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## 1. Public Defender's Welcome



**Public Defender of Georgia**  
**Ucha Nanuashvili**

Bulletin N3 of the National Preventive Mechanism contains crucial information on activities implemented during the autumn 2015.

A presentation of a special report on the National Preventive Mechanism's Special Report on the Requests/Complaints Procedures in Georgia's Penitentiary System has been of utmost importance. It is worth mentioning that the report is based on the most wide-scale research ever administered in Georgia up to date. Within the same period ten visits were paid to penitentiary institutions while one special and two post-visit reports were published the Public Defender's Office.

Monitoring of the country's 12 mental health institutions carried out by the members of the National Preventive Mechanism deserves special attention. The NPM members also monitored Police Stations and Temporary Detention Isolators located in east Georgia. On October 20, 2015 the staff of the Department of Prevention and Monitoring monitored a joint operation for the return of migrants for the second time. A special report on the condition of older persons in day and night care specialized institutions was also published.

The bulletin provides information on Penitentiary Institution N8 including dynamics of the implementation of recommendations and legislative changes.

The present edition reviews issues related to the restricted right of long-term visits in penitentiary institutions when a disciplinary sanction is applied. The bulletin focuses on a report concerning the state of children's rights in boarding schools subordinated to Georgia's Orthodox Church and Muslim denominations. The report was developed by the Special Preventive Mechanism and the Centre of the Child's Right of the Public Defender's Office.

The period of Autumn 2015 saw the implementation of a series of activities including debates around issues related to responses to ill-treatment under the police custody and visions of the State and public on this problem. During an important visit to Geneva the representatives of the Public Defender met with the members of the UN's subcommittee on prevention of torture.

A training on monitoring of the security sector provided to the staff of the National Preventive Mechanism stood out as particularly important for the development of their professional skills.

An interview with the UNICEF representative in Georgia Mr Sascha Graumann is also covered in the present Bulletin.

## 2. Mandate of the National Preventive Mechanism

Since 2009 the Public Defender of Georgia has been fulfilling the function of the National Preventive Mechanism in Georgia. For this purpose the Special Preventive Group was formed at the Public Defender of Georgia, the competences of which are prescribed by the Organic Law on Public Defender of Georgia.

The United Nations Subcommittee on the Prevention of Torture has issued the Guidelines on National Preventive Mechanisms to provide interpretation of provisions of the Optional Protocol to the Convention against Torture. It aims to address number of important issues that emerged in practice.<sup>1</sup>

The Guidelines define several important issues, according to which the National Preventive Mechanism represents an additional system of supervision and it does not rule out or substitute other systems of supervision.<sup>2</sup> The mandate and powers of the National Preventive Mechanism is defined by a legislative act; functional independence of the National Preventive Mechanism is ensured.

According to article 4 of the Optional Protocol, the NPM mechanism has access to all penitentiary facilities. For prevention of torture and other forms of ill-treatment, the National Preventive Mechanism and relevant state agencies should constantly review the recommendations provided by the National Preventive Mechanism. It is a continuous obligation to ensure effective operation of the National Preventive Mechanism and hence, the state, as well as the National Preventive Mechanism itself, should constantly check the efficiency of the National Preventive Mechanism. At the same time, the opinions of the Subcommittee on the Prevention of Torture should be considered in this process.

The National Preventive Mechanism should make all efforts in the process of carrying out each aspect of its mandate to avoid the conflict of interests. The members of the National Preventive Mechanism are required to systematically revise the working methodology and to undertake relevant trainings for

capacity building.<sup>3</sup> The National Preventive Mechanism should elaborate an action plan that includes visits to and inspection in all places of deprivation of liberty that are under effective state control. The activities should be planned and the resources should be allocated in a way that would allow visits to the places of deprivation of liberty at such frequency that would ensure making an effective contribution to the prevention of torture and other forms of ill treatment.<sup>4</sup>

The National Preventive Mechanism issues reports after each visit to the closed institutions, as well as annual reports and other reports as needed. Reports should contain relevant recommendations, where appropriate. Recommendations in their turn should be drafted in line with the norms adopted within the frames of the UN concerning the prevention of torture and other forms of ill-treatment, including the comments and recommendations of the Subcommittee on the Prevention of Torture.

The National Preventive Mechanism is obliged to fully protect the acquired confidential information.<sup>5</sup>

## 3. Main Event

### 3.1 NPM Special Report on Requests/Complaints Mechanism in Penitentiary System of Georgia

On 19 November 2015 Public Defender Ucha Nanuashvili presented a special report of the National Preventive Mechanism (NPM) on the requests/complaints procedures in the penitentiary system.

