



# Public Defender of Georgia

## Statute of the Special Preventive Group

2015

## Statute of the Special Preventive Group

### Article 1. General Provisions

1. The Statute of the Special Preventive Group (hereinafter – “the Statute”) determines the structure, rule of operation, competencies of the Special Preventive Group, and other issues related to its activities.
2. The Special Preventive Group shall be established by the Public Defender of Georgia under Articles 3<sup>1</sup>, 19, and 19<sup>1</sup> of the Organic Law of Georgia on the Public Defender in order to implement the functions of the National Preventive Mechanism against torture and other cruel, inhumane, or degrading treatment or punishment.
3. While carrying out their activities, members of the Special Preventive Group shall be guided by the Constitution of Georgia, international treaties and agreements, the Organic Law of Georgia on the Public Defender of Georgia, other legislative acts and bylaws of Georgia, and the present Statute.
4. The Statute applies to members of the Special Preventive Group (hereinafter – “members of the Special Preventive Group”).
5. The Statute applies to the implementation of the mandate of the National Preventive Mechanism (hereinafter – “the National Preventive Mechanism”).

### Article 2. Definition of Terms

1. Monitoring – the inspection carried out during planned and ad hoc visits to the places of restriction or deprivation of liberty.
2. Administration – administration of the facilities of detention and imprisonment, other places of arrest and deprivation of liberty, psychiatric institutions, eldercare institutions and childcare institutions.
3. Conflict of interests – a case when a member of the Special Preventive Group has family, friendship, business, personal, or other ties (which an independent observer may consider as conflict of interests) with a person deprived or restricted of his liberty in a closed-type facility or to a responsible official of the respective administration, and it poses an objective risk to independence and/or impartiality.
4. Working methodology – guidelines, drafted in advance, on conduct of monitoring in detention and imprisonment facilities, other places of arrest and deprivation of liberty, mental institutions, eldercare institutions, and childcare institutions.
5. Member of the Special Preventive Group – a member of the Group established under Articles 3<sup>1</sup>, 19, and 19<sup>1</sup> of the Organic Law of Georgia on the Public Defender in order to implement the functions of the National Preventive Mechanism against torture and other cruel, inhumane, or degrading treatment and punishment.
6. Contract – a contract concluded between the Public Defender of Georgia and a member of the Special Preventive Group pursuant to the effective legislation.
7. Group leader – a person who carries out direct, on spot coordination of the conduct of monitoring.

### Article 3. Composition of the Special Preventive Group

1. The composition of the Special Preventive Group is approved by the order of the Public Defender of Georgia.

2. Members of the Special Preventive Group are selected through the competition that, as a rule, is organized annually, and terms of its organization are determined by the order of the Public Defender of Georgia.
3. In special cases, in view of the goals of the National Preventive Mechanism, the Public Defender of Georgia is authorized to decide to add a temporary member to the composition of the Special Preventive Group. In such cases, the decision to add a member is made by the Public Defender of Georgia without holding the competition.
4. The members of the Special Preventive Group may be a person who has a relevant education, professional experience, professional and moral qualities that enable him or her to carry out the functions of the National Preventive Mechanism.
5. The members of the Special Preventive Group may not be members of a political party or may not participate in political activities.
6. The members of the Special Preventive Group may not be a person who practices law as a private attorney or works as a journalist.

#### **Article 4. General Rules and Principles of Activities of the Members of the Special Preventive Group**

1. While discharging the functions of the National Preventive Mechanism, a member of the Special Preventive Group acts on the basis of the proxy of the Public Defender of Georgia, and is accountable only to the Public Defender of Georgia.
2. The members of the Special Preventive Group carry out the function of the National Preventive Mechanism exclusively within the scope of a specific assignment given by the Public Defender of Georgia. The implementation is organized, coordinated, and supervised by the Department of Prevention and Monitoring of the Public Defender's Office of Georgia.
3. Conduct or status of a member of the Special Preventive Group should not conflict with the goals of the National Preventive Mechanism.
4. The principles of activities of the members of the Special Preventive Group are:
  - A) fairness;
  - B) objectivity;
  - C) trust;
  - D) confidentiality;
  - E) protection of human rights;
  - F) prohibition of conflict of interests;
  - G) collegiality;
  - H) mutual respect.

