



Public Defender of Georgia

National Preventive Mechanism

The Report of the National Preventive Mechanism 2018

The document was prepared in accordance with Article 21, paragraph g, of the Organic Law of Georgia
on the Public Defender of Georgia

2019

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1. REVIEW OF ACTIVITIES CARRIED OUT BY THE NATIONAL PREVENTIVE MECHANISM

1.1. INTRODUCTION

2019 marks the tenth anniversary of the National Preventive Mechanism of Georgia. According to the legislative amendments made in 2009, the Public Defender of Georgia was granted a special mandate determined by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As of today, the National Preventive Mechanism is established as a separate structural unit. Under the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, since 2019, the budget of the mechanism has been established separately.

There are six professional public officials and one contracted official discharging their functions within the department. During visits, 40 members of the Special Preventive Group support the activities of the National Preventive Mechanism. There is a consultative council, which is designed to ensure the effectiveness and transparency of the National Preventive Mechanism.

The National Preventive Mechanism is aimed at studying, observing and identifying shortcomings in closed institutions (the Ministry of Internal Affairs, penitentiary and psychiatric establishments) as well as suggesting recommendations to relevant administrations so that they establish procedural safeguards that would exclude/reduce/bring to minimum incidents of ill-treatment.

We plan to make the activities of the National Preventive Mechanism faster and more effective. Since 2019, all the post-visit reports are developed in the shortest periods possible. At the first stage, the document is shared with the respective agency and made public later.

The National Preventive Mechanism plans visits, made at the beginning of each year, according to its prescheduled plan. This plan can be modified according to the information supplied by the thematic departments (Department of Criminal Justice and the Department of the Rights of Persons with Disabilities).

The National Preventive Mechanism applies considerable efforts towards the fulfilment of its recommendations; it maintains a constant dialogue with state bodies and is always oriented towards the effective implementation of its recommendations.

1.2. PREVENTIVE VISITS

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

punishment, follow up on them, and elaborate recommendations aimed at eradicating these factors.¹ To this end, in the reporting period, the Special Preventive Group visited the following establishments: 37 visits to 8 penitentiary establishments²; 12 visits to 5 psychiatric establishments; 50 visits to 50 Police Stations; 26 visits to 22 TDIs; there were 8 focus group meetings with lawyers and NGOs working in the regions of Georgia. 37 visits to 37 small family type homes for children. 2 visits to 2 Boarding houses for persons with disabilities; 3 joint operations related to returning migrants from the EU countries were monitored. During their 2018 visits, members of the Special Preventive group were able to move around the facility without any impediments by the administration.

On June 26, 2018, the National Preventive Mechanism presented its 2017 Annual Report;³ During the reporting period, the National Preventive Mechanism prepared and published a visit after report on the penitentiary institution N6;⁴ LEPL Tbilisi Public School N202 - Boarding School for Blind Children⁵ And a special report - And a special report - "The Impact of Prison Conditions on Prisoners' health",⁶ which concerns the health risk factors of prisoners and includes recommendations for the elimination of these risk factors.

The National Preventive Mechanism applies considerable efforts towards the fulfilment of its recommendations; it maintains a constant dialogue with state bodies and is always oriented towards the effective implementation of its recommendations.

In its 2017 parliamentary report, the Public Defender of Georgia, within the mandate of the National Preventive Mechanism, issued 65 recommendations to the penitentiary system, the Ministry of Internal Affairs and psychiatric establishments. 10 recommendations have been fulfilled; 16 recommendations have been fulfilled partially and 39 recommendations have not been fulfilled.

Out of the 24 recommendations made by the Public Defender to the Ministry of Internal Affairs in 2018, 10 recommendations were reflected in the Resolution of the Parliament of Georgia on the 2017 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia. 17 recommendations out of the 34 recommendations made to the penitentiary system, and 9 recommendations out of the 16 recommendations made to the psychiatric establishments, were reflected in the resolution.

¹UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Twelfth session Geneva, 15-19 November 2010, The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at: https://digitallibrary.un.org/record/699284/files/CAT_OP_12_6-EN.pdf [last seen: 06.06.19].

² Penitentiary Establishments N2, N3, N5, N6, N8, N11, N16 and N17.

³ Available at: <<http://www.ombudsman.ge/res/docs/2019040513262313034.pdf>> [last seen: 10.06.19]

⁴ Available at: <<http://www.ombudsman.ge/res/docs/2019040410062929010.pdf>> [last seen: 10.06.19]

⁵ Available at: <<http://www.ombudsman.ge/res/docs/2019042212301126155.pdf>> [Last Seen: 10.06.19]

⁶ Available at: <http://www.ombudsman.ge/res/docs/2019060318003373268.pdf> [last seen: 10.06.19].

1.3.IMPLEMENTING THE MANDATE OF THE NATIONAL PREVENTIVE MECHANISM

According to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "Optional Protocol"), it is the responsibility of states to grant National Preventive Mechanisms Unrestricted access to all information referring to the treatment of prisoners as well as their conditions of detention. However, the National Preventive Mechanism is facing obstacles regarding the full access to certain categories of personal data in recent years. For instance, in 19-21 December 2018, the Special Preventive Group conducted a monitoring visit to the penitentiary establishment N17, where the chief doctor refused to disclose the register of bodily injuries of remand/convicted prisoners, claiming that the information was confidential and demanded that the Group obtained a written consent from prisoners.

An important component of the mandate and methodology of the Special Preventive Group is processing a large amount of data obtained from various documents in accordance with the principles of the confidentiality. Restricting access to existing data directly contradicts the obligations set out in the Optional Protocol and impedes a comprehensive assessment of the situation in relation to torture and ill-treatment.

Members of the Special Preventive group are also not allowed to access records made through electronic surveillance. These records are important to the extent that they are one of the effective means of identifying cases of torture and ill-treatment and provide an essential evidence.⁷ Consequently, restricting the access of the National Preventive Mechanism to video recordings impedes the implementation of the preventive mandate guaranteed under the Optional Protocol.

The UN Subcommittee on Prevention of Torture responded to the failure of the Government of Georgia to fulfil its obligations under the Optional Protocol in a written communication with the Government of Georgia. The Subcommittee stressed the need for ensuring the unhindered access for the National Preventive Mechanism to all relevant data, including medical records, registries and others.

The Special Preventive Group calls on the Government to ensure the fulfilment of its obligation under the Optional Protocol without delay and to eliminate all restrictions and obstacles in relation to the access to the special category of data and video records by the National Preventive Mechanism.

⁷ European Committee for the Prevention of Torture, 12 General report, (CPT/Inf (2002) 15) indicates that the complete and authentic video and audio recording systems greatly facilitates the investigation of ill-treatment, Available at: <http://www.cpt.coe.int/en/annual/rep-12.htm> [Last Seen: 17.06.2019]

1.4.FINANCIAL SUPPORT FOR THE NPM'S ACTIVITIES

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the “CPT”), in its report on the visit to Georgia carried out on 10-21 September 2018, recommended⁸ to the Public Defender to separate the NPM’s budget from the overall budget of the Public Defender’s Office. It is noteworthy that, since 2019, the NPM’s budget has been separated from the overall budget. Therefore, the above recommendation has been fulfilled.

1.5.ELECTION OF THE HEAD OF THE NPM (DEPARTMENT) AS A MEMBER OF THE UNITED NATIONS SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (SPT)

On 25 October 2018, Nika Kvaratskhelia, the Head of the National Prevention Mechanism (Department) of the Office of the Public Defender of Georgia, was elected as a member of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “SPT”) for 2019-2022. Nika Kvaratskhelia, the candidate from Georgia, has been working for the Office of the Public Defender of Georgia since 2013. He has been participating actively in global campaigns against torture and contributing to raising awareness about the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, (hereinafter the “OPCAT”). It is worth mentioning that, for the first time in Georgia’s history, a candidate from Georgia was selected as a member of the SPT. The Georgian candidate won with 55 votes at the 7th meeting of the States Parties to the OPCAT held in Geneva. Candidates from 20 countries were nominated to the 13 vacant positions in the SPT.

The SPT conducts regular independent international visits to the places of deprivation of liberty under the jurisdiction of the States Parties to the OPCAT in order to prevent torture and other cruel, inhuman or degrading treatment or punishment and, with a view of implementing the OPCAT, it supports establishing national preventive mechanisms and their activities. The SPT started functioning in 2007; it is composed of 25 independent experts and is one of the largest treaty-based bodies within the system of the United Nations.

1.6.COMMUNICATION WITH STAKEHOLDERS

It is impossible to study the situation and develop recommendations, advocate their fulfilment and monitor their implementation without dialogue with civil society, international organisations, competent public authorities and other stakeholders. Therefore, the NPM pays much attention to communication with the stakeholders. In this regard, numerous significant activities were carried out in 2018.

⁸ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 12, available in English at: <https://rm.coe.int/1680945eca> (accessed 12.06.19).

Within the monitoring of the regional bodies of the Ministry of Internal Affairs, the Special Preventive Group held eight meetings with local lawyers and representatives of NGOs working on criminal cases in various regions of Georgia.⁹ The meetings aimed at obtaining additional information regarding the situation in terms of protection of detained persons from torture and other ill-treatment. At the same time, the representatives of the Public Defender's Office introduced the mandate and the field of activities to the participants of the meetings.

1.6.1. DIALOGUE WITH PUBLIC AUTHORITIES

The NPM pays particular attention to active communication and constructive dialogue with relevant public authorities. The appointment of a responsible person¹⁰ in 2018 served this very purpose of observing the fulfilment of the NPM recommendations. In the reporting period, meetings were held individually and within various working groups. Numerous meetings were held with the representatives of the Ministry of Internal Affairs of Georgia, the Minister of Corrections, the Minister of Justice and the representatives of the aforementioned ministries regarding specific problems and activities to be carried out for implementing concrete recommendations of the Public Defender.

We welcome the practice of the Ministry of Internal Affairs to supply various data to us in a timely manner as well as the ministry's readiness to maintain a constructive dialogue with the Public Defender's Office. In the reporting period, numerous meetings were held, during which we discussed the matter of the implementation of the Public Defender's recommendations.

It is regrettable that, despite good cooperation of the past few years with the Penitentiary System, 2018 was not the best in terms of active cooperation. On many occasions, the NPM was not provided in a timely manner or was not provided with materials and information necessary for the discharge of its mandate. This amounted to the failure to comply with the Public Defender's legal requests and constituted the ground for the imposition of a fine.¹¹ The Public Defender hopes that this practice will change for the better and the active cooperation based on dialogue with the ministry will be restored.

On 5 March 2018, the Public Defender of Georgia and the NPM representatives visited the psychiatric clinic in Surami. The Public Defender evaluated the existing situation as inhuman and degrading treatment of patients and called upon the state to take prompt measures to improve the patients' conditions. As a result, a working group was set up in the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health, and Social Affairs of Georgia, within which repair works were planned and carried out in Surami psychiatric clinic.

In the reporting period, a meeting was held, under the auspices of the Association for the Prevention of Torture (APT), with the participation of representatives of the NPM and the Ministry of Internal

⁹ Samegrelo, Kakheti, Imereti, Shida Kartli, Samtskhe-Javakheti, Ajara, and Guria.

¹⁰ Deputy Head of the National Preventive Mechanism (Department) of the Public Defender's Office.

¹¹ The Code of Administrative Violations of Georgia, Article 173⁴.

Affairs of Georgia. The meeting concerned the recommendation implementation monitoring procedure, the format of dialogue and prospects for future cooperation.

1.6.2. DIALOGUE WITH THE DIPLOMATIC CORPS AND INTERNATIONAL ORGANISATIONS

In 2018, the NPM maintained active communication with the diplomatic corps and international organisation both in Georgia and abroad. The Public Defender and the representatives of the NPM participated personally in various forums and meetings organised under the auspices of international organisations.

On 10 September 2018, within the visit of the CPT to Georgia, the Public Defender of Georgia and the representatives of the NPM met with the representatives of the committee. A representative of the NPM also took part in the concluding meetings organised by the CPT with the Minister of Justice of Georgia and the Minister of Internal Affairs of Georgia.

On 17 November 2018, a video conference was held with the participation of the representatives of the NPM of Georgia and the SPT regional team in Europe. During the conference, representatives of the NPM of Georgia discussed the achievements and challenges in Georgia in terms of prevention of torture.

In November 2018, the NPM participated in the preparation of the third-party intervention sent by the Public Defender of Georgia to the Committee of Ministers of the Council of Europe regarding the case of *Merabishvili v. Georgia* (application no. 72508/13). The communication was aimed at adducing additional comments regarding the Public Defender's recommendation concerning determining a reasonable term for storing video recordings in penitentiary establishments.

1.6.3. PUBLIC RELATIONS

Informing the public about human rights protection in the places of deprivation of liberty and raising awareness is one of the priorities of the NPM. The public is informed by publishing after visit reports, special and annual reports, by organising various workshops and meetings, and through media.

The representatives of the NPM participated in various TV and Radio programmes; numerous interviews were printed and posted in social media. The NPM circulated public statements regularly regarding visits made to the places of deprivation of liberty and the situation in these places. Furthermore, a representative of the NPM took part as a speaker in public debates organised by the Tbilisi State University concerning safeguards for persons in police custody.