Prisoners' confidence in the abovementioned procedures was surveyed for the first time in Georgia. Within the framework of the survey, which included both sociological and legal components, the Special Preventive Group interviewed prisoners by using a pre-designed questionnaire in 14 penitentiary institutions, after which the group analyzed the regulatory normative base of internal monitoring and procedures of consideration of requests/complaints, as well as the response practice of the Ministry of Corrections and Legal Assistance, in the context of international standards.

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<sup>1</sup>The Subcommittee on the Prevention of Torture, Guidelines on National Preventive Mechanisms, 2010, para. 2

<sup>2</sup> Id. para. 5

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<sup>3</sup> Guidelines on National Preventive Mechanism, paras. 30-31

<sup>4</sup> Id. paras. 33-34

<sup>5</sup> Id. para. 36-37

Quick and impartial responses to the applications by the authorities and efficient functioning of the internal monitoring system are essential component of the fight against torture. Effective mechanism of monitoring and consideration of requests/complaints in penitentiary facilities ensures respect for the rights of prisoners and represents fundamental safeguard against ill-treatment. Absence of such a mechanism negatively impacts on security and order in penal institutions. Prisoners often resort to the most extreme form of protest – hunger strike - due to improper response to their complaints.

The aim of the National Preventive Mechanism was to find out how safe, available, confidential and impartial the requests/complaints procedures were in the first quarter of 2015, as well as whether they were responded timely and if the decision-making was justified.

The survey found that material and technical means of submission of requests/complaints are generally available, though awareness on the procedures is low among prisoners. Significant part of requests/complaints concerns revision of verdicts, pardon, medical service, transfer to other penitentiary facilities and ill-treatment.

Some of the prisoners believe that submission of a complaint is not the right thing to do; others fear that submission of a complaint will result in exerting pressure on them; (the survey showed that in some cases pressure was indeed exerted on prisoners); part of prisoners do not hope for a fair response.

According to the survey, the principle of confidentiality is often violated during submission of complaints. At the same time, essential problems exist in terms of ensuring timely and adequate responses to the complaints. In many cases the issues indicated in the complaints are not comprehensively surveyed and the decisions made after consideration of the complaints are not sufficiently substantiated. Efforts of the General Inspection of the Ministry of Corrections are unsatisfactory as well.

The report contains the Public Defender's specific recommendations with regard to the abovementioned issues. It should be noted that although proper responses to medical requests/complaints by the Medical Department of the Ministry of Corrections still remains one of the major problems, the Regulatory Division of the Medical Department tries

to critically evaluate various aspects of the penitentiary healthcare within the framework of the monitoring of penal institutions and also to prepare relevant recommendations, which is a positive step.

The survey was carried out by the funding from the Open Society Georgia Foundation within the framework of the project "Enhancing Internal Monitoring and Mechanism of Consideration of Requests/Complaints in Penitentiary Facilities".

#### **4. Activities of the National Preventive Mechanism**

##### **4.1 Visits**

###### **4.1.1 Visits in the penitentiary establishments**

Within the period from September to November 2015 the National Preventive Group visited penitentiary institutions N12, N6, N8 and N 16. During these visits the group members were able to move freely on the territory of aforementioned institutions and there had been no reported cases involving the impediment of the monitoring by administrations of the institutions. Institution staff has provided all requested information available to them to the members of the group.

The data obtained during the monitoring visits are currently being processed by the monitoring group and findings are to be presented to broader public by early 2016.

###### **4.1.2 Monitoring in Police Stations and Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia**

The Special Preventive Group monitored 12 police stations and 4 temporary detention isolators of the Ministry of Internal Affairs in Shida Kartli and Samtskhe-Javakhet regions.

During the monitoring, the Special Preventive Group checked the physical environment in the temporary detention isolators, talked with prison staff and examined documents of the inmates arrested in 2015, including protocols on arrests and visual examination, as well as emergency medical service cards. Members of the group were guided by the pre-designed guidelines. The monitoring revealed a number of important cases containing signs of alleged ill-treatment by police. The group members talked to police staff and examined detainees' registration and transfer documents. They visited division buildings; checked the practice of notification of family members of the detention, access to a lawyer and a doctor;

interviewed police officers about investigative procedures.

Currently the Special Preventive Group is processing a large volume of data collected during the monitoring and will publish a report in the near future.

#### **4.1.3 Monitoring of Psychiatric Care Institutions**

Special Preventive group members inspected 12 psychiatric care institutions in Tbilisi, Rustavi, Imereti, Samegrelo, Samtskhe-Javakheti and Adjara.

During the monitoring the NPM group members examined physical environment of the institutions and conducted face-to-face interviews with patients in a manner that ensured their confidentiality. Interviews were also conducted with the administrations, medical staff and members of social services. The group members examined and reviewed documentations and medical records as a result of which a number of cases involving alleged misuse of power by the staff of the institutions were revealed. On October 28, 2015 The Public Defender of Georgia submitted a proposal N03-1/8853 to the State Prosecutor's Office to look into the cases involving violence against patients in A. Kajaia Surami Psychiatric Hospital. In regard with the occurrence a criminal investigation was launched (case file N038311015001) on October 31, 2015 under Khashuri district unit of the Ministry of Interior of Georgia on signs of the crime stipulated by Article 126, Part I of the Criminal Code of Georgia.