#### **Article 5. Organization of Monitoring**

1. Under the aegis of the National Preventive Mechanism, the Department of Prevention and Monitoring of the Public Defender's Office of Georgia plans, organizes, and supervises monitoring with the agreement of the Public Defender of Georgia.
2. For the purposes of implementing the activities listed in paragraph 1 of this article, the Department of Prevention and Monitoring of the Public Defender's Office of Georgia:
  - A) determines the composition of the group that will undertake specific monitoring in view of the type of facility, the issues to be studied, and in view of the necessity of a multidisciplinary composition of the group, and presents it for approval to the Public Defender of Georgia.
  - B) sends written notification to members of the Special Preventive Group no less than seven calendar days earlier about the planned monitoring and working meeting.
  - C) immediately after taking the decision on the conduct of ad hoc monitoring, notifies the members of the Special Preventive Group who are selected for this ad hoc monitoring.

- D) assigns concrete tasks to the monitoring group members that are approved by the Public Defender of Georgia, and appoints the group leader who coordinates the conduct of monitoring directly at the monitoring site.
- E) ensures the provision of necessary information for the conduct of monitoring to the members of the Monitoring Group.
- F) ensures the drafting of the working methodology.
- G) manages technical issues that are necessary for the conduct of monitoring.

## **Article 6. Competence and Safeguards of the Members of the Special Preventive Group**

1. Members of the Special Preventive Group act within the scope of competencies provided by Articles 3<sup>1</sup> and 19<sup>1</sup> of the Organic Law of Georgia on the Public Defender of Georgia.
2. For the purpose of regular inspection of the treatment of inmates of detention and imprisonment facilities, other places of arrest and deprivation of liberty, as well as mental institutions, eldercare institutions, and childcare institutions as well as for the purposes of their protection from torture and other cruel, inhumane, or degrading treatment or punishment, the Public Defender of Georgia/member of the Special Preventive Group:
  - A) without witnesses, personally or with the assistance of an interpreter, meets and conducts interview with detained, arrested, or other persons otherwise restricted of their liberty, convicts and persons placed in psychiatric institutions, eldercare institutions, and childcare institutions, as well as with those persons who can provide information on the violation of rights of the abovementioned persons.
  - B) examines the conditions and the documentation concerning persons placed in detention and imprisonment facilities, other places of arrest and deprivation of liberty, as well as mental institutions, eldercare institutions, and childcare institutions.
3. Meeting of a member of the Special Preventive Group with an arrested, detained, or other persons restricted or deprived of their liberty, convicts, as well as those placed in psychiatric institutions, eldercare institutions, and childcare institutions, is confidential. Any type of wire-tapping or surveillance is prohibited.
4. Imposition of lien, examination and seizure of mail and telegraph, or mail parcel addressed to a member of the Special Preventive Group, should not be allowed.
5. A member of the Special Preventive Group is entitled not to testify about the fact that was communicated to them while carrying out functions of the National Preventive Mechanism. They maintain this right even after terminating their powers as a member of the Special Preventive Group.
6. In the case of having prior, written consent by the Public Defender of Georgia, a member of the Special Preventive Group is entitled to disclose only the information that does not contain personal data about a specific natural person, if there is an informed and written consent of that person on the disclosure of such information.
7. A member of the Special Preventive Group is entitled to be informed about the planned monitoring seven calendar days prior to the conduct of monitoring.
8. Members of the Special Preventive Group move around in closed-type facilities unaccompanied by the staff of the facility. In exceptional cases, personnel of the facility may move around together with the members of the Special Preventive Group to ensure their safety. In such cases, the independent conduct of monitoring shall always be made possible.

## **Article 7. Obligations and Conduct of a Member of the Special Preventive Group**

1. While conducting monitoring, a member of the Special Preventive Group is obliged:
  - A) to comply with effective legal norms and inter alia, to fully abide by the security rules of the respective closed-type facility;
  - B) to attend the meetings organized by the Public Defender of Georgia/the Department of Prevention and Monitoring of the Public Defender's Office;