1.6.4. PARTICIPATION IN INTERNATIONAL ACTIVITIES

On 21-22 February 2018, an expert workshop on the prevention of human rights abuses was conducted by the Office of the High Commissioner for Human Rights (OHCHR), in Geneva. The National Prevention Mechanism of Georgia was the only mechanism that had the honour to address the participants of the workshop with a speech. At the organisers' request, Nika Kvaratskhelia, Head of the

National Prevention Mechanism (Department) of the Public Defender's Office, discussed the importance of education in preventing human rights abuses. He presented to the participants the activities of the Public Defender, the mandate of the Human Rights Academy and its activities, the specific nature of the NPM's activities and the situation in terms of training of the personnel of closed-type establishments. The global system of prevention of torture, which comprises the United Nations SPT and national prevention mechanism, was discussed as the ideal model for preventing human rights abuses. The participants of the workshop agreed that only the mechanism of follow-up to violations is not a solution and more emphasis should be placed on preventing violations. Thus, it is important to change the working methodology of the relevant bodies within the United Nations and national human rights institutions to make their activities more prevention-oriented.

On 5-7 March 2018, Akaki Kukhaleishvili, the representative of the National Prevention Mechanism (Department) of the Public Defender's Office participated in a workshop – Monitoring and Accountability – organised by the European Network of Human Rights National Institutions in the capital of Moldova, Chisinau.

On 31 May - 1 June 2018, Nika Kvaratskhelia, Head of the National Prevention Mechanism (Department) of the Public Defender's Office, was invited to the conference held in Tashkent, dedicated to introducing a preventive monitoring mechanism for the places of deprivation of liberty in Uzbekistan.

On 26 June 2018, to mark the International Day in Support of Victims of Torture, the Public Defender of Georgia and the international NGO Prison Reform International (PRI) held a regional conference where National Preventive Mechanisms of Georgia, Azerbaijan and Armenia presented their annual reports.

On 15-17 July 2018, Nino Lomjaria, the Public Defender of Georgia paid an official visit to Yerevan, the capital of Armenia, where she, together with Armen Tatoyan, the Human Rights Defender of Armenia, Artak Zeynalyan, the Minister of Justice of Armenia, and the representatives of international delegations participated in the conference organised by the Armenian side. The participants discussed in a round-table format the activities of the NPM of the Public Defender of Georgia and the rights of women and juveniles in penitentiary establishments of Armenia and access to healthcare in prisons.

On 30 July - 2 August 2018, Akaki Kukhaleishvili, Deputy Head of the National Prevention Mechanism (Department) of the Public Defender's Office, participated as a speaker in a regional seminar on Introducing the NPM in Palestine, hosted in Amman.

On 15-19 October 2018, an international conference on Fair Treatment of Persons in Police Custody was held in Oranienburg. Nika Kvaratskhelia, Head of the National Prevention Mechanism (Department), delivered a lecture about national prevention mechanisms, discussed the achievements of the Georgian NPM and the existing challenges.

On 7-9 November 2018, Akaki Kukhaleishvili, Deputy Head of the National Prevention Mechanism (Department) of the Public Defender's Office, participated in a workshop organised under the auspices of the International Ombudsman Institute (IOI) in Copenhagen, which was dedicated to strengthening the Recommendation Fulfilment Assessment System for NPMs.

On 12-13 November 2018, Akaki Kukhaleishvili, Deputy Head of the National Prevention Mechanism (Department) of the Public Defender's Office, participated as a speaker/trainer in a workshop organised under the auspices of the Turkish Office of the United Nations Development Programme (UNDP) in Ankara. The workshop was dedicated to Enhancing the Capacities for the Effective Discharge of the Functions of the National Human Rights and Equality Institute (NHREI).

On 27-30 November 2018, the Head of the National Prevention Mechanism (Department) of the Public Defender's Office participated in a high-level international conference in Yerevan, dedicated to the 10th anniversary of the National Preventive Mechanism of Armenia. The Head of Georgia's NPM acted as a moderator of the session on monitoring psychiatric establishments.

On 2-6 December 2018, the Head of the National Prevention Mechanism (Department) of the Public Defender's Office, representatives of national preventive mechanisms/NGOs and experts in the field participated in the second regional meeting in Milan on the challenges regarding the prevention of torture.

1.6.5. COOPERATION WITH NGOs AND DONOR ORGANISATIONS

In 2018, the NPM actively cooperated with various local and international NGOs and donors.

In the reporting period, the NPM continued active communication with the PRI South Caucasus office. Numerous meetings were held regarding the situation of human rights protection in the places of deprivation of liberty. Furthermore, the representatives of the NPM maintained regular communication with the APT regarding the improvement of the recommendation follow-up control system.

The NPM actively cooperated with the European Union project, Combating All Forms of Discrimination in Georgia. For several years, the EU has been providing considerable financial and analytical support to the NPM, which is manifested in funding regular activities such as training sessions, monitoring visits, public presentations, etc.

Based on the memorandum concluded in accordance with the Rules of Cooperation with NGOs,¹² within the mandate of the NPM, a monitoring group composed of the representatives of the Human Rights Centre and staff members of the Public Defender's Office, in March and April 2018, visited

¹² Available at:

http://www.ombudsman.ge/res/docs/2019041010484470943.pdf?fbclid=IwAR2xAJ51tZ-iZj-LxR-8hxpFir-OX_S1nQkaPiZjSIUZ4YuxyBDoZ1uVcEc, (accessed 11.06.2019).

special penitentiary establishment no. 5 for women, rehabilitation establishment no. 11 for juveniles and the juvenile wing in penitentiary establishment no. 8. Based on the outcomes of the inspections carried out in these establishments, on 28 June, the NGO, Human Rights Centre published a report – The Situation of Female and Juvenile Prisoners in Georgia. The report was developed with the financial support of the Bulgarian Development Aid within the project, Monitoring of the Situation of Female and Juvenile Prisoners in Georgia.

Apart from the above-mentioned, in the reporting period, within the memoranda concluded with international organisations,¹³ the representatives of the NPM (Department) and NGOs carried out thematic monitoring in penitentiary establishments nos. 2, 3, 17 and 16.

1.7 WORK METHODOLOGY AND TRAINING OF THE NPM MEMBERS

1.7.1. CONSULTATIVE COUNCIL

The Consultative Council aims at contributing to the effective functioning and transparency of the NPM. The council presents to the Public Defender its views about the following issues: a) the action plan to be implemented by the NPM; b) work methodology; c) subject-matter research; d) professional training of the NPM members; e) other strategic documents of the NPM; and f) other issues of significance in terms of the effective functioning of the NPM. The views of the Consultative Council are consultative in nature. Its invited members should facilitate the NPM to maintain communication with academia, donor organisations and other stakeholders.

Apart from the representatives of the Public Defender's Office, there are invited members that are: a) persons engaged in educational and academic activities in the field related to the NPM's mandate; b) a member of an international organisation working in the fields of prevention of torture and criminal justice; c) a member of an international non-governmental organisation working in the fields of prevention of torture and criminal justice; and d) a member of a local non-governmental organisation working in the fields of prevention of torture and criminal justice.¹⁴

In 2018, two sessions of the NPM Consultative Council were held. The members of the Consultative Council were informed about the activities carried out and planned by the NPM. The members on their side expressed their views and recommendations regarding the activities of the NPM.

¹³ PRI, Rehabilitation Initiative for Vulnerable Groups, Human Rights Centre.

¹⁴See detailed information about the council at: <http://www.ombudsman.ge/geo/preventsiiis-erovnuli-mekanizmis-sakonsultatsio-sabcho> (accessed 10.06.19).

1.7.2. WORKING METHODOLOGY

The MPM pays particular importance to the revision and improvement of the working methodology. To this end, numerous workshops and meetings have been held and the members of the Special Preventive Group have been retrained.

In 2018, with the support of the European Union and the Association for Prevention of Torture, an international non-governmental organisation, the methodology for monitoring the fulfilment of the NPM's recommendations as well as the action plan of the activities to be carried out in this regard, Dialogue with Representatives of State agencies, Local and International Organisations, was developed.

1.7.3. TRAINING OF THE STAFF

On 30-31 August 2018, the representatives of the NPM of the Public Defender's Office participated in the training session organised under the auspices of the NGO, Prison Reform International (PRI). The training session aimed at introducing the methodology of monitoring in penitentiary establishments and the facilitation of acquiring practical monitoring skills. On 22-23 May, a representative of the NPM participated in a ToT on human rights, organised under the auspices of the United Nations Programme (UNDP).

2. PENITENTIARY SYSTEM

2.1. IMPLEMENTATION OF THE NPM'S RECOMMENDATIONS

The present subchapter is aimed at reviewing the fulfilment of recommendations, taking into consideration the nature of the impact of each recommendation regarding the prevention of torture and other ill-treatment. The Public Defender issued 34 recommendations within the mandate of the NPM, for preventing torture and other cruel and inhuman or degrading treatment or punishment as well as improving imprisonment conditions. Out of these recommendations, 4 have been fulfilled; 11 have been fulfilled partially and 19 were not fulfilled at all.¹⁵

Fulfilled Recommendations

Inadequate living conditions as Inhuman and Degrading Treatment

The Public Defender welcomes that establishment no. 7 was closed down and prisoners were transferred to other establishments. For years,¹⁶ the Public Defender had assessed the dire living conditions in this establishment as inhuman and degrading and had been requesting its closure.

It is commendable that, following the Public Defender's recommendation, the Ministry of Justice developed a strategy for dividing large penitentiary establishments into smaller facilities and setting up a balanced infrastructure.¹⁷

The size, architectural design and the practice of placement of prisoners in several penitentiary establishments operating in the country (nos. 2, 8, 14, 15 and 17)¹⁸ affect the situation considerably in terms of prevention of torture and other ill-treatment.

Partially Fulfilled Recommendations

The Public Defender positively assesses abolition of the so-called barrack-type dormitories in establishment no. 14. However, the recommendation has not been fulfilled with regard to penitentiary

¹⁵ The implementation of the recommendations is analysed as of May 2019.

¹⁶ The 2016 and 2017 NPM reports.

¹⁷ The Strategy and Action Plan on the Development of the Penitentiary and Crime Prevention Systems for 2019–2020 was approved by Order no. 385 of the Minister of Justice of Georgia of 22 February 2019, according to which the design and construction of new small facilities was one of the strategic goals of the order.

¹⁸ The capacity limit of establishment no. 2 – 1 068 accused/convicted persons; the capacity limit of establishment no. 8 is 3,170 accused/convicted persons; the capacity limit of establishment no. 14 – 1,362 convicted persons; the capacity limit of establishment no. 15 – 1,388 convicted persons; the capacity limit of establishment no. 17 – 2,000 convicted persons.

establishment no. 17, where the so-called barrack-type dormitories remain operational. In such dormitories, smoking and non-smoking prisoners stay in the same area and it is difficult to maintain hygiene standards; the risk of spreading contagious diseases is also high in such establishments. Besides, such establishments pose additional challenges in terms of security, as there is a higher risk of conflict among prisoners due to the lack of personal space.

Video Recording as One of the Effective Means for Identifying Torture and Ill-Treatment

Video recording¹⁹ is a significant means of storing evidence that contributes to fighting impunity, increasing the personnel's accountability and preventing torture and other ill-treatment. The Public Defender welcomes amending order no. 35²⁰ and determining the term of storage of video recordings for no less than 30 days. Moreover, the amendments provide for different terms of enforcement of the obligation of storing video recordings for no less than 30 days by different establishments.²¹

Rehabilitation as a Means of Correction of Prisoners' Behaviour, Reduction of the Influence of the Criminal Subculture and Violent Incidents, and Preventing Ill-Treatment

The following remains to be significant challenges in penitentiary establishments: inter-prisoner violence, taking effective measures against the influence of the prison's criminal subculture and maintaining order, which among other factors are caused by the shortage of rehabilitation and resocialisation activities in penitentiary establishments.

Against the background of the lack of rehabilitation programmes, the Public Defender welcomes the fulfilment of the recommendation and the implementation in semi-open prison facilities of the rehabilitation programmes previously implemented in low-risk prison facilities; also, the implementation of some of the rehabilitation programmes of the semi-open prison facilities in the closed-type prison facilities. Among other efforts, the implementation in the special-risk prison facilities of several programmes implemented in 2017 in the closed-type prison facilities is positively

¹⁹ This recommendation was reflected in the Resolution of the Parliament of Georgia on the 2017 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia. Under the resolution, no less than 7 days had to be determined as the reasonable term of storage of video recordings.

²⁰ The Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings as approved by Order no. 35 of 19 May 2015 of the Minister of Corrections and Probation of Georgia, available at: <https://matsne.gov.ge/ka/document/view/2823755?publication=4>, (accessed 13.06.19).

²¹ To be enforced in penitentiary establishment no. 8 from 1 July 2019; to be enforced in penitentiary establishments nos. 2 and 15 from 1 October 2019; to be enforced in penitentiary establishment no. 12 from 1 February 2020; to be enforced in penitentiary establishments nos. 7, 9, 17 and 19 from 1 July 2020; to be enforced in penitentiary establishments nos. 5 and 6 from 1 October 2020; to be enforced in penitentiary establishments nos. 3, 11, 14, 16 and 18 from 1 January 2021. Order no. 403 of the Minister of Justice of Georgia of 13 May 2019, available at: <https://matsne.gov.ge/ka/document/view/4561590?publication=0>, (accessed 13.06.19).

assessed.²² Despite this, activities carried out in penitentiary establishments in terms of rehabilitation and resocialisation are only fragmental and are not tailored to the individual needs of convicted persons.