Currently, data obtained as a result of the monitoring are being processed by the group members to present a respective report to broader public in the near future.

#### **4.1.4 Monitoring of Deportation Process**

An innovation - monitoring of joint return operations was introduced in the work of the National Preventive Mechanism in 2014. It is important that the monitoring has become regular, as a result of which employees of the Department of Prevention and Monitoring of the Public Defender's Office carried out monitoring of the joint return operation for the second time on October 20, 2015.

The monitoring was carried out within the framework of the EU-Georgia Readmission Agreement and was aimed at observing the deportation of 35 Georgian citizens from the EU countries.

Border police officers of Germany, Switzerland and Bulgaria handed over Georgian citizens deported from Germany, Switzerland and Bulgaria to the Georgian side (representatives of the Ministry of Internal Affairs) on board (in Dusseldorf and Sofia). The deportation was coordinated by the European organization FRONTEX.

Officers of the Patrol Police and the Migration Department of the Ministry of Internal Affairs of Georgia were engaged in the operation. Within the framework of the monitoring, representatives of the Department of Prevention and Monitoring of the Public Defender's Office went from Tbilisi International Airport to the cities of Dusseldorf and Sofia.

The deported persons were checked (gender specifics were taken into account) by officers of the Ministry of Internal Affairs with a metal detector in the plane, after which one or two employees of the Ministry of Internal Affairs sat next to each deported person.

The process of checking and travelling was monitored non-stop. No violation of the rights of the deported persons has been revealed. The trip was calm, during which members of the National Preventive Mechanism talked to the deported persons, part of which expressed dissatisfaction against the deportation process in general.

The Public Defender continues to survey the reasons for dissatisfaction and to verify information.

#### **4.1.5 State of Rights of Older Persons in Daily Specialized Institutions**

A special report conveys findings of the monitoring conducted jointly by the National Preventive Mechanism and the Department of the Protection Rights of People with Disabilities on the legal status of beneficiaries of day and night special care institutions for the old aged.

The monitoring carried out in April 2015 in Tbilisi and Kutaisi based elderly care institutions as well as in five service providers to elderly people revealed a series of problems including inappropriate treatment of beneficiaries, flaws in paperwork, understaffing and inadequate level of qualification of staff coupled with beneficiary unfriendly physical environment, inadequate infrastructure etc. However, a boarding

house for the elderly run by the Young Teachers Union stood out as a showcase with the services being provided in line with established standards.

The Public Defender issued recommendations to agencies in charge for effective implementation of the rights entitled to the senior citizens under the state's care so that existing flaws are adequately addressed.

## 4.2 Dialogue with stakeholders

### Response to Facts of Ill-treatment in Police: Visions of the State and Society



Photo: Public Defender of Georgia

- On December 4, 2015, the Public Defender held another public debate on "Response to Facts of Ill-treatment in Police: Visions of the State and Society". Reports were presented by Ekaterine Khutsishvili, Head of the Public Defender's Department of Criminal Justice, Nika Kvaratskhelia, Head of the Public Defender's Department of Prevention and Monitoring, Varlam Khatridze, Deputy Head of the General Inspection of the Ministry of Internal Affairs, and Zviad Koridze, Head of the Pardon Commission.

The main topics of the debate were the facts of ill-treatment committed by police officers and inefficient investigation of offences committed by law enforcers. Rules of interrogation of detainees, shortcomings in documentation of bodily injuries and proper processing of other important documents were also discussed.

Ekaterine Khutsishvili, Head of the Department of Criminal Justice, stressed the ineffectiveness of investigation. According to her, this year the Public Defender's Office has sent 9 proposals to the Prosecutor's Office with regard to initiation of investigation into alleged offences committed by law enforcers, however, none of the cases have been solved yet. She also termed conduction of investigation into alleged offenses involving police officers by the General Inspection of the Ministry of Internal Affairs as conflict of interest. According to

her, the abovementioned casts doubt on the objectivity of investigation.

Varlam Khatridze, Deputy Head of the General Inspection of the Ministry of Internal Affairs, denied existence of conflict of interest. According to him, in 2015 alone the General Inspection has reviewed more than 2000 disciplinary cases involving police officers and punished a number of them.

