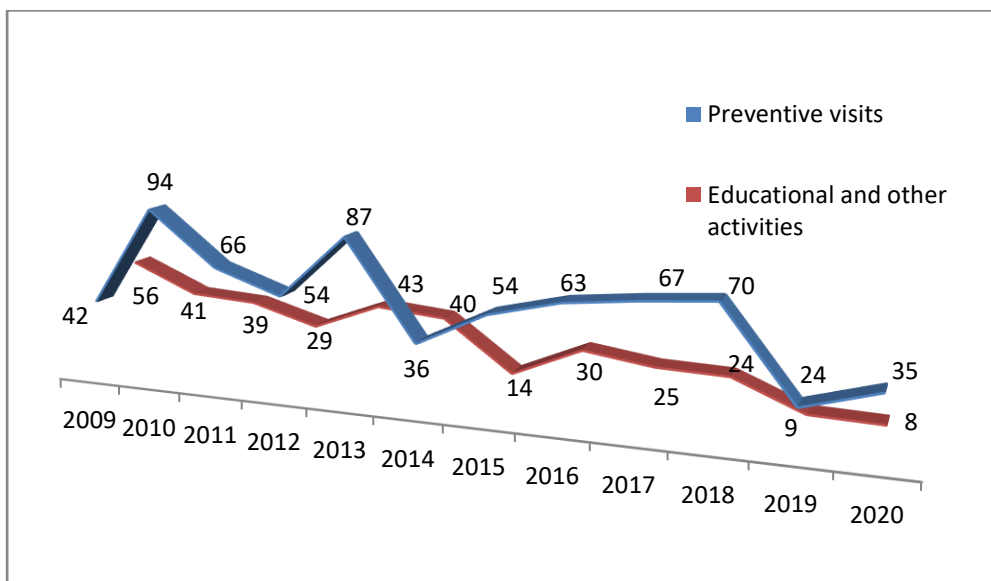
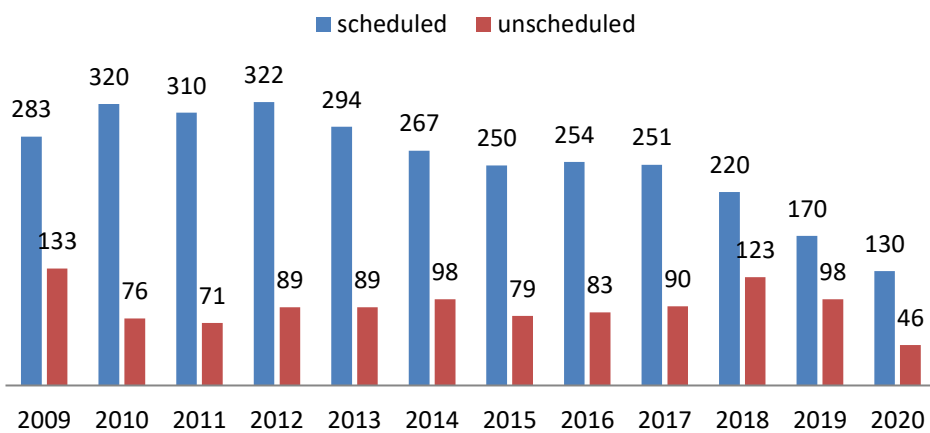


Diagram 3. Number of visits implemented by NPM by years



Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the 1993 World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the

adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

Part I

General Principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Part II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven

professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected" at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who

the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at

the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

Part IV

NATIONAL PREVENTIVE MECHANISMS

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

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

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Part V

DECLARATION

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI

FINANCIAL PROVISIONS

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

FINAL PROVISIONS

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of

the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State;

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.