Unfulfilled Recommendations

A Medical Professional's Role in the Fight Against Torture

The great part of the Public Defender's opinions, which concern the role of medical professionals in the fight against torture, remains unfulfilled. The Public Defender positively assesses the elaboration of the training module for penitentiary establishments' medical personnel on registering the injuries of accused/convicted persons as a result of alleged torture and other cruel, inhuman and degrading treatment in penitentiary establishments and training of 145 medical professionals of the penitentiary system according to this module. However, without ensuring the independence of medical professionals and documenting alleged incidents of torture and other ill-treatment in accordance with the Istanbul Protocol, the activities of medical professionals are less likely to be effective.

The Use of De-Escalation Rooms as an Informal Punishment and Amounting to Ill-Treatment

The practice of use of de-escalation rooms has been assessed by the Public Defender as informal punishment and ill-treatment. This practice does not ensure the reduction of risks on the part of prisoners threatening their own and/or other persons' life and limb.²³

In accordance with the changes made to the statutes of penitentiary establishments in 2016, the maximum duration of placing a prisoner in a de-escalation room is set at 72 hours.²⁴ However, the recommendation made in 2017 regarding reducing this term to 24 hours has been unfulfilled. The Public Defender's recommendation made in 2017 regarding creating a safe environment in de-escalation rooms (including lining the walls and floors with soft material) and providing multidisciplinary intervention for prisoners placed in de-escalation rooms has not been fulfilled either.

Impact of Being in Open Air on Prisoners' Physical and Mental Health

²² Three activities implemented in 2017 in closed-type prison facilities were implemented in special risk facilities in 2018.

²³ The duration of the use of de-escalation rooms, absence of multidisciplinary work and existing environment and conditions in the rooms.

²⁴ Maximum term was not determined until 2016.

The Public Defender's recommendations made in 2017 concerning increasing the daily duration of spending time in the open air (which is one hour) and arranging appropriate conditions for physical exercise in closed-type and special risk penitentiary establishments has not been fulfilled.

Despite the recommendation of the NPM, prisoners held in closed-type and special risk establishments were not given the possibility to spend more than one hour in the open air. The survey conducted by the Public Defender showed that 32.1% of prisoners, who are in the open-air daily, state that they are practically healthy. Prisoners of the same group complain rarely about serious and chronic diseases. Furthermore, those prisoners who spend a certain time in the open air daily suffer less from the inclination to self-harm, suicidal thoughts and attempts of suicide.²⁵

Contact with the Outside World as a Coping Mechanism with being in a Closed Institution, Psychological and Penitentiary Stress

Contact with the outer world has great importance for accused and convicted persons. Being in a closed institution is already depressive and associated with psychological difficulties and penitentiary stress.

Considering the fact that high-risk convicted persons placed in special-risk prison facilities are more restricted in their contact with the outer world in accordance with the legislation, it is obvious that they are practically isolated for prolonged periods, which contradicts international standards and can amount to ill-treatment in some cases.

Despite the recommendations made by the Public Defender, the Imprisonment Code has not been amended to the effect of giving the right to video visits to convicted persons in special-risk prison facilities.

The Imprisonment Code has not determined the right to long visits for remand prisoners, taking into account the interests of the investigation.

2.2.ASSESSMENT OF THE STRATEGY AND ACTION PLAN ON THE DEVELOPMENT OF THE PENITENTIARY AND CRIME PREVENTION SYSTEMS FOR 2019–2020

On 22 February 2019, the Minister of Justice of Georgia approved by order no. 385 the Strategy and Action Plan on the Development of the Penitentiary and Crime Prevention Systems for 2019–2020. The present chapter discusses how the Public Defender's recommendations are reflected in the Action Plan on the Development of the Penitentiary and Crime Prevention Systems. The action plan is composed of strategic goals, interim and expected outcomes, deadlines and indicators. The incorporation of the Public Defender's recommendations in the action plan has been reviewed in terms

²⁵ The Public Defender of Georgia, the NPM, Impact of the Imprisonment Conditions on Prisoners' Health, p. 118, available at: <http://www.ombudsman.ge/res/docs/2019060317571314166.pdf> (accessed 10.06.19).

of the seven major thematic directions: security, physical environment, risk assessment, equality, rehabilitation, medical services and contact with the outside world.

The incorporation of the Public Defender's recommendations in the Strategy and Action Plan on the Development of the Penitentiary and Crime Prevention Systems for 2019–2020 is welcomed by the Public Defender. However, some of the activities determined by the action plan are of general nature and do not allow analysing the compatibility of expected outcomes with the Public Defender's recommendations.

Order and Security

In terms of the order and security in the penitentiary system, the Public Defender's important recommendations concern the approach to the public order, system of disciplinary proceedings and the use of security measures. In terms of the approach to the public order, the Public Defender has emphasised the importance of establishing a constructive relationship between prisoners and personnel as a precondition to reducing the risk of disorders, violent incidents and ensuing ill-treatment in penitentiary establishments. The Public Defender welcomes the fact that the action plan incorporates the mechanisms of coping with inter-prisoner violence, the concept of dynamic security and the mechanisms of incentives. These are some of the most important recommendations that the Public Defender has been issuing for years.

It is with regret that the Special Preventive Group notes that the Action Plan does not address the system of disciplinary procedure at all. For years, the Public Defender has been discussing the importance of improving the disciplinary procedure and introducing minimum safeguards necessary for fair disciplinary responsibility. The Public Defender has issued recommendations in this regard.

The Public Defender welcomes the fact that the recommendation regarding the application of security measures has been incorporated in the action plan, namely, the recommendation about improving the procedures of entering, settlement, search and examinations. Despite this fact, the plan does not address the issue of changing the established practice of the use of certain security measures such as separation of prisoners, visual and/or electronic surveillance and de-escalation rooms. For years, the Public Defender has been discussing the importance of the application of security measures based on individual risk assessment, regular revisions and justification for short-time periods.

Physical Environment

The Public Defender welcomes that improvement of living conditions in active penitentiary establishments and designing /constructing new small-sized penitentiary establishments is determined as one of the strategic objectives in the action plan. However, there is no information in the plan as to

what type and concept are contemplated for these new, small-sized establishments and how they would ensure the environment necessary for the prisoners' rehabilitation/resocialisation.

The action plan does not address the problem of visitation infrastructure either; there is no reference to arranging the necessary infrastructure for either video visits or long-term visits in all penitentiary establishments.

The Public Defender hopes that the recommendations made by the Public Defender in relation to the infrastructure will be fully integrated into the construction concept of the new small-sized penitentiary establishments.

Risk Assessment

One of the activities was the revision of the risk assessment mechanism in the penitentiary system. It is noteworthy that, in May 2019, the penitentiary system started using the new instrument of risk assessment and needs assessment for adult convicts.

The new procedure approved by the Justice Minister does not follow the Public Defender's recommendation regarding the introduction of legal safeguards for a convicted person in the risk assessment procedure, namely:

- The new procedure does not lay down any obligation of the penitentiary authorities to inform convicted persons about the risk assessment criteria or procedures during placement in the establishment or immediately before the initiation of the risk assessment procedure; and
- In the risk assessment procedure, the new procedure does not safeguard a convicted person's right to present his position and viewpoints about the circumstances based on which risk is being determined (according to the new procedure, it is within the discretionary power of the team to interview a convicted person before reaching its decision about the risk assessment).

Similarly, the plan does not reflect the Public Defender's recommendations about the Inspectorate General carrying out supervision over transfers to other establishments for pre-term risk reassessment and security reasons.

Contact with the Outside World

The action plan provides for setting up a working group and developing a plan for creating a friendly and supportive environment within a family in cooperation with respective NGOs. It is important to incorporate the Public Defender's recommendations when elaborating the plan, namely, the following: to take into account the place of residence when accommodating a prisoner; to organise short-term visits without glass barriers; to arrange long-term and video visit infrastructure in all penitentiary

establishments; to increase the number of allowed visits and telephone calls in closed-type and special-risk establishments.

Equality

For years, the Public Defender has been issuing the same recommendation regarding the elaboration of a strategy aimed at eradicating hate, stigmatisation and marginalisation of LGBT prisoners and other prisoners employed in service units and responsible for cleaning.²⁶

One of the strategic goals of the plan is to improve convicted persons' opportunities for employment, vocational training, education and relaxation. To this end, setting up appropriate systems and infrastructure and taking into account the needs of vulnerable groups are emphasised. The Public Defender hopes that the ministry will study the needs of LGBT prisoners, prisoners doing household and cleaning jobs, and develop an action plan based on the identified needs. The Public Defender and the Special Preventive Group are well aware of the complexity of the problem and consider that it is necessary to carry out evidence-based, coherent and effective measures to solve the problem.

Rehabilitation

One of the goals of the plan is to reduce recidivism and thus prevent crime through effective rehabilitation and reintegration through penitentiary and probation systems. The expected outcome of these goals is the implementation of individual assessment, including implementation of effective methodologies of classification, sentence planning and incident management. The Public Defender and the Special Preventive Group hope that the provision of rehabilitation services tailored to individual needs of all convicted persons will be ensured.

Medical Services

One of the important goals of the plan is to create a healthy environment in penitentiary establishments and probation bureaus through improving the measures aimed at preventing and reducing contagious diseases, preventing suicide and self-harm, and improving mental health services. It is commendable that there are activities planned to further improve healthcare services for prisoners in penitentiary establishments and bring them closer to the quality of services provided in the civic sector. However,

²⁶ The problem is also discussed, on his visit to Georgia, by the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, from 25 September to 5 October 2018 (A/HRC/41/45/Add.1). The independent expert recommends that the state gather baseline information on the lesbian, gay, bisexual, trans and gender diverse populations in prison, including with regard to the size and the needs of those diverse populations, and incorporate components related to their care, protection and social integration in policy documents (para. 50); the report is available in the United Nations official languages at: http://ap.ohchr.org/documents/dpage_e.aspx?c=69&su=77, (accessed 12.06.2019).

it is to be noted that the plan does not provide for any changes in terms of screening for non-contagious diseases. The Public Defender made a recommendation to the ministry in the 2017 parliamentary report.

The Public Defender made numerous recommendations²⁷ to the ministry to ensure compliance of medical units of the penitentiary establishments with the standards existing in the country, including equipping these units adequately, control of medical equipment, improving ventilation system and arranging antistatic flooring. While the plan envisages the improvement of penitentiary healthcare standard, it is not obvious from the plan whether it plans to bring the primary healthcare units of penitentiary establishments in compliance with the national standards.

It should be mentioned positively that the plan envisages **the identification of drug and alcohol users and the introduction of harm reduction approaches through the provisions of medical and rehabilitation services**. According to the plan, by 2020, there must be at least one psychosocial rehabilitation and treatment programme for alcohol and drug users, which is commendable. There is a psychosocial rehabilitation programme, named Atlantis, implemented in establishments nos. 2 and 5.²⁸ In the report – Imprisonment Conditions’ Impact on Prisoners’ Health – the Public Defender recommended to the ministry to enhance the capacities of Atlantis and implement it in all penitentiary establishments. The plan does not envisage this recommendation.

The plan also envisages improvement of accessibility of psychiatric services and their quality in penitentiary establishments and probation systems. It should be mentioned positively that the plan envisages elaboration of screening tools and their implementation, retraining of nurses of establishments in mental healthcare, working on the strategy document on mental healthcare development and pilot programmes of crisis management. However, the plan does not envisage the increase in the number of psychiatrists in penitentiary establishments, development of outpatient mental healthcare services in penitentiary establishments, provision of community services in establishments, and introduction and development of psych-social rehabilitation programmes, which is particularly important for timely and adequate medical services.

2.3. THE SITUATION IN THE PENITENTIARY SYSTEM

Despite the reforms implemented in the penitentiary system for the past few years, the system needs significant fundamental reforms that will aim at developing a system that is based on human rights,

²⁷ The 2016 Parliamentary Report of the Public Defender of Georgia. See also Imprisonment Conditions’ Impact on Prisoners’ Health.

²⁸ The programme is a therapeutic model for the convicts suffering from alcohol, drug and other psychoactive substance abuse.

positive changes in the behaviour of convicted persons, their rehabilitation and their reintegration into the society.²⁹

The following remains to be a challenge in the penitentiary system: lack of procedural and institutional safeguards against ill-treatment; large penitentiary establishments where it is more difficult to maintain order and security; ensuring adequate conditions of imprisonment; the problem related to providing adequate rehabilitation services; the lack of such services increases the influence of the criminal underworld and risks of ill-treatment; the established approaches based on maintaining order and security in a penitentiary establishment which are based on negative aspects of managing prisoners' behaviour³⁰ and diminishes the feeling of fair treatment and increases the likelihood of violent incidents; the legislation governing risk-assessment of convicts and the existing practice of risk-assessment which cannot ensure reduction of risks from convicted persons and uncondusive to their rehabilitation; the lack of activities aimed at rehabilitation and resocialisation and lack of contact with the outside world; infrastructural conditions in penitentiary establishments; shortcomings in medical care and preventive health care; mental health care; creation of penitentiary establishments based on equality; and lack of personnel and their working conditions.