The debate also focused on safeguards to protect detainees from torture and other ill-treatment during and after detention. Nika Kvaratskhelia, Head of the Department of Prevention and Monitoring, based on the monitoring results, stated that reasonable suspicion existed with regard to a number of cases that detainees were subjected to physical violence during or after detention. He added that there was a particularly high risk of violence prior to placing detainees in a temporary detention center. In addition, there are no surveillance cameras in police stations and therefore, it is impossible to obtain videos showing treatment of detainees, which could serve as decisive evidence for the investigation. The discussion also focused on reasonability of equipping police officers with body cameras in order to prevent excessive use of force.

The debate lasted in a Q&A format more than two hours. The event was moderated by Nino Gobronidze, representative of the Council of Europe Office in Georgia.

- On November 20, 2015, the Public Defender of Georgia held another meeting with representatives of international organizations and diplomatic missions accredited in Georgia.



Photo: Public Defender of Georgia

Public Defender Ucha Nanuashvili talked about the novelties in the Public Defender's Office – opening of the Academy of Human Rights and activation of hotline. He briefly overviewed the state of human rights in the country, the legal dispute over the Rustavi 2 TV broadcasting company, the investigation

of the release and public display of secret videos, the shortcomings in the process of appointment/promotion of judges by the High Council of Justice, the abuse of lawyer Giorgi Mdinaradze by police officers, the necessity for investigation of the release of telephone conversations of Mikheil Saakashvili and other members of the National Movement, the recent by-elections, legislative amendments and other important issues.

Public Defender's representatives presented recent special reports of the Public Defender to the representatives of the diplomatic corps and international organizations. In addition, close cooperation with the diplomatic corps within the framework of the Universal Periodic Review was underlined at the meeting.

Participants of the meeting had the opportunity to ask questions about interesting topics around the country's recent developments.

#### 4.3 Participation in local and International Events

- On November 10, Natia Katsitadze, Deputy Public Defender, Nika Kvaratskhelia, Head of the Department of Prevention and Monitoring, and Niko Tatulashvili, Head of the Department of International Relations and Communications, attended the 23th session of the second cycle of the Universal Periodic Review (UPR) in Geneva, where a report on the human rights situation in Georgia was reviewed.



Photo: Public Defender of Georgia

After the session, the representatives of the Public Defender of Georgia held a meeting with Joachim Rucker, President of the United Nations Human Rights Council, and talked about the protection of human rights in Georgia, as well as the media, freedom of expression, protection of human rights in conflict regions, labour inspection and other issues.

The Public Defender's delegation also met with representatives of Sweden, Holland, Germany, Belgium and the Czech Republic, which took active part in the Universal Periodic Review and provided important recommendations to the Georgian Government. The sides agreed on close cooperation in implementation of the recommendations.

On November 11 the Public Defender's delegation met with a member of the United Nations Subcommittee on Prevention of Torture and briefed him in detail of the efforts and future plans of the Department of Prevention and Monitoring. The Subcommittee praised the Department's activities and a decision was made that the National Preventive Mechanism of Georgia will share its experience with other countries.

The delegation members also held meetings with representatives of international non-governmental organizations – the Association for the Prevention of Torture and the UPR Info. Activities and plans of the Public Defender's Office of Georgia were discussed at the meeting.

- On November 2-6, 2015, representatives of the Public Defender's Office visited Strasbourg, France, and familiarized with work aspects of various institutions of the Council of Europe.



Photo: Public Defender of Georgia

Realization of standards of the European Convention on Human Rights at the national level, the Council of Europe mechanisms against human trafficking and compliance of the Council of Europe member states' legislations and practices with the Council of Europe standards for fight against discrimination, racism, xenophobia and anti-semitism were discussed at the meetings. Sexual abuse of children, gender equality, prevention of violence against women, elimination of violence, protection and rehabilitation of victims and other issues of the Istanbul Convention were widely discussed at the meetings.

Other topics of discussion were: the European Social Charter, its principles and monitoring mechanisms of its implementation; the Council of Europe activities for persons with disabilities and the action plan for 2006-2015; effective implementation of the European Convention on Human Rights at the national level through enhancing capacities of judges, lawyers, prosecutors and other specialists in the member states.



Photo: Public Defender of Georgia

Representatives of the Council of Europe institutions showed interest in the work aspects of the Public Defender's Office of Georgia. They noted that the reports of the Public Defender's Office were the valuable source of information for them and expressed readiness for closer cooperation and implementation of joint activities.

The cases related to Georgia, the execution mechanisms and the importance of engagement of member states' national human rights institutions were discussed at the meetings held in the European Court of Human Rights.

The group members attended the Grand Chamber court hearing concerning the alleged violation of the right of access to public information by the Hungarian authorities in the European Court of Human Rights.

The organizational support of the visit was provided by the CoE project "Improving the operational capacities of the Public Defender's Office of Georgia".