- C) to notify the head/deputy head of the Department of Prevention and Monitoring of the Public Defender's Office in advance and in written form (in printed or electronic form) on the reasons of absence, in the case of the inability to participate in the planned monitoring and to attend the meeting;
  - D) to present themselves and explain at the outset of the conversation with a person restricted or deprived of his liberty that the information received will be kept confidential.
  - E) to conduct private interview with a person restricted or deprived of his liberty unattended by representatives of the administration, unless security interest demand certain supervision that can be carried out exclusively by visual control, and which should never allow the administration of the facility to learn the contents of the conversation;
  - F) not to communicate the contents of the interview with a person restricted or deprived of his liberty, or parts of it, to the administration of the facility;
  - G) to stop an interview if a person restricted or deprived of his liberty believes that the confidentiality of the interview is disturbed;
  - H) to take steps to conduct interview with persons restricted or deprived of their liberty individually without presence of other persons. A member of the Special Preventive Group may also resort to collective interview if this does not impede the achievement of the goals of the National Preventive Mechanism;
  - I) to proceed with private interview if information provided during group collective interview requires so;
  - J) to explain the mandate of the National Preventive Mechanism during interview and to inform a person restricted or deprived of his liberty that they seek to inspect treatment and conditions in the facility;
  - K) to conduct interview with persons restricted or deprived of their liberty only with the consent a person to be interviewed;
  - L) not to conduct interview if a person restricted or deprived of his liberty refuses to meet with members of the Special Preventive Group and this represents his true will;
  - M) to postpone a meeting with a person who is being interviewed by investigative or judicial authorities under the procedure prescribed by the relevant Georgian legislation until the end of these activities, except when postponing discharge of a function or an obligation prescribed by the Organic Law of Georgia on the Public Defender of Georgia, can substantially damage the achievement of goals of the National Preventive Mechanism;
  - N) immediately after the visit to report to the Public Defender of Georgia, or the group leader, and to provide information and opinion on the possible measures that should be taken in the case of identification of problems of utmost importance (problems that pose risk to the life of a particular person, gross violation of human rights, and/or other risks that may entail grave consequences);
  - O) not to disclose information that is considered to be secret or confidential and that he has learnt as a result of activities undertaken under aegis of the National Preventive Mechanism;
  - P) not to disclose any information related to the visits undertaken under the aegis of the National Preventive Mechanism - their location, duration, or other issues that may cause impediments to the discharge of functions of the National Preventive Mechanism;
  - Q) not to disclose information that the person has learned while discharging the functions of the National Preventive Mechanism without a prior written consent of the Public Defender of Georgia;
  - R) to be guided by the previously drafted, relevant working methodology while conducting monitoring.
2. The obligation stated in subparagraph "O" in paragraph 2 of present Article continues to be effective even after the termination of the powers of the members of the Special Preventive Group.
  3. When there is a case of a conflict of interest, in order to prevent it, a member of the Special Preventive Group is obliged to immediately, and at the first possibility, inform the Public Defender of Georgia, or group leader and the latter shall take the decision to remove a member of the Special Preventive Group from the conduct of the specific visit.
  4. In order to protect the reputation of the National Preventive Mechanism, and to observe the rules of professional ethics:

- A) the apparel of a member of the Special Preventive Group should be in line with well-established norms of ethics while implementing the monitoring;
- B) members of the Special Preventive Group should be dressed plainly and in a business-like manner;
- C) members of the Special Preventive Group are prohibited to wear apparel that contains offending and/or discriminatory, homophobic, sexist, or hate speech containing message, or depicts vulgar, pornographic images and/or caricature;
- D) a member of the Special Preventive Group is not allowed to bring into the penitentiary facility foodstuffs, objects, products, substances, and documents, which are prohibited by the Order N97 of the Ministry of Corrections of 30 May 2011.

#### **Article 8. Findings of the Monitoring by the Special Preventive Group**

1. A member of the Special Preventive Group is obliged to thoroughly document, in writing, the findings of the monitoring.
2. Members of the Special Preventive Group should prepare complete and objective reports based on the information obtained while carrying out the monitoring, which should be presented in Georgian, according to the predetermined reporting form to the Public Defender.
3. The deadlines to present a report by the Special Preventive Group are determined in the contract.

#### **Article 9. Early Termination of the Powers of a Member of the Special Preventive Group**

1. The decision of the early termination of the powers of a member of the Special Preventive Group is taken by the Public Defender of Georgia.
2. These are the grounds of early termination of powers of a member of the Special Preventive Group:
  - A) personal application;
  - B) failure to participate in the two consecutive planned monitoring or working meeting with no respectable reason;
  - C) person becomes a member of a political party or is otherwise involved in political activities;
  - D) employment in such a public agency whose activities are directly related to the activities of the National Preventive Mechanism, and/or monitoring of which falls under the functions of the National Preventive Mechanism;
  - E) practice of law as private attorney or conduct of journalistic activities;
  - F) failure to observe obligations provided by the present statute;
  - G) failure to present the report on finding of the monitoring in the prescribed manner and time;
  - H) recognition as incapable, missing, or dead, under the procedure established by the legislation;
  - I) effective judgment of conviction;
  - J) loss of citizenship of Georgia;
  - K) death.