Against the background of the existing situation, managers of penitentiary establishments are tempted – in order to maintain order in penitentiary establishments – to allow the informal rule of the criminal underworld to a certain degree or even facilitate its existence.³¹ Similar to the previous years,³² according to the information received during the monitoring conducted in 2018 (conversations with prisoners and employees of penitentiary establishments), criminal underworld and informal rule in penitentiary establishments remain a significant challenge. In the opinion of the Special Preventive Group, it is necessary to develop a relevant strategy and carry out targeted, complex measures for overcoming the informal rule of the criminal underworld.³³

²⁹ The Nelson Mandela Rules, Rule 4.

³⁰ It implies punishing, controlling and subduing prisoners with maximum restrictions, prohibitions and discomfort, inter alia, with the use of the criminal underworld.

³¹ The 2015 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from in 2014. According to the report, the committee was concerned with the phenomenon of informal power structures existing within a prison, which in the committee's view can sometimes generate risks of intimidation or extortion, and possibly contribute to inter-prisoner violence, para. 56, the report is available at: <https://goo.gl/2f5bwa>, (accessed 28 February 2019)

³² The parliamentary reports of 2015, 2016, and 2017 of the Public Defender discuss criminal underworld existing in penitentiary establishments.

³³ It is noteworthy that the small number of applications lodged with the Public Defender's Office from semi-open establishments indicates the existence of the criminal underworld in these establishments (the so-called zones). In 2018, 8 applications were filed from establishment no. 14, where annually, 1,011 prisoners were accommodated on average; 17 applications were filed from establishment no. 15, where annually 1,811 prisoners

The CPT emphasised the existence of the criminal underworld in penitentiary establishments in its report published with regard to Georgia in 2019. The CPT discussed the particularly dangerous influence of the informal prisoner hierarchy in penitentiary establishment no. 15. The report also mentions that the management of penitentiary establishment no. 15 acknowledged that it considered itself compelled to share a part of its responsibility for order and security with “strong prisoners” (so-called “watchers”) to maintain order and security. In the view of the CPT, this exposed weaker prisoners to the risk of violence and intimidation. The committee also mentioned that in penitentiary establishment no. 15 a certain group of prisoners that has a great influence on the establishment enjoys privileged conditions, which differ greatly from the conditions of other prisoners.³⁴

The CPT calls upon the Georgian authorities to exercise constant vigilance and use all appropriate means at their disposal to prevent and combat inter-prisoner violence and intimidation. This should include ongoing monitoring of prisoner behaviour (including the identification of likely perpetrators and victims), proper recording and reporting of confirmed and suspected cases of inter-prisoner intimidation/violence, and thorough investigation of all incidents. The report also points out the importance of protection of the actual or potential victims against the actual or potential perpetrators (by taking steps such as transferring them to different establishments or otherwise preventing them from having any contact with each other). Furthermore, the CPT emphasises that an end must be put at penitentiary establishments to the practice of delegating authority to informal prisoner leaders and using them to maintain order and security among the inmates. All informal prisoner leaders and their close circles must be deprived of the privileges which other prisoners do not enjoy (including as regards material conditions); consideration might be given in this context to segregating the informal leaders and their close circles from the rest of the prison population, on the basis of a proper individual risk and needs assessment.³⁵

The Public Defender has been discussing for years the serious threats in terms of ill-treatment of prisoners posed by the criminal underworld existing in penitentiary establishments, which often causes violence among prisoners and their bullying.

It is noted in the Public Defender’s 2016 report³⁶ that it is necessary that the Ministry of Corrections of Georgia should understand the challenges posed by the existence of criminal underworld in penitentiary establishments and elaborate a strategy to overcome these problems. The issue needs to be

were accommodated on average; and 27 applications were filed from establishment no. 17, where annually 1,874 prisoners were accommodated on average.

³⁴ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 51, available in English at: <https://rm.coe.int/1680945eca> (accessed 12.06.19).

³⁵ *Ibid.*, para. 53.

³⁶ The 2016 report of the NPM, p 46, available at: <http://www.ombudsman.ge/res/docs/2019040513214458561.pdf>, (accessed 11.06.19).

addressed by a complex approach comprising relevant legal actions to be taken against those inmates violating the rights of other prisoners. The Public Defender observes that, for changing the existing situation, it is necessary to take task-oriented complex measures, including the practical implementation of a dynamic security concept, fighting impunity, enhancement of rehabilitation services, creation of adequate prison conditions, raising awareness among prisoners, offering incentives to inmates and giving them opportunities to be involved in various meaningful activities. All these measures taken together will weaken the authority of criminal underworld in penitentiary establishments. It is also necessary to take measures aimed at overcoming criminal underworld under the conditions, where inmates' rights and safety are secured. Violent and repressive methods should not be applied in order to avert possible torture and other cruel, inhuman or degrading treatment or punishment.

In the 2015 report,³⁷ the Public Defender discussed discriminatory attitudes towards prisoners employed in service units and responsible for cleaning, which continues to date and is caused by the criminal underworld and supported by the establishment authorities.

2.3.1. PROCEDURAL AND INSTITUTIONAL SAFEGUARDS AGAINST ILL-TREATMENT

During 2018, the Public Defender's Office applied twice to the Office of the General Prosecutor of Georgia with a proposal to start an investigation into the alleged physical violence against a prisoner by an employee of the penitentiary system. It is noteworthy that on both the occasions an investigation was launched but criminal prosecution was not instituted against anybody. Furthermore, during the monitoring conducted in penitentiary establishment no. 6 in 2018, the members of the Special Preventive Group received information about alleged physical violence against one of the prisoners by prison officers.³⁸

The prevention of torture and other ill-treatment cannot be effective unless there are legal safeguards against such treatment introduced at the legislative level and implemented in practice. Unfortunately, a significant portion of the recommendations made by the Public Defender in 2017 towards enhancing procedural and institutional safeguards against torture and other ill-treatment are still unfulfilled.³⁹

³⁷ The 2015 report of the NP, p. 134, available at: https://drive.google.com/file/d/1_VN-AwGDBAc-ocqskoTm0OSPXcrb9Cup/view, (accessed 11.06.19).

³⁸ Injuries were visible on the body of the prisoner and they were documented by the photographs taken by the members of the Special Preventive Group. The materials were sent to the Office of the Chief Prosecutor of Georgia for instituting an investigation. According to the response received from the prosecutor's office, investigation regarding this incident was launched under Article 144³ of the Criminal Code of Georgia.

³⁹ *Inter alia*, no steps have been taken towards integrating the penitentiary health care into civil healthcare in the context of professional independence. Unlike the Ministry of Internal Affairs, the obligation of a medical professional employed in a penitentiary establishment to notify the independent investigative agency about alleged ill-treatment has not been laid down in a legislative act.

In the opinion of the Special Preventive Group, a significant risk of ill-treatment arises from the nefarious practice⁴⁰ of placing prisoners in de-escalation rooms for lengthy periods.⁴¹

For the purpose of effectively documenting and investigating torture and other cruel, inhuman or degrading treatment or punishment, it is necessary to ensure that forensic examinations are conducted in the country in compliance with the Istanbul Protocol. It is noteworthy that the wording of the findings of forensic examination conducted by the LEPL Levan Samkharauli National Forensics Bureau regarding incidents of torture and other ill-treatment do not comply with the requirements under chapters V, VI and Annex 1 (Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) of the Istanbul Protocol. In particular, there are questions posed by the investigative authority about whether there is any kind of injury, location and time-frame of infliction of this injury and the cause. According to the national bureau's conclusions, certain injuries have been inflicted for instance by a solid blunt object and is of a minor nature; then the time-frame of the injury is indicated. It is clear that these conclusions fail to establish a possible link between torture and other ill-treatment, on the one hand, and physical symptoms, on the other hand. This does not comply with the guidelines of the Istanbul Protocol. Moreover, the psychological state of an alleged victim is not assessed and the possible link of identified symptoms with torture and other ill-treatment is not established.

According to the assessment of the Public Defender and the Special Preventive Group, it is necessary to adopt complex measures for establishing a practice of forensic examination that would comply with the principles of the Istanbul Protocol. This could imply the renovation of the logistical and technical infrastructure, retraining of staff, and revision of the legislation and development of relevant instructions. Therefore, the Government of Georgia should elaborate a plan that would be aimed at the practical implementation of the guidelines of the Istanbul Protocol in forensic examinations.

The results of the monitoring conducted in 2018 show that the effective identification and documentation of alleged incidents of ill-treatment is not fully ensured in penitentiary establishments. It is noteworthy that in penitentiary establishments, from 1 January to 30 September 2018, injuries were documented only in 8 cases in accordance with the new form of registering injuries;⁴² whereas,

⁴⁰The practice of placing a prisoner in a de-escalation room remains problematic. During the application of this measure, there is no multidisciplinary intervention on the part of the establishment's personnel to reduce and eradicate risks. Prisoners are prohibited from maintaining contacts with the outside world and they are not provided with clothes and items of personal hygiene. The environment and conditions in de-escalation rooms remain problematic. The rooms are not safe and not arranged in a way to reduce the risk of self-harm to the minimum.

⁴¹ Shortly after the expiry of 72-hour term (which is a maximum term), prisoners are placed in de-escalation rooms again.

⁴²Order no. 131 of the Minister of Corrections and Probation of Georgia on Approving the Procedure for Documenting Injuries of Accused/Convicted Persons as a Result of Alleged Torture and Other Cruel, Inhuman or Degrading Treatment in Penitentiary Establishments of the Ministry of Corrections and Probation of Georgia.

according to the information received from the Special Penitentiary Office of the Ministry of Justice of Georgia, from 1 January to 30 September 2018, 83 accused persons that were brought to penitentiary establishments sustained injuries during arrest and after arrest.⁴³ At the same time, in penitentiary establishments, from 1 January 2018 until 30 September 2018, in terms of injuries documented to be found on accused and convicted persons, in 209 cases, injuries were inflicted by another person and in 74 cases, the origin of injuries could not be identified.⁴⁴

Under the procedure of documenting injuries of accused/convicted persons, the suspicion of a health-care professional concerning possible torture and other ill-treatment of the prisoner is the ground for registering injuries. Stemming from the fact that the criteria based on which a medical professional selects suspicious injuries are not determined by law, there is a risk that incidents of ill-treatment will not be identified fully and effectively. Therefore, it is necessary to statutorily determine guidelines for the criteria for selecting suspicious injuries by medical professionals.

Under Article 2.2. of the Procedure of Documenting Injuries of Accused/Convicted Persons in the Penitentiary System, before the medical examination, a medical professional must obtain a patient's informed consent. Under Article 2.5, an examination cannot be carried out without the informed consent of the patient.

The CPT, in its report to the Government of Georgia concerning the visit to Georgia, carried out in 2018, recommended that the existing procedure needs to be amended so as to require using the "body charts" and taking photographs (and reporting this information) whenever prison doctors believe that there are grounds to suspect ill-treatment/inter-prisoner violence, irrespective of whether the prisoner alleged any ill-treatment, and agreed to such recording and reporting.⁴⁵

2.3.2. LARGE PENITENTIARY ESTABLISHMENTS⁴⁶

It is commendable that, following the Public Defender's recommendation, the Ministry of Justice developed the strategy for dividing large penitentiary establishments into smaller facilities and setting up a balanced infrastructure.⁴⁷ However, the Public Defender's recommendation concerning addressing

⁴³ Letter no. 32884/01 of the Special Penitentiary Office of the Ministry of Justice of Georgia, dated 9 February 2019.

⁴⁴ Letter no. 32884/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, dated 9 February 2019.

⁴⁵ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 80, available at: <https://rm.coe.int/1680945eca>, (accessed 15.05.19).

⁴⁶ As of December 2018, the number of convicted persons in establishment no. 15 exceeded the limit by 373. As regards establishment no. 2, the number of convicts exceeded the limit for 9 months in 2018.

⁴⁷ The Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020 was approved by Order no. 385 of the Minister of Justice of Georgia of 22 February 2019 according to which one of the strategic goals of the order was the design and construction of new smaller facilities.

the problem of overcrowding in penitentiary establishment no. 15 was not fulfilled. The Public Defender recommended the transfer of convicted persons to another semi-open prison facility. It is planned under the above strategy to submit the plan of closing penitentiary establishment no. 15, which should also be positively noted. The Public Defender deems it necessary that, in parallel to developing the strategy of dividing the system into smaller establishments, the criminal policy should be aimed at the application of non-custodial preventive measures in the country. Furthermore, the existing system of conditional early release should also be revised since there are shortcomings in its implementation.⁴⁸

2.3.3. ORDER AND SECURITY

The existing system of disciplinary proceedings remains a significant challenge in the context of ensuring order in penitentiary establishments. This system does not serve the maintenance of order and protection of the fundamental rights of persons deprived of their liberty in the penitentiary establishments. Despite the recommendations made in 2017, no steps have been taken towards introducing minimum safeguards necessary for a fair system of disciplinary proceedings.⁴⁹ It is also problematic that the legislation does not determine the obligation of imposition of disciplinary penalty as a last resort. Furthermore, neither legislation nor practice incorporates conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or resolve conflicts. Such mechanisms are based on trust and constructive relations among the personnel and the prisoners, aimed at establishing positive relations and thus correcting prisoners' behaviour.⁵⁰

Since the Georgian legislation does not differentiate disciplinary penalties according to the seriousness of the act concerned,⁵¹ there is a risk of application of disproportionate penalties. Not even minimum standards of a fair trial are upheld in disciplinary proceedings.⁵² Usually, according to the existing practice, a disciplinary penalty is applied without an oral hearing and an order on its application is only

⁴⁸ It is still a major problem that the decisions are not justified. Furthermore, different approaches of local councils in different cases with identical circumstances are identified, which is manifested by adopting different decisions in such cases.