- On November 23 and 24, the Public Defender of Georgia Ucha Nanuashvili held meetings with the Secretary General of the Council of Europe Mr. Thorbjørn Jagland, Commissioner for Human Rights Mr. Nils Muižnieks, Director of Human Right Directorate Mr. Christos Giakoumopoulos, Executive Secretary of the European Committee for the Prevention of Torture Mr. Jeroen Schokkenbroek, Director of the Directorate of Political Affairs Mr. Alexander Gessel and other representatives of the Council of Europe.

At the meetings the Public Defender of Georgia provided an overview of the situation concerning the human rights protection in Georgia and presented special reports. The overview included current situation in the penitentiary institutions, reforms in the public prosecutor's office and court system, in particular a process concerning the appointment of judges. In his speech, the Public Defender touched upon the importance of setting up an independent investigation mechanism. The attendees expressed their interest to hear about the effectiveness of investigation looking into the cases involving inappropriate treatment by representatives of law enforcement agencies.

### 4.3 Working Methodology and Staff Training

#### 4.3.1 Training in Monitoring of Security Sector



Photo: Public Defender of Georgia

From 30 November to 3 December, 2015, the Geneva Center for the Democratic Control of Armed Forces (DCAF) held training for the employees of the Public Defender's Office. The theme of the training was "Monitoring of the Security Sector".

In his opening remarks Public Defender Ucha Nanuashvili thanked the Geneva Center for the Democratic Control of Armed Forces for organizing the training and stressed the importance of monitoring of the security sector. Deputy Public Defender Natia Katsitadze and Heads of Departments of the Public Defender's Office talked about the monitoring experience and major challenges in this field.

The invited experts reviewed the key aspects related to the security sector management and oversight mechanisms, monitoring of security sector and case law of the European Court of Human Rights, protection of human rights in the armed forces and the role of ombudsman's institution in this field, legal monitoring of the activities of the Defense Ministry and the Armed Forces, submission of complaints by the Armed Forces personnel and other safeguards for them, monitoring of civilian and military intelligence, international experience in monitoring of law enforcement agencies, in particular the use of force by law enforcers, their responsibility in case of violation of human rights, protection of victims, their right to compensation and other measures.

The training was held in an interactive Q&A format. At the end of the event, the participants talked about the needs of the Public Defender's Office in relation with the discussed issues and presented recommendations on strengthening the capacities of the Office.

## **5. Information on Prisons**

### **5.1 Overview of the Penitentiary Institution N8**

Penitentiary Institution N8 of the Ministry of Corrections of Georgia is located in Gladani district, building estate 7, Tbilisi. It is a closed institutions consisting of an administrative and four separate residential buildings. The institution can accommodate juvenile offenders. A psychiatric hospital functioning in its premises during the Soviet Union was shut down to become a place for a prison in 2005. The institution was opened on December 7, 2005 and first flow of juvenile offenders was transferred to the institution in 2010. Up to 2010 the Institution N8 had been known as Jail N8 to be replaced with Penitentiary Institution N8 later on. Currently, it represents a penitentiary institution N8 with the capacity of 3 672 inmates.

As outlined in the 2010 report of the European Committee for the Prevention of Torture cases of inappropriate treatment were observed in Penitentiary Institution N8 of Gldani, however, inmates serving their sentences there have never confirmed the aforementioned. According to the report unusual silence in a residential part of the institution raised suspicions of inappropriate treatment of the inmates.

By 2010 inhuman and degrading conditions prevailed in a quarantine section of the Institution N8. The

group of monitors observed that scarce furniture in the rooms only allowed inmates to sleep on chairs or concrete floor as there were no mattresses provided by the administration even though inmates may spend weeks in the quarantine. Prisoners were placed in the quarantine before court hearings or as a means of punishment which in turn is an illegal act.

Torture and other forms of inhuman treatment was a usual practice in the Institution N8. After video footages of inmate torture were made available to public, inmates had become more open to talk about practice involving torture and other inhuman treatments for years.

The period after 2012 has seen a series of drastic changes in the Institution N8. However, the Public Defender still continues to receive reports on alleged facts of inhuman treatment. These reports have often served as the basis for appeals to the Chief Prosecutor's Office by request of the investigation. As assessed by the members of the Special Preventive Group and the Public Defender, a lot needs to be done to address issues related to torture and other forms of inhuman treatments in the institution and therefore it has been paid special attention by the Public Defender.

## **6. Dynamics of the Fulfillment of Recommendations**

### **6.1 Overview of the progress of the recommendation implementation**

The following section provides the analysis of the implementation of a number of important recommendations outlined in reports developed by the National Preventive Mechanism after the visits to the Penitentiary Institutions N17 and N5.

The Public Defender/Special Preventive Group welcomes the willingness of the addressees of recommendations to take practical measures to respond to a range of issues highlighted on in the report. However, it should also be noted that significant part of the recommendations has not been shared or responses are yet to be provided by respective agencies.

On December 1 and 2, 2014, the Special Preventive Group monitored the Institution N17 followed by a report and recommendations developed on the basis of the findings. Measures taken by the administration of the institutions to improve sanitary conditions of the medical unit as advised in the recommendation is undoubtedly a positive development.

The Public Defender welcomes measures taken by the administration of the Institution N17 to improve the supply of goods high on demand in the shop of the Institution N17. Further to the recommendation, a sewage system has already been repaired.

In spite of a number of positive steps, many crucial problems still remain to be addressed. First of all, it should be noted that the space of 4 m<sup>2</sup> is not provided for all inmates placed in the institution and there have been issues with the provision of adequate medical services in particular understaffed medical personnel and insufficient medicament supplies for inmates.

It is worth noting that the absence of adequate conditions in rooms designated for long term visits remain unaddressed. However, some measures have already been taken for the commencement of rehabilitation works.

The Special Preventive Group monitored the Institution N5 on February 19-20, 2015 followed by a report and recommendations based on the findings of the monitoring and resulting in the improved conditions for the transportation of mothers and children. In addition, as a result of the recommendation now women prisoners have better access to hygienic items.

The rule of admission, discharge and personal checking of female prisoners causes a series of problems. Privacy is not ensured in bathrooms and there is no hot running water in cells. It is critical that adequate infrastructure be provided in the institution N5 so that women can enjoy long term visits similar to men.

Sadly, the recommendation on setting up an electric database specifically for female inmates has not been considered, nor the recommendation on the introduction of additional job for a psychologist.

## **7. Review of the Legislation**

### **7.1 Legislative proposals and amendments to the legislation**

Pursuant to Article 107 of the Imprisonment Code results of reviewing complaints may be appealed in the court under the administrative proceedings. It is worth noting that up to May1, 2015 Article 95 of the Imprisonment Code restricted the possibility to appeal rejected complaints. As a result of changes to the legislation, this flaw has been addressed, which is welcome by the Public Defender.

An amendment to the Part III of Article 103 of the Imprisonment Code is considered a positive development. The amendment has decreased the period for reviewing a complaint by a director of the department from one month to 10 days. However, there are no set timeframe for reviewing complaints by the Medical Department of the Ministry of Corrections <sup>6</sup> and by the General Inspection<sup>7</sup> determined by the Imprisonment Code which is undoubtedly of negative effects.

## **7.2 The Review of International Standards**

### **7.2.1 Restriction of the Right to Long-term Visits under Disciplinary Sanctions**

Pursuant to the Rule 37 of the European Prison Rules, prisoners have the right to communicate with their family and reputable friends at regular intervals.<sup>8</sup> It is important that special attention be paid to maintenance and improvement of relations between a prisoner and his family as are desirable in the best interests of both.<sup>9</sup>

Contact with the family is not a privilege but the fundamental human rights and it cannot be taken away as a disciplinary measure.<sup>10</sup>

Pursuant to Article 17<sup>1</sup>, Clause 6 of the Georgian Imprisonment Code, the prisoner who is subject to disciplinary liability cannot enjoy the right to long term visits. According to Article 87 of the Imprisonment Code of Georgia, the prisoner will be released from disciplinary liabilities if s/he has not committed disciplinary violation within six months after having served disciplinary sanction. In practice the article implies that after a disciplinary measure is imposed over the prisoner, she or he is no longer entitled to the right of long-term visits during the specific period of time.

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<sup>6</sup> There is no indication of a timeframe for reviewing complaints on medical issues neither in the Imprisonment Code nor in the statute of the Medical Department of the Ministry of Corrections.

<sup>7</sup> Pursuant to both former and the new statute of the General Inspection of the Ministry of Corrections (approved on June 25, 2015) a timeframe for service check shall not exceed one month. The period may be extended up to three months upon an agreement of a head of the General Inspection

<sup>8</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 37

<sup>9</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 79

<sup>10</sup> Association for the Prevention of Torture. Available at: [http://www.apt.ch/detention-focus/en/detention\\_issues/38/](http://www.apt.ch/detention-focus/en/detention_issues/38/)

In a report reflecting on the visit of the European Committee for the Prevention of Torture to Georgia, it was communicated that restrictions in contacts with the family as a form of punishment shall be applied for the shortest period possible (for days rather than for weeks or a month) and under those circumstances when a crime or offence is linked to such contacts.<sup>11</sup> UN's Special Rapporteur expressed his concern over the practice of restricting the right to long-term visits under disciplinary sanctions.<sup>12</sup>

European Committee for the Prevention of Torture states that disciplinary punishment of the prisoner shall not imply total restriction of contact with family members. Such restriction shall only be imposed if the crime or offense is linked to these contacts.<sup>13</sup> Supporting the prisoner to maintain relations with his or her family members by prison administration is the integral part of the prisoners' right to respectful treatment of his or her family life.<sup>14</sup>