⁴⁹ No guidelines on imposition of disciplinary penalties have been developed; the procedure of oral hearing during disciplinary proceedings has not been introduced.

⁵⁰ The Nelson Mandela Rules, Rule 38.1 and Rule 76.1.c).

⁵¹ It is noteworthy that there are two categories of disciplinary offences in penitentiary establishments of Great Britain based on the gravity of a violation: misconduct and gross misconduct; information is available at: https://www.justice.gov.uk/downloads/offenders/psipso/psi-2010/psi_2010_06_conduct_and_discipline.doc, (accessed 16.02.19).

⁵² The European Prison Rules require that prison administrations should uphold minimum standards of a fair trial, Article 59.

substantiated with explanations and reports submitted by the personnel. Prisoners practically do not participate in disciplinary proceedings.⁵³

The practice of the application of security measures in penitentiary establishments is problematic. Decisions on visual and/or electronic surveillance are not justified. The use of the above means without appropriate justification results in interference in the right to respect for private life.⁵⁴ It should be also noted that the Public Defender's recommendation concerning increasing the term of surveillance recordings at least for ten days has not been fulfilled.⁵⁵

The high security prisons are **based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. Such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and eventual social reintegration.**⁵⁶

Placing prisoners in de-escalation rooms remains problematic similar to the previous years.⁵⁷ Furthermore, the recommendation of the Public Defender remains the same that it is necessary to store surveillance recordings from de-escalation rooms for at least one month in all cases. Full search of prisoners are carried out again routinely and are not based on the imminent risk assessment of prisoners.⁵⁸ Furthermore the grounds for full (strip) search and body cavity searches are not clearly stipulated.⁵⁹ According to the information received by the Special Preventive Group from prisoners during monitoring, full searches are still conducted in penitentiary establishments.

⁵³ The frequent use of solitary confinement cells is problematic in some establishments. The instances of use of solitary confinement cells against prisoners with mental health problems have not been eradicated. Prisoners still claim that they are provoked and then imposed with disciplinary sanctions.

⁵⁴ Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 December 2012, para. 52, available in English at: <https://rm.coe.int/168069844d>, (accessed 10.02.2019).

⁵⁵ Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings as approved by Order no. 35 of 19 May 2015 of the Minister of Corrections and Probation of Georgia lays down 120 hours (five days) as the minimum term of storing video recordings.

⁵⁶ The 2016 Report of the National preventive Mechanism of the Office of the Public Defender of Georgia, pp. 40-45.

⁵⁷ During the application of this measure, there is no multidisciplinary intervention on the part of the establishment's personnel to reduce and eradicate risks. Prisoners are prohibited from maintaining contacts with the outside world and they are not provided with clothes and items of personal hygiene. The environment and conditions in de-escalation rooms remain problematic. The rooms are not safe and not arranged in a way to reduce the risk of self-harm to the minimum. Besides, the recommendation of the Public Defender about introduction of the statutory limit of the term of placement of prisoners in de-escalation rooms to a maximum term of 24 hours has not been fulfilled.

⁵⁸ **The regulations under the statutes of penitentiary establishments determine administration of full body searches in all occasions of first arrival, temporary leave and return to the penitentiary establishment. Furthermore, based on the decision of the director or another official authorised by the director, full body search can be administered in other cases as well.**

⁵⁹ The 2016 Report of the National Preventive Mechanism, pp. 71-81.

2.3.4. RISK ASSESSMENT AND CLASSIFICATION OF CONVICTED PERSONS

Under the legislation of Georgia, these are the following categories of risks: low, average, increased, and high. Convicted persons of low risk are placed in low risk prison facilities; convicted persons of average risk – in a semi-open prison prisons; convicted persons of increased risk – in a closed type prison facility; and convicted persons of high risk – in high security prisons. Convicted persons' risks are assessed by the risk assessment team.

The system of risk assessment of convicted persons is a significant challenge in the penitentiary system. In this regard, the problem exists in having no legal safeguards and in lack of a conducive approach to reducing inmates' risks in the risk assessment process.

2.3.5. ABSENCE OF LEGAL SAFEGUARDS IN THE RISK ASSESSMENT PROCESS

It is problematic, in the context of legal safeguards of convicted persons in the risk assessment process, that the Georgian legislation⁶⁰ does not lay down the obligation of penitentiary establishments to inform a prisoner during his/her first placement in an establishment about the risk assessment system.

Similarly, the legislation does not lay down the right of convicted persons to be involved on their own motion in the risk assessment process and argue his position regarding the factors that can serve as the ground for determining the risk.

It is noteworthy that the decision adopted by the risk assessment team concerning the specific category of risk determines the type of a prison facility in which a convict should serve punishment, to what extent his/her communication with the outside world and other rights should be restricted. Accordingly, the Special Preventive Group believes that it is necessary to afford the appropriate legal safeguards to convicted persons in the process of risk assessment, which will ensure the protection of convicted persons' rights in the process.⁶¹ Furthermore, convicted persons should be informed about

⁶⁰Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015 on Approving Types of a Convicted Person's Risks, Risk Assessment Criteria, Procedure for Risk Assessment and Risk Reassessment, Terms and Procedure for Transferring A convicted Person to another Prison Facility of the Same or Other Type, Also the Procedure for Determining Activity and Authority of the Risk Assessment Team.

⁶¹ Under para. 32 of Recommendation CM/Rec(2014)3 of the Committee of Ministers to Member States concerning dangerous offenders, adopted by the Committee of Ministers on 19 February 2014, "offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment." Under para. 20, "Anyone held for preventive reasons should be entitled to a written plan which provides opportunities for him or her to address the specific risk factors and other characteristics that contribute to their current classification as a dangerous offender."

the specific acts and behaviour⁶² that would be reflected positively or negatively on the decision about risk assessment.

With regard to the above problem, in her 2018 Parliamentary Report, the Public Defender of Georgia recommended to the Minister of Justice of Georgia, in 2019, to take all the measures to ensure the amendment of Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015 to the end of a) determining the obligation of informing a convicted person by a penitentiary establishment about risk assessment criteria and procedures when bringing to a penitentiary establishment and right before the process of risk assessment starts; and b) determining the right of a convicted person to submit his/her position and opinion about circumstances based on which risk is being assessed.⁶³

It is noteworthy that Order no. 395 of the Minister of Justice of Georgia of 8 May 2019 invalidated Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015 on Approving Types of a Convicted Person's Risks, Risk Assessment Criteria, Procedure for Risk Assessment and Risk Reassessment, Terms and Procedure for Transferring A convicted Person to another Prison Facility of the Same or Other Type, Also the Procedure for Determining Activity and Authority of the Risk Assessment Team.

The same order approved Types of a Convicted Person's Risks, Risk Assessment Criteria, Procedure for Risk Assessment and Risk Reassessment, Terms and Procedure for Transferring A convicted Person to another Prison Facility of the Same or Other Type, Also the Procedure for Determining Activity and Authority of the Risk Assessment Team.

Unlike the procedure approved by Order no. 70 of the Minister of Corrections and Probation of Georgia, the procedure approved by Order no. 395 of the Minister of Justice of Georgia lays down the authority of the risk assessment team that can be discharged in the risk assessment process, namely, the risk assessment team is entitled to meet and hear a concerned convicted person on its own motion before adopting a decision about the increased-risk or high risk.⁶⁴ The Public Defender and the Special Preventive Group positively assess that this authority of the risk assessment team has been determined. However, the decision to meet a convicted person is a team's discretion rather than an obligation and only applies to increased-risk or high-risk cases. Accordingly, this change only does not meet the Public

⁶² For instance, upholding legal regime of a penitentiary establishment, participation in rehabilitation activities, etc.

⁶³ The 2018 Parliamentary Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 53, available at: <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>, (accessed 10.02.2019).

⁶⁴ Article 13.1 of Order no. 395 of the Minister of Justice of Georgia of 8 May 2019 Approving Types of a Convicted Person's Risks, Risk Assessment Criteria, Procedure for Risk Assessment and Risk Reassessment, Terms and Procedure for Transferring A convicted Person to another Prison Facility of the Same or Other Type, Also the Procedure for Determining Activity and Authority of the Risk Assessment Team.

Defender's above recommendations to ensure legal safeguards for convicted persons in the risk assessment process.

The CPT in its report to the Government of Georgia concerning the visit to Georgia carried out in 2018 noted that, in the context of individual risk assessment and individual sentence plans, particular attention should be paid to the procedural safeguards mentioned above and, in the case of individual sentence plans, involving (to the extent possible) prisoners in the drafting and reviewing the plans so as to secure their commitment to the implementation of the plans and to their social rehabilitation.⁶⁵

Apart from the abovementioned, the Public Defender of Georgia fully shares the spirit of the CPT that there is an urgent need to completely rethink the philosophy and the approach to them so as to ensure that any restrictions on organised activities, association, privacy and contact with the outside world are only imposed based on a genuine and frequent review (at least every 6 months).⁶⁶ Accordingly, the Public Defender and the Special Preventive Group believe that the Risk Assessment Rules approved by Order no. 395 of the Minister of Justice of Georgia of 8 May 2019 should be amended to the effect of making it mandatory to review high-risk prisoners once a month.⁶⁷

2.3.6. ABSENCE OF APPROACH CONDUCIVE TO CONVICTED PERSONS' RISK REDUCTION

In terms of the approach that would facilitate the reduction of risks posed by convicted persons, the absence of a uniform system of assessment of convicted persons' risks and needs in the penitentiary system is problematic. The same concerns the practice of artificially discouraging transfers to low-risk prison facilities.

As it was established by the examination carried out by the Special Preventive Group, convicted persons' needs and risks are not assessed in penitentiary establishments by virtue of the uniform system. Therefore, during the classification of convicted persons, the individual risks of convicted persons are not studied; specific needs to eliminate these risks are not identified and followed up. This would greatly influence risk reduction and convicted persons' rehabilitation.

Apart from the above mentioned, the examination carried out in penitentiary establishment no. 16, which is a low-risk prison facility, showed that convicted persons are obliged to go to the dining area during meal hours three times a day and be there irrespective of whether they want to eat. Moreover, the establishment's management obliges convicted persons to walk from the accommodation block to

⁶⁵ See the Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 74, available at: <https://rm.coe.int/1680945eca>, (accessed 12.06.19)

⁶⁶ *Idem*.

⁶⁷ Under Article 17 of Order no. 395 of the Minister of Justice of Georgia of 8 May 2019 on the risk assessment procedure, high-risk convicted persons must be reviewed at least once in 12 months.

the dining area and back in two coordinated lines. The convicted persons are obliged to clean corridors in their living blocks.⁶⁸

It should be noted that, as a result of the influence of the criminal underworld existing in penitentiary establishments, for the majority of convicted persons, it is unacceptable to clean corridors and walk in sync. There were cases when prisoners transferred to penitentiary establishment no. 16 refused to stay in this establishment as it was unacceptable for them to comply with the above rules. Besides, as of December 2018, in penitentiary establishment no. 16, there were 153 convicted persons whereas the limit of this penitentiary establishment is set at 856 convicted persons. These facts clearly show that the rules existing in penitentiary establishment no. 16 negatively affects the motivation of convicted persons to be transferred to a low-risk establishment for serving their sentence.

All the above-mentioned shows that the shortcomings of the legislation governing risk assessment and the existing relevant practice do not contribute to convicted persons' risk reduction and rehabilitation. Deprivation of liberty is still perceived mainly as a punishment and in the interests of the public's safety maintained through the isolation of convicted persons from the outside world, and less attention is paid to the fulfilment of the objectives of rehabilitation and resocialisation, which in its turn leads to a formalistic approach to the risk assessment system.

2.3.7. SEPARATION OF PRISONERS FOR SECURITY MEASURES

The ground for placing prisoners separately is determined by Article 57.1.b) of the Imprisonment Code.⁶⁹ The procedures of the application of the measure concerned are governed by the statutes of penitentiary establishments that are approved by the respective orders of the Minister of Correction and Probation of Georgia.

It is noteworthy that different rules apply to the separation and extension of separation by the statutes of semi-open, closed-type and special-risk prison facilities.

Under the statutes of semi-open establishments,⁷⁰ a director, based on a prisoner's application or his/her own motion, provided there are relevant grounds present, takes a decision about placing a prisoner separately for a reasonable time until the respective threat is resolved. In case of necessity, the decision

⁶⁸ Under Article 32.3.d) of the statute of the Penitentiary Establishment no. 16 of the Ministry of Corrections and Probation of Georgia, a convicted person shall be obliged to maintain personal hygiene, keep his/her clothes, bed, special living space, hall, corridor, staircase and workspace neat and clean.

⁶⁹ Based on a reasoned decision, a prisoner may be separated from other prisoners in order to prevent self-harming, harming another person, damaging property, crime and other violation in the establishment; also in cases of an accused/convicted person disobeying a legal request of a penitentiary officer, self-defence, group disobedience, and/or to prevent mass disorder.

⁷⁰ Penitentiary establishments nos. 12, 14, 15 and 17.

about the separation of a prisoner from other prisoners can be extended for another 30 days by the director's decision.

Under the statutes of closed-type prison facilities,⁷¹ an establishment's director based on a prisoner's application, a report of the officer of legal regime/security unit of the establishment or his/her own motion, provided there are relevant grounds present, takes a decision about placing a prisoner separately for no more than 90 days. The decision about the separation of a prisoner from other prisoners can be extended more than once, each time for no more than 90 days until the grounds under the statute are exhausted.

Under the statutes of special-risk prison facilities,⁷² an establishment's director, based on a prisoner's application or his/her own motion takes a decision about placing a prisoner separately for no more than 30 days. In case of necessity, the decision about the separation of a prisoner from other prisoners can be extended for a reasonable time until the respective threat is resolved.

The analysis of the above provisions shows that directors of penitentiary establishments have the discretion to place prisoners on their own motion separately for an indefinite time and limit their contact with other prisoners. This could amount to inhuman and degrading treatment.

Directors of semi-open penitentiary establishments can place a prisoner separately on their own motion for a reasonable time; directors of closed-type establishments have the power to extend on their own motion the duration of separation more than once, each time no more than for 90 days until the grounds under the establishment statute are exhausted; special-risk establishment directors can extend the duration of separation for a reasonable time until the respective threats are resolved.

The inspection of penitentiary establishments shows that the measure of placing prisoners separately is actively used in practice. According to letter no. 159934/01 of the Special Penitentiary Service, dated 30 May 2019, as of 30 May 2019, 19 prisoners were placed separately in penitentiary establishment no. 3; 109 prisoners in penitentiary establishment no. 6; 8 prisoners in penitentiary establishment no. 7; 24 prisoners in penitentiary establishment no. 8; and 8 prisoners in penitentiary establishment no. 9. According to the same letter, some of these prisoners have been separated from other prisoners for years. For instance, since 2018, 13 prisoners have been placed separately in penitentiary establishment no. 3. In penitentiary establishment no. 6, 4 prisoners have been placed separately since 2014; 4 prisoners have been placed separately since 2015; 4 prisoners have been placed separately since 2016; 5 prisoners have been placed separately since 2017, and 44 prisoners have been placed separately since 2018. In penitentiary establishment no. 7, 1 prisoner has been placed separately since 2005; and 5 prisoners have been placed separately since 2018. In penitentiary establishment no. 8, 2 prisoners have been placed separately since 2013; 1 prisoner has been placed separately since 2014; 1 prisoner has been

⁷¹ Penitentiary establishments nos. 2, 8 and 9.

⁷² Penitentiary establishments nos. 3, 6 and 7.

placed separately since 2015; 5 prisoners have been placed separately since 2016; 10 prisoners have been placed separately since 2017, and 4 prisoners have been placed separately since 2018. In penitentiary establishment no. 9, 1 prisoner has been placed separately since 2012; 1 prisoner has been placed separately since 2013; 1 prisoner has been placed separately since 2017; and 3 prisoners have been placed separately since 2018.

The CPT points out that it “pays particular attention to prisoners held, for whatever reason (for disciplinary purposes; as a result of their ‘dangerousness’ or their ‘troublesome’ behaviour; in the interests of a criminal investigation; or at their own request), under conditions akin to solitary confinement. The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the concerned person. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.”⁷³

In the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on his mission to Georgia in 2015, the Special Rapporteur discussed this practice of placing prisoners separately, where a prisoner may spend several months in this form of solitary confinement. The Special Rapporteur is of the opinion that this may constitute cruel, inhuman or degrading treatment and even torture, and may indeed risk exacerbating the conditions that make these inmates a risk to themselves or others.⁷⁴ For the purposes of the report, the Special Rapporteur defined solitary confinement as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. 15 days is the limit between “solitary confinement” and “prolonged solitary confinement” because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible, which amounts to cruel, inhuman or degrading treatment or punishment or, in some cases, even torture.⁷⁵

Considering the above-mentioned, in the 2016 parliamentary report, the Public Defender recommended to the Minister of Corrections to ensure that it was mandatory to review decisions about separating prisoners for 14 days after the use of this measure and later within the same intervals. However, this recommendation has not been fulfilled.⁷⁶

⁷³ CPT report on its visit to Finland, carried out in 1998, (CPT/Inf(96)28).

⁷⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia in 2015, A/HRC/31/57/Add.3, para. 85.

⁷⁵ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, available in English at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/268, (accessed 11.06.19).

⁷⁶ The 2016 parliamentary report of the Public Defender of Georgia, p. 69.

The approach under international human rights law should always be borne in mind according to which the state is under an obligation to review periodically the need and proportionality of measures applied to a convicted person for security measures. Under Rule 50.5 of the European Prison Rules, “The level of security necessary shall be reviewed at regular intervals throughout a person’s imprisonment.”

The Public Defender maintains the same position that appropriate legal safeguards should be incorporated in domestic legislation in order to ensure that separated prisoners do not face such conditions in isolation, which would subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in imprisonment and at the same time would undermine the chances of rehabilitation.

2.3.8. PRISONERS’ REHABILITATION AND RESOCIALISATION

The activities carried out in penitentiary establishments in terms of rehabilitation and resocialisation are sporadic and are not tailored to the individual needs of convicted persons. Individual sentence planning is formalistic.⁷⁷ Against the background where there is a shortage of social workers in terms of numbers⁷⁸ and qualifications⁷⁹ (a social worker must have a bachelor’s degree, master’s degree /equivalent to master’s degree or doctorate in the field of social work or the certificate of a social worker as stipulated by law), it is impossible to determine the individual needs of convicted persons.⁸⁰

The CPT recommends that the Georgian authorities fully implement in practice the new provisions on individual risk assessment and individual sentence plans in all prisons and in respect of all inmates. In this context, particular attention should be paid to the procedural safeguards mentioned above and, in the case of individual sentence plans, to involving (to the extent possible) prisoners in the drafting and

⁷⁷ During 2018, examination of individual sentence planning showed that individual plans do not comprehensively reflect the work conducted by specialists after the identification of a convicted person’s needs; on a couple of occasions, the involvement of prisoners in activities (necessary response) are planned so that the forms of risk and needs assessment does not show what needs have been identified; after the completion of activities as stipulated in individual sentence plans, the achieved results are not assessed; the activities planned according to identified needs are not sufficient.

⁷⁸For instance, as of December 2018, there were 3 vacancies for social workers in establishment no. 16; 2 vacancies for social workers in establishment no. 17; 3 vacancies for social workers in establishment no. 2; a vacancy for the Head of Social Work Department and one vacancy for a social worker in penitentiary establishment no. 3.

⁷⁹ The majority of social workers employed in penitentiary establishments do not comply with the requirements under Article 42.1.c) of the Law of Georgia on Social Work.

⁸⁰ From January 2018 to September 2018, (except for establishment no. 16) 621 individual sentence planning was drafted. In the same period, no individual sentence planning has been drafted in establishments nos. 6 and 14.

reviewing the plans so as to secure their commitment to the implementation of the plans and to their social rehabilitation.⁸¹

In those circumstances where individual sentence planning is formalistic and activities carried out in penitentiary establishments in terms of rehabilitation and resocialisation are not tailored to individual needs of convicted persons, it is imperative to ensure that rehabilitation programmes implemented in 2018 in low-risk prison facilities are implemented in the semi-open prison facilities. It is also important to ensure that rehabilitation programmes implemented in 2018 in the semi-open prison facilities are implemented in the closed type prison facilities also, taking into account the infrastructure and security considerations and ensure that rehabilitation programmes implemented in 2018 in the closed type prison facilities are implemented in special risk prison facilities too, taking into account the infrastructure and security considerations. Furthermore, it is imperative that, in 2019, rehabilitation programmes in each penitentiary establishment should cover more prisoners.

In terms of rehabilitation and resocialisation, the situation in special risk penitentiary establishments is particularly difficult.⁸² Being locked up in cells for 23 hours without interesting and engaging activities in closed-type and special risk facilities strengthens the feeling of protest, unfairness and hopelessness, which creates additional problems in terms of order and security.

It is noteworthy that the same problem is pointed out by the CPT in its report to the Georgian Government on the visit carried out in Georgia in 2018. According to the CPT, as had been the case during previous visits, progress had been much less impressive in drawing up programmes for purposeful, out-of-cell activities for prisoners. The delegation again observed that prisoners in closed-type establishments visited (establishments nos. 3, 6, 7, 8 and 9) were locked up in their cells for most of the day, in a state of enforced idleness. For some of them (those in the so-called “high-risk” category), the regime could amount to de facto solitary confinement for years on end. The situation was not much better in semi-open establishment no. 15 – although not locked up during the day and free to move around the prison premises, inmates were basically left with nothing to do.⁸³

The Public Defender’s recommendations made in 2017 concerning increasing the daily duration of the time spent in the open air (which is one hour) and arranging appropriate conditions for physical exercise in closed-type and special risk penitentiary establishments has not been fulfilled. At the same

⁸¹ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 74, available in English at: <https://rm.coe.int/1680945eca>, (accessed 15.05.19).

⁸² In 2018, there were only 5 rehabilitation programmes implemented in penitentiary establishment no. 3; **only one rehabilitation activity was implemented in penitentiary establishment no. 6 and no rehabilitation activities were implemented in penitentiary establishment no. 7.** There is a psychologist working individually with some convicted persons in these penitentiary establishments, which is not conducted systematically.

⁸³ Available at: <https://rm.coe.int/1680945eca>, p. 5, (accessed 26.05.2019).

time, increasing prisoners' educational and employment opportunities⁸⁴ is noteworthy. Despite the positive changes made in 2018,⁸⁵ out of 15 penitentiary establishments, a workshop is functioning only in four penitentiary establishments (nos. 5, 14, 15, and 16).⁸⁶ Work is not perceived as a positive aspect of the prison regime in a penitentiary establishment. The prisoners doing household services still have to do the jobs⁸⁷ that are less likely to develop or maintain the skills that would enable them to sustain themselves after release. Moreover, doing such work is associated with a strong stigma. Unfortunately, there is a situation in penitentiary establishments where prisoners responsible for household chores and doing cleaning jobs are stigmatized, isolated from the prison life and marginalised. At the same time, there is a high risk of violence against them. There is an impression that prison officers take into account the informal prison rule and thus condone the existing situation.⁸⁸

It should be noted that social workers and psychologists working in penitentiary establishments do not have an appropriate workspace to work with convicted persons in a peaceful and therapeutic environment. Prisoners' participation in rehabilitation activities is also obstructed by factors such as the criminal underworld and absence of motivation among prisoners. The reasons behind the refusal to be involved in rehabilitation programmes are due to informal rules and being under the influence of other prisoners as participation in such programmes is unacceptable for a certain group of prisoners. Therefore, it is important to identify such convicted persons, assess their risks and needs and provide individual consultation for them. Besides, it is important that social workers actively cooperated with prisoners to encourage and motivate them to take part in various activities. The best motivator for prisoners would be offering activities that would influence the reduction of the rest of the sentence⁸⁹ or commuting sentence.

2.3.9. PHYSICAL ENVIRONMENT

Despite the planned renovation works,⁹⁰ similar to previous years, in 2018 too sanitation and hygiene in cells were problematic in penitentiary establishments nos. 2, 8, 12, 14, 15, 17, 18 and 19. There are

⁸⁴ These are the following employment opportunities in penitentiary establishments: 1) employment on the premises of the establishment or outside; 2) employment in workshops; and 3) enrolment in household services.

⁸⁵ Greenhouse farming and cotton processing workshops with respective equipment were arranged in penitentiary establishment no. 5.

⁸⁶ The United Report of 31 December 2018 on the Statistics in the Special Penitentiary Office of the Ministry of Justice of Georgia, available at: <https://goo.gl/EF9LCV>, (accessed 18.02.19).

⁸⁷ For instance, distribution of food for prisoners, washing, bringing food and other items from the shop located on the establishment's premises, cleaning, etc.

⁸⁸ For more details, see the 2016 parliamentary report of the Public Defender of Georgia, pp. 229 -233.

⁸⁹ The initiative voiced by the Minister of Corrections and Probation in 2017 is noteworthy in this regard, namely, implying that from 2018, the ministry would start working on introducing a new mechanism under which a convicted person working within a penitentiary establishment would have his/her sentence reduced according to the working days.

⁹⁰ Works accomplished to avoid deterioration caused by wear to the infrastructure.

insect infestations in penitentiary establishments nos. 2, 8, 15, 16 and 17. During visits, the monitoring group members saw cockroaches and bed bugs in psychologists' offices, living cells and solitary confinement cells. More than one prisoner showed insect bites to the group members. The following were problematic in 2018: adequate ventilation,⁹¹ sufficient light⁹² and the minimum living space of 4 square metres as established by Article 15 of the Imprisonment Code for each convicted person.⁹³ Besides, the Public Defender's recommendation made in the 2017 parliamentary report concerning ensuring accused persons with 4 square metres as the minimum living space has not been fulfilled.⁹⁴ The old, so-called barrack type dormitories⁹⁵ are still functioning in penitentiary establishment no. 17. It is necessary to abolish them.

The problem of uninterrupted water supply remains unsolved in penitentiary establishment no. 3. From midnight, 24:00, until 08:00 in the morning, the establishment is not provided with drinking water from the city of Batumi.⁹⁶ The water stored in the establishment's reservoirs is exhausted within a few hours after which the water supply to the cell units is cut off for 2-3 hours.

Under the European Prison Rules, clean drinking water shall be available to prisoners at all times.⁹⁷ It is important that the establishment should take all the necessary measures to ensure uninterrupted supply of drinking water.