Long-term restriction of direct contact may be justified by actual and continual security risks.<sup>15</sup> The State has a discretion to determine general restrictions without ascertaining as whether or not these restrictions are necessary and unavoidable in specific cases. In *Trossin v Ukraine* the national legislation imposed automatic restrictions on the length of visits to life term prisoners instead of introducing a more flexible system for individual approaches by determining whether or not such restrictions were necessary for each specific case. The court ruled that the States must develop a tool for proportionate assessment to enable state agencies to strike a balance between and consider specific aspects of individual and public interests.<sup>16</sup>

In *Khoroshenko v Russian Federation*, the court ruled that the prison regime which allowed only two short-term visits during ten years had been violating the right of the prisoner to respectful treatment of his

private and family life. The court stated that prisoners in general must be able to exercise all fundamental rights and liberties enshrined in the convention except for the right to freedom. The proportionate principle requires that clear links be ascertained between the application of such measures and behavior demonstrated by an individual prisoner prior to applying restrictions.

### **7.3 Incorporation of the international Standards in the domestic legislation**

Pursuant to the European Prison Rules and Standard Minimum Rules for the Treatment of Prisoners of the United Nations, the transport of prisoners in conveyance with inadequate ventilation or light or in any way which would subject them to unnecessary physical hardship, shall be prohibited.<sup>17</sup>

After the monitoring visit to the Institution N5, the Public Defender of Georgia issued a recommendation for the purpose of improving transportation conditions for mothers and children. The recommendation included in a post-visit report also suggested that while removed prisoners be provided with such means of transport which will have no negative impact on health of passengers and which will ensure the protection of all security rules.

It is worth noting that the Ministry of Corrections did not deny the presence of problems outlined in the report and took measures to renew its carpool.<sup>18</sup> As indicated in the Ministry's response, as of today female prisoners are transported in SUZUKI sedan and or HYUNDAI equipped adequately to accommodate women and children. The Ministry's response also notified the Public Defender that a new carpool and office in line with western standards were opened in July 2015. Cars in the carpool are differentiated according to categories and designated for juvenile, female and male prisoners of all risk groups. The Public Defender welcomes progressive steps made forward towards the implementation of the standard and is going to monitor above mentioned transportation means in future.

<sup>11</sup> A visit of European Committee for the Prevention of Torture, Paragraph 11, CTP/Inf (2015). Available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last Accessed: 23.12.2015]

<sup>12</sup> A report of the visit of the UN's Special Rapporteur, November 6, 2015. Paragraph 97, [Last Accessed: 23.12.2015]

<sup>13</sup> A visit of European Committee for the Prevention of Torture to Portugal. Available at: <http://www.cpt.coe.int/documents/prt/2013-35-inf-eng.htm>

<sup>14</sup> Refer to *Messina v. Italy*, para § 61 (Application no. [25498/94](#))

<sup>15</sup> Refer to *Horych v. Poland*, para § 117-132, (Application no. [13621/08](#))

<sup>16</sup> Refer to *Trossin v. Ukraine*, (Application no. [39758/05](#))

<sup>17</sup> European Prison Rules, Rule 32.2; Standard Minimum Rules for the Treatment of Prisoners, Rule 45.

<sup>18</sup> N699606 Letter N699606 of the Ministry of Corrections of Georgia

## 8. Focus

### 8.1 State of Children's Rights in Boarding Schools Subordinated to Georgia's Orthodox Church and Muslim Denominations

The Public Defender's special report reflects the state of children's rights in the boarding schools subordinated to the Orthodox Church of Georgia and Muslim denominations of Georgia. The report covers the period from February 23 to March 15, 2015, and was prepared by the Public Defender's Special Preventive Group and the Center for Child's Rights. Monitoring in the boarding schools was carried out within the scope of the mandate of the National Preventive Mechanism.

The state of children's rights was monitored in: 1. Stepantsminda's Ilia the Righteous Gymnasium-Boarding School (non-commercial legal entity of the Orthodox Church of Georgia); 2. Javakheti Ninotsminda's St. Nino Boarding School of Orphaned, Abandoned and Homeless Children (non-commercial legal entity of the Orthodox Church of Georgia); 3. Boarding School of St. Mathata Fund (non-commercial legal entity of the Orthodox Church of Orphaned) in the village of Feria; 4. Girls' Boarding School of the Union of Georgian Muslims in the village of Feria; 5. Boys' Boarding School of the Union of Georgian Muslims in the village of Feria 6. Boys' Boarding School of the Union of Georgian Muslims in Kobuleti; 7. Bediani Rehabilitation Center for Children and Juveniles of the Orthodox Church of Georgia.

The monitoring has been the first attempt within the Public Defender's mandate to examine the state of children's rights and identify challenges in the abovementioned boarding schools as well as to draw up recommendations.