2.3.10. MEDICAL CARE

In terms of penitentiary health care, the following remain problematic: medical personnel's staffing⁹⁸ and qualification,⁹⁹ maintaining medical documentation in an appropriate manner, respect for medical confidentiality, timely medical referral and the overall situation in the system.

⁹¹Penitentiary establishments nos. 2, 3, 5, 6, 8, 9, 14, 15 and 17.

⁹²Penitentiary establishments nos. 3, 8 and 14.

⁹³Penitentiary establishments nos. 2, 8, 12, 14, 15 and 17.

⁹⁴ Stemming from the presumption of innocence, accused persons should not be in more restrictive conditions compared to convicted persons.

⁹⁵ In barrack type dormitories, smoking and non-smoking prisoners live in the same area; it is difficult to maintain hygiene and the risk of spreading infectious diseases is high.

⁹⁶ Similar to the district of Batumi where the establishment is located (Letter no. 001-219 of the LTD Batumi Water, dated 15 April 2019).

⁹⁷ Rule 22.5.

⁹⁸Report to the Government of Greece on the visit to Greece, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007. According to the CPT, staffing levels should be equivalent to roughly **one medical doctor for 300 prisoners and one qualified nurse for 50 prisoners**. In large penitentiary establishments such as nos. 2, 14, 15 and 17, the ratio of prisoners and nurses is high and therefore it is necessary to provide additional medical staff. See, the Public Defender's Special Report on the Effect of Imprisonment Condition on Prisoners' Health, 2018, p. 32.

⁹⁹ There are still problems in the field of continuous medical education. The training sessions conducted for medical personnel are mostly about mental health, substance abuse and protection of rights. Training sessions on

Developing a screening instrument for mental disorders in 2018 should be positively noted. According to the response from the Special Penitentiary Office,¹⁰⁰ the works for incorporating the above document into a legal framework are underway and, after retraining of medical personnel, it is planned to implement the instrument.

In its report on the visit to Georgia, carried out on 10-21 September 2018, the CPT reiterated its recommendation that the Georgian authorities should continue their efforts to reinforce the provision of psychiatric care and psychological assistance to prisoners.¹⁰¹

The examination of medical cards by the members of the Special Preventive Group revealed a number of problems¹⁰² that affect providing timely medical care. The visits showed that there were still problems in terms of respect for medical confidentiality. Medical procedures are conducted in the presence of prison staff, which breaches medical confidentiality.

Despite expediting medical referrals, there are still occasions when the terms¹⁰³ of providing medical care¹⁰⁴ are not complied with. It is also noteworthy that **there are patients who have been registered since 2016 but as of December 2018 have not received medical treatment.**

specialisation are rarely conducted. Computers in medical centres can only access the website of the Ministry of Labour, Health and Social Affairs of Georgia. Due to the restriction on the Internet, medical personnel are unable to obtain comprehensive and prompt information about the contemporary methods of treatment and diagnostics, guidelines, protocols and medication. This, in turn, affects the quality of medical care.

¹⁰⁰ Letter no. 3337/01 of the Special Penitentiary Office, dated 9 February 2019.

¹⁰¹ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 86, available in English at: <https://rm.coe.int/1680945eca>, (accessed 15.05.19).

¹⁰²For instance, medical cards are not structured; records are not organised chronologically; information about the consultation and finding of medical consultants often are illegible. Overall, dynamics of a patient's health condition is not reflected in medical cards, which creates problems in terms of providing continuous medical treatment.

¹⁰³ For instance, one convicted person was given a recommendation by an ophthalmologist on 17 October 2017 to have an additional consultation in an ophthalmological clinic in civil sector. The diagnosis was circulating cornea, traumatic acute cataract. On 20 October 2017, the convicted person was registered in the uniform electronic database. However, as of 21 December 2018, the prisoner was still awaiting transfer to a clinic.

¹⁰⁴Order no. 31 of the Minister of Corrections of Georgia of 22 April 2015 on Approving the Standards of Providing Medical Care in Penitentiary Establishments, Additional Standard of Providing Medical Care for Persons with Specific Medical Needs, Preventive Health Care Package in Penitentiary Establishments and the List of Basic Medication of the Penitentiary Health Care, Article 8.

Unfortunately, the number of deceased prisoners is higher in 2018.¹⁰⁵ Among others, the number of suicides¹⁰⁶ has increased.¹⁰⁷ Mainly, the cause of death is problems of somatic health.¹⁰⁸ It is important that the Medical Department analysed each death in order to plan appropriately the measures of preventive health care and prevent complications of somatic health problems. It is important to pay particular attention to screening for non-contagious diseases and their identification¹⁰⁹ so that prisoners receive timely and adequate medical care and avoid fatal outcomes.

Supplying information to prisoners concerning preventive health care and healthcare services, in general, remains problematic. The majority of prisoners do not have the above information at all or have some information. Besides, no steps were taken in 2018 towards informing prisoners. Periodical screening for non-contagious diseases also remains problematic. It should be noted that medical personnel mostly respond to clinically manifested diseases and treatment is symptomatic. As regards screening for contagious diseases, it is systemic in nature and, accordingly, the indicator of prisoners being covered by this examination is higher.

Inadequate nutrition and low physical activities are significant factors affecting prisoners' health.¹¹⁰ It should be positively noted that, for redeeming the existing shortcomings, the Special Penitentiary Service concluded a contract with a nutritionist in November 2018.¹¹¹ It is also important to increase the daily amount allocated for a prisoners' diet.¹¹²

¹⁰⁵ In 2017, 15 prisoners died in penitentiary establishments (5 of them in a civil sector hospital), whereas 21 prisoners died in 2018 (6 of them in civil sector clinics).

¹⁰⁶ According to the statistical information posted on the official website of the Special Penitentiary Office of the Ministry of Justice of Georgia, four incidents of suicide were registered in 2018; see at: <http://sps.gov.ge/images/temp/2019/02/05/0c06bd21dc6cefb63b55ff8c06852ac.pdf>, (accessed 12.03.2019).

¹⁰⁷ Two incidents of suicide were registered in 2017 and 4 in 2018.

¹⁰⁸ According to the statistical information posted on the official website of the Special Penitentiary Office of the Ministry of Justice of Georgia, the following are indicated as causes of death: sudden death, chronic respiratory and cardiovascular insufficiency, suicide, reduced blood flow to the brain, acute peritonitis and tumour.

¹⁰⁹ Screening for colon and prostate cancer conducted in penitentiary establishments in 2018 should be positively mentioned as well as screening for cervical cancer in female prison facilities; however, it is important to give regular and systemic nature to such measures.

¹¹⁰ Herbert K et al. "Prevalence of risk factors for non-communicable diseases in prison populations worldwide: A Systematic Review", 2012, 379(9830):1975–1982; available at: <https://goo.gl/UvPhVx>, (accessed 28.2.2019).

¹¹¹ Stemming from the interests of accused/convicted persons, the abovementioned aims at significantly improving the existing typical menu of daily meals, calories of daily ration, nutrition regime and standards, food portion standards and medical diet; as well as developing the catalogue of recipes and food preparation rules.

¹¹² In 2018, the amount of money allocated for a daily diet of a prisoner without the cost of bread amounts to GEL 3.742. The cost of bread is another GEL 0.625.

2.3.11. CONTACT WITH THE OUTSIDE WORLD

Window shields in short-term visit rooms,¹¹³ absence of privacy during family visits and telephone conversations remain problematic.¹¹⁴ Despite the importance of video visits, the requisite infrastructure has not been arranged in all penitentiary establishments.¹¹⁵ Besides, accused persons still are not entitled to long-term visits.¹¹⁶ Convicted persons placed in special risk prison facilities are not allowed to have video visits.¹¹⁷

The fact that the place of residence of a prisoner's family is not taken into account when placing a prisoner in a penitentiary establishment hinders the exercise of the right to visits. The prisoners that face problems in terms of visitation in penitentiary establishments located in Western Georgia are mostly those prisoners that have been transferred from Eastern Georgia. For instance, the Public Defender recommended to the Minister of Justice of Georgia regarding the transfer of a prisoner from penitentiary establishment no. 2 to penitentiary establishment no. 8 as the prisoner wanted to be closer to his family. Prisoners in penitentiary establishment no. 3 are faced with the same problem as their families live in Eastern Georgia.

The CPT emphasises the importance of a preferential approach in terms of visits and telephone communication for those prisoners whose families live far away from penitentiary establishments (which practically makes regular visits impossible). Such prisoners may be allowed to accumulate visits and/or better conditions in terms of access to the telephone.¹¹⁸ However, the Special Preventive Group established during its visit to establishment no. 3 that there had been cases where prisoners transferred from Eastern Georgia were restricted access to a telephone and the right to correspondence as a disciplinary punishment.¹¹⁹

¹¹³ Direct contact and communication with family members are key elements for ensuring a prisoner's rehabilitation. Under Rule 24.4 of the European Prison Rules, the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible. Due to the window shield, a prisoner is deprived of all physical contact with family members during short-term visits. This shield could be a means of protection. However, despite the fact that in some cases it is important to have physical barriers, it is important that the possibility of physical contact should be the norm and any decisions limiting physical contact should be reasonable, justified and proportionate to the aim sought by such restriction.

¹¹⁴ It is impossible to make a phone call in a confidential environment as telephones are installed in duty offices at the closed-type establishments.

¹¹⁵ Only prisoners at establishments nos. 5, 8, 11, 15, 16 and 17 are allowed to have video visits.

¹¹⁶ The 2017 parliamentary report of the Public Defender, p. 47.

¹¹⁷ *Ibid.* p. 50.

¹¹⁸ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 51, available in English at: <https://rm.coe.int/1680945eca>, (accessed 15.05.19).

¹¹⁹ For instance, one prisoner's right to telephone conversation was restricted for two months. In the same period, the prisoner's right to correspondence was restricted for one month. Furthermore, one convicted person's right

Therefore, it is important that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts and only for the shortest time possible.¹²⁰

In the 2016 parliamentary report on the Situation of Protection of Human Rights and Freedoms in Georgia,¹²¹ the Public Defender pointed out the problem of dispatching correspondence. Namely, prisoners were unable to obtain registration numbers of sent letters and, therefore, unable to verify whether their letters were registered and dispatched to a recipient. Dispatching correspondence is an acute problem in penitentiary establishments nos. 2, 6 and 8 despite the fact that letters are given to social workers; prisoners are unaware as to what happens to their correspondence.¹²² According to prisoners, they are not given any written document that would confirm the fact of handing correspondence to a social worker.

It is difficult to establish whether a social worker handed a correspondence to a prisoner since there is no procedure in place that would confirm this fact by a written document. Considering this, the Public Defender recommended to the Minister of Corrections to take all possible measures to ensure that, when a social worker receives or dispatches an open letter, a document is drawn in two copies which are stamped and the following information is entered in the presence of the prisoner: a) the name and surname of the letter's author; b) the name and surname of the social worker receiving the letter; c) the date of handing the letter; d) the recipient of the letter; and e) the number of pages. Both copies should be signed by the prisoner and the social worker; one copy should be given to the prisoner and the other should stay with the social worker. This recommendation has not been fulfilled.

2.3.12. EQUALITY

For creating a penitentiary system that would be based on the principle of equality and prevents discrimination, it is necessary to identify the special needs of concrete groups and satisfy those needs. In this regard, there are certain challenges in penitentiary establishments, inter alia, the stigma associated with the LGBT community, psychological violence, their isolation and marginalisation from

to telephone conversation was restricted for one month in different periods (in total amounting to three-month restriction).

¹²⁰ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, para. 119, CPT/Inf (2015) 42.

¹²¹ The 2016 Parliamentary Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pp. 158-164.

¹²² For instance, one of the convicted persons insisted that a letter was given to the establishment's social worker for dispatching it. However, no document was received confirming the dispatch or any response. The examination of this issue by the Public Defender revealed that this prisoner's letter had not been dispatched from the administrative office in charge of communication.

prison life. It is necessary that the state developed an appropriate strategic vision to address these problems and deal with the challenges.

The following issues are also problematic: adequate rehabilitation of persons sentenced to life imprisonment;¹²³ the restricted access of foreign prisoners to services due to linguistic barriers; the failure to take into consideration the needs of prisoners of various religious beliefs when preparing food; placing juveniles in penitentiary establishments for adults (establishments nos. 2 and 8); and placement of women prisoners within penitentiary establishments for men (establishment no. 2 where, unlike special penitentiary establishments, there are no appropriate services).

According to these documents, one of the strategic objectives, considering the needs of vulnerable groups, is to improve the opportunities of employment, vocational studies, education and leisure activities for convicted persons, and creation of systems and infrastructure to this end. The Public Defender hopes that, in 2019, the ministry will study the needs of LGBT prisoners, prisoners doing household and cleaning jobs and will develop an action plan based on the identified needs.

According to the Strategy and Action Plan on the Development of the Penitentiary and Crime Prevention Systems for 2019–2020 approved by the Minister, the separation plan will be ready by September 2019, which will aim at transferring juveniles from establishment no. 8 and by December 2020 there will be separate infrastructure arranged for juveniles in establishments nos. 2 and 11. The Public Defender and the Special Preventive Group welcome abolishing the juvenile wing in penitentiary establishment no. 8¹²⁴ and express their hope that juvenile prisoners will have similar services accessible in penitentiary establishment no. 11.