The monitoring was aimed at evaluating the observance of state standards of child care in the boarding schools as well as the efforts of the state to promote implementation of these standards.

The monitoring showed that the quality of care in the above-mentioned institutions varies and is not regulated by a unified child care system, as the beneficiaries of the boarding schools are not under state care – are not involved in social service care program. This makes it difficult to realize the child's fundamental rights and freedoms, such as the right to health, the right to education, protection from

violence, and so on. The fact that these beneficiaries are not under state care creates problems for children with disabilities as well. It is impossible to define a status and provide relevant medical service for them without the participation of the state. In addition, it is problematic to regulate personal documentation of the juveniles and to define their educational needs without cooperation with the Social Service Agency.

The services provided for beneficiaries in boarding schools of religious denominations need to be harmonized with the state standards of child care, while upbringing of beneficiaries must be ensured in the family-like environment. For this purpose, the steps taken by the state can be described as unsatisfactory. In compliance with the state policy for deinstitutionalization, the state should apply all measures in order to ensure observance of the state standards of child care. In particular, it must create an appropriate mechanism for monitoring the implementation of these standards, ensure training and capacity building of the persons involved in the service, hold a dialogue with all interested parties for achieving the child's well-being and harmonious development, and strengthen international cooperation in order to ensure effective implementation of the principles of the United Nations Convention on the Rights of the Child.

## 9. Expert Opinion

- **An Interview with Representative of UN Children's Fund (UNICEF) Mr. Sascha Graumann**



Photo: [www.radiotavisupleba.ge](http://www.radiotavisupleba.ge)

### 1. How would you assess the Public Defender's 2015 report on "State of Children's Rights in Boarding Schools Subordinated to Georgia's Orthodox Church and Muslim Denominations"

UNICEF compliments the Public Defender Office's initiative to monitor children's rights "in Boarding Schools Subordinated to Georgia's Orthodox Church and Muslim Denominations".

The PDO report is only looking at seven residential facilities and therefore not necessarily reflecting

exhaustively the situation in all institutions and boarding schools in Georgia. Furthermore, while some of the recommendations refer to deinstitutionalization and family reunification, other recommendations are focusing on the improvement of the environment in the institutions. This might appear as ambiguous while the main priority should be the closure – when possible – of these unregulated institutions.

## **2. What is the main challenge for Georgia in this regard?**

The main legal challenge remains that licensing is not mandatory for private or religious child care institutions and boarding schools.

Furthermore, insufficient information exist as regards to the number, the location and the types of private residential care institutions and as regards to the situation of children and adolescents in these institutions. Similarly the causes on this ongoing (re) institutionalisation of children remain unknown.

More information/knowledge needs to be produced in order to appropriately prevent and respond to this issue.

## **3. What is the international experience and best practices in this field?**

For UNICEF, family-based care is the best option for children and institutional care is the least desirable alternative. Institutional care can indeed undermine children's physical, intellectual and emotional development. Furthermore, researches show that family and community-based services are more cost effective in the long run.

As a minimum and in any case, all Child Care residential facilities including boarding schools should be licensed, regulated and systematically monitored by the State agencies.

In remote areas, regulated and licensed boarding schools could be considered as an adequate means to ensure access to education for the most vulnerable children.

## **4. How can this issue be resolved in Georgia?**

Following the finalisation of the ongoing mapping of child residential facilities (religious, private or administrated by local authorities), UNICEF will conduct an in-depth analysis to better understand the causes of the ongoing institutionalisation of children.

This study will provide UNICEF with all the necessary information to support the development of appropriate preventive mechanisms, an improved access to education and the establishment and/or reinforcement of State support family/community-based programmes.

## **10. International News**

### **Approval of the Revised Version of the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)**

On December 17, 2015 the General Assembly of all UN members unanimously approved of the revised UN Standard Minimum Rules for the Treatment of Prisoners which are called the Mandela Rules to honor the late South African president who spent 27 years in prison for his fight for human rights, equality, democracy and peace. The Mandela Rules represent a renewed version of the original text adopted in 1957. A working group set up under a resolution of the UN General Assembly in 2010 spent next four years working to revise the aforementioned rules.<sup>19</sup>

## **11. Announcement of Future Activities**

In 2016 the National Preventive Mechanisms will present its special report on findings of the monitoring visit to psychiatric care institution N12. Voluminous data obtained as a result of the monitoring are being processed by the Special Preventive Mechanism.

Post-visit reports on monitoring visits to the Penitentiary Institutions N12, N6, N8, N16, N17, N9 and N15 will also be published in early 2016.

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<sup>19</sup> Penal Reform International. Available at: <http://www.penalreform.org/news/10071/> [Last Accessed: 24.12.2015].



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**Department of Prevention and Monitoring 2015**

**Public Defender of Georgia**

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