With regard to meeting the specific needs of vulnerable groups, in 2019, the approval of the Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019–2020 by the Minister of Justice of Georgia is commendable. According to the strategy, one of the strategic objectives, considering the needs of vulnerable groups, is to improve the opportunities of employment, vocational studies, education and leisure activities for convicted persons, and creation of systems and infrastructure to this end. The Public Defender hopes that, in 2019, the ministry will study the needs of LGBT prisoners, prisoners doing household and cleaning jobs and will develop an action plan based on the identified needs.

¹²³ During 2018, 2 persons sentenced to life imprisonment did not participate in any rehabilitation activities and no rehabilitation activities were conducted at all in penitentiary establishments nos. 6 and 7.

¹²⁴ According to the action plan, the separation plan is ready for September 2019, among others, the plan of transfers from penitentiary establishment no. 8.

2.3.13. PERSONNEL OF PENITENTIARY ESTABLISHMENTS

The monitoring results showed that penitentiary establishments are understaffed. Due to the insufficient number of human resources, the personnel are forced to work in a busy schedule. Overtimes are neither registered nor remunerated in penitentiary establishments. Due to the existing situation, the majority of the penitentiary establishments' employees have to request and use only half of their vacations.¹²⁵ The rest of the vacations are not transferred into the next year or reimbursed. Though the Public Defender requested, in the 2017 parliamentary report, for conducting a training session on professional burnout for each employee of penitentiary establishments, this recommendation has not been fulfilled to this day.

Penitentiary establishments nos. 3, 14, 15 and 19 are situated away from populated areas. Therefore, the personnel of these penitentiary establishments have to use private or municipal transportation at their own expenses. This creates certain problems for them. In this regard, the practice of penitentiary establishments nos. 5, 6, 16 and 17 is to be mentioned positively as, since 2018, the personnel of these penitentiary establishments have transportation arranged for their commuting. The Public Defender made a recommendation concerning this issue also in the 2017 parliamentary report. Unfortunately, it has not been fulfilled fully and establishments nos. 3, 14, 15 and 19 remain problematic in this regard.

Medical insurance is one of the most significant forms of social security. A recommendation concerning the medical insurance of employees of the penitentiary establishments was made in the previous year's parliamentary report too. It should be positively noted that the personnel of penitentiary establishments were given medical insurance.

Employees of penitentiary establishments stay at work for long durations.¹²⁶ Therefore, it is important to provide them with appropriate food during working hours in order to maintain their health and productivity. For years, employees of penitentiary establishments have had to eat dry food brought from home. It should be positively mentioned that this problem has been eradicated since 2019. Namely, on-duty personnel in penitentiary establishments are provided with food from establishments' canteen facilities.

¹²⁵ Under Article 21.1 of the Labour Code, "an employee shall have the right to use paid holiday for minimum 24 working days annually."

¹²⁶ Most of the staff members have to work in a 24-hour shift.

Proposals

To the Parliament of Georgia:

- In 2019, take all the measures to ensure amending the Imprisonment Code to the effect of determining the obligation of providing a minimum living space of 4 m² for remand prisoners;
- In 2019, take all the measures to ensure amending the Imprisonment Code to the effect of determining the right of remand prisoners to long visits taking into account the interests of investigation;
- In 2019, take all the measures to ensure amending the Imprisonment Code to the effect of allowing convicted persons placed in special-risk prison facilities to have video visits;
- In 2019, ensure amending the Imprisonment Code to the effect of determining the imposition of a disciplinary penalty as a last resort and determining at the legislation and practical levels the use of conflict prevention, mediation and other alternative dispute resolution mechanisms; amend the Imprisonment Code to the effect of abolishing the restriction of the right to telephone conversations and maintaining personal correspondence, and prohibition of short-term visit as a type of a disciplinary penalty; and
In 2019, take all the measures to ensure amending the Imprisonment Code to the effect of determining the categories of disciplinary offences (minor offence, grave offence and especially grave offence) and determining appropriate penalties; introduce oral hearing in disciplinary proceedings.

Recommendations

To the Government of Georgia:

- Develop a plan aimed at the practical implementation of the guidelines established by the Istanbul Protocol when forensic examinations are conducted.

To the Ministry of Justice of Georgia:

Procedural and Institutional Safeguards Against Ill-Treatment

- In 2019, amend Order no. 131 of the Minister of Corrections of Georgia of 26 October 2016 to the end of determining the obligation of healthcare professionals employed in penitentiary establishments to notify investigative authorities about incidents of ill-treatment;
- In 2019, take all the measures to ensure the effective identification of incidents of torture and other ill-treatment; in 2019, take all the measures to develop guidelines incorporating the criteria based on which a medical professional selects suspicious injuries when documenting injuries; and

- In 2019, to amend the rules of documenting injuries of accused/convicted persons sustained as a result of alleged torture or other cruel, inhuman or degrading treatment in penitentiary establishments, so that medical professionals describe, photograph and refer injuries to independent investigative authorities in each case when a medical professional has a suspicion that a prisoner could have been subjected to possible torture or other inhuman treatment, irrespective of the prisoner's informed consent.

Order and Security

- In 2019, ensure determining a maximum reasonable term of not exceeding 24 hours of placing in a de-escalation room to ensure joint multidisciplinary work of a psychologist, psychiatrist, social worker, doctor and staff members of other units of the establishment towards risk reduction/elimination; ensure a safe environment in de-escalation rooms, including lining the walls and floors with soft material; and
- In 2019, through issuing a new sub-legislative act or amending the statutes of penitentiary establishments, determine the obligation of upholding the principle of proportionality during full body searches; lay down the obligation of offering an alternative method of full-body search (scanner) to differentiate full body search and cavity search; establish the respective procedures for each; ban requesting a prisoner to take off all of his/her clothes at the same time.

Risk Assessment and Classification of Convicted Persons

- In 2019, ensure the amendment of Order no. 395 of the Minister of Justice of Georgia of 8 May 2019 Approving Types of a Convicted Person's Risks, Risk Assessment Criteria, Procedure for Risk Assessment and Risk Reassessment, Terms and Procedure for Transferring A convicted Person to another Prison Facility of the Same or Other Type, Also the Procedure for Determining Activity and Authority of the Risk Assessment Team – to the end of
 - Determining the obligation of informing a convicted person by a penitentiary establishment about risk assessment criteria and procedures when brought to a penitentiary establishment and right before the process of risk assessment starts;
 - Determining the right of a convicted person to submit his/her position and opinion about the circumstances based on which risk is being assessed; and
 - Determining the obligation to review high-risk convicted persons at least once in 12 months.
- In 2019, take all the measures to ensure that, through amending the statute of penitentiary establishment no. 16, the duty of convicted persons to clean corridors, staircases and other places of common use is abolished.

Placing Prisoners Separately for Security Reasons

- In 2019, the statutes of the penitentiary establishments should be amended to the effect of determining the maximum term of separation; as well as the duty to review the measure in 14 days after the use of this measure and, later, within the same intervals.

Prisoners' Rehabilitation and Resocialisation

- In 2019, ensure that prisoners of closed-type penitentiary establishments are able to spend more than one hour a day in the open air;
- In 2019, take all the measures to ensure that rehabilitation programmes implemented in 2018 in low-risk prison facilities are implemented in the semi-open prison facilities; ensure that rehabilitation programmes implemented in 2018 in the semi-open prison facilities are implemented in the closed type prison facilities, taking into account the infrastructure and security considerations; ensure that rehabilitation programmes implemented in 2018 in the closed type prison facilities are implemented in special risk prison facilities, taking into account the infrastructure and security considerations; also ensure that, in 2019, rehabilitation programmes in each penitentiary establishment covers more prisoners;
- Increase the number of psychologists and social workers;
- In 2019, ensure retraining of those social workers who do not have a bachelor's degree, master's degree /equivalent to a master's degree or doctorate in the field of social work;
- In 2019, extend logistical and technical bases of the social work unit;
- Enable persons sentenced to life imprisonment and held in penitentiary establishments nos. 2, 6 and 7 to take part in rehabilitation activities similar to establishment no. 8; and
- In 2019, start working on introducing a new mechanism under which a convicted person employed in a penitentiary establishment would have his/her sentence reduced according to the working days.

Physical Environment

- In 2019, take all the measures to transfer prisoners from penitentiary establishment no. 15 to another semi-open prison facility in order to address the problem of overcrowding and take into account prisoners' residence in this process. Similarly, in order to address the problem of overcrowding in penitentiary establishment no. 2, transfer prisoners to another penitentiary establishment of the same type and take into account prisoners' residence in this process;
- In 2019, take all the measures to provide for each prisoner in penitentiary establishments nos. 2, 8, 14, 15 and 17 with 4 square metres of living space; abolish the so-called barrack type dormitories in penitentiary establishment no. 17;
- In 2019, take all the measures to ensure minimum living conditions for prisoners and to this end ensure adequate sanitary and hygiene conditions in penitentiary establishments nos. 2, 5, 8, 14, 15, 17, 18 and 19; adequate light in penitentiary establishments nos. 3, 8 and 14; adequate ventilation in penitentiary establishments nos. 2, 3, 5, 6, 8, 9, 14, 15 and 17; and

- Provide an additional number of the water reservoir(s) in order to address the problem of water supply in penitentiary establishment no. 3.

Medical Assistance

- In 2019, take all the measures to equip primary health centres with the requisite amount of IT technology and provide them with access to the Internet;
- In 2019, take all the measures to ensure that by the end of each year a summary/annual epicrisis¹²⁷ is written for redeeming shortcomings when filling outpatients' medical cards; the epicrisis should briefly describe the dynamics of a patient's health, consultations conducted, referrals made, researches carried out, diagnoses made, provided care and its results;
- In 2019, take all the measures for conducting screening for non-contagious diseases in penitentiary establishments; and
- In 2019, take all the measures to ensure informing prisoners in penitentiary establishments about healthcare services, preventive healthcare and healthy lifestyle by virtue of regular meetings with prisoners placed in penitentiary establishments and information campaign, including dissemination of information bulletins.

Equality

- In 2019, ensure placing all juvenile convicts in an establishment where the appropriate services will be accessible for them; and
- In 2019, ensure the assessment of needs of LGBT prisoners, prisoners doing household and cleaning jobs and development of action plans based on identified needs.

Contact with the Outside World

- Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts and only for the shortest time possible (days, rather than weeks or months);
- When deciding about placing a prisoner in a penitentiary establishment, in order to ensure the unhindered exercise of the right to visits, the place of residence of the prisoner's family members should be taken into account; and
- Take all possible measures to ensure that, when a social worker receives or dispatches an open letter, a document is drawn in two copies which are stamped and the following information is entered in the presence of the prisoner concerned: a) the name and surname of the letter's author; b) the name and surname of the social worker receiving the letter; c) the date of handing

¹²⁷ Doctor's conclusion, exhaustive written explanation of origin, development, progress, treatment and outcome of the disease.

the letter; d) the recipient of the letter; and e) the number of pages. Both copies should be signed by the prisoner and the social worker; one copy should be given to the prisoner and the other should stay with the social worker.

Personnel of the Penitentiary Establishments

- In 2019 and 2020, conduct training sessions on professional burn-out for each staff member of penitentiary establishments;
- In 2019, take all the measures for the remuneration of overtime for each staff member of penitentiary establishments; and
- In 2019, take all the measures to ensure that each staff member can use holidays fully.

3. THE SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS

In 2017, the Public Defender, for improving safeguards against torture and other ill-treatment by police, made 12 recommendations to the Ministry of Internal Affairs, 1 proposal to the Parliament of Georgia and 1 recommendation to the Government of Georgia. Out of the 12 recommendations made to the Ministry of Internal Affairs, 4 recommendations have been fulfilled; 3 recommendations have been fulfilled partially; and, 5 recommendations have not been fulfilled. The proposal made to the Parliament of Georgia has not been fulfilled.¹²⁸

As a result of the fulfilment of the Public Defender's recommendations by the Ministry of Internal Affairs, today there are far more temporary detention isolators (hereinafter "TDI") in the country with medical units than in 2017.¹²⁹ Significant changes concerned the statutes of TDIs which determined the obligation of a doctor employed in a TDI to notify the prosecutor's office of Georgia about injuries found on the body of a person brought to TDI when she/he suspects torture or other ill-treatment. It should be positively noted that, since 1 July 2018, the Ministry of Internal Affairs has increased salaries by GEL 250 for 14, 000 employees working on operative issues.

The Public Defender's Office welcomes renovation works conducted to improve infrastructure and living conditions in TDIs in 2018. It should also be noted, however, that the conditions existing in TDIs are still unacceptable considering the enforcement of administrative detention up to 15 days. In this

¹²⁸ The Government of Georgia was given a recommendation to increase the budget of the Legal Aid Service for increasing the human resources of the service. According to the Ministry of Finance, the service has not spent more than 1 million GEL the previous year and therefore their budget was not increased for 2019.

¹²⁹ As of 2018, only in 15 TDIs out of 29 had a medical centre. During 2018, medical centres opened in 8 TDIs (TDIs of Mtskheta, Poti, Sagarejo, Zestaponi, Chkhorotsku, Akhaltsikhe, Khashuri and Kvareli).

regard, the infrastructure renovation activities planned by the ministry in 2019, including construction of buildings for administrative detention in Tbilisi, are to be noted positively.¹³⁰

In 2018, compared to 2017, the number of the Public Defender's proposals concerning institution of investigation of alleged violence by police officers is decreased.

Despite the individual positive steps made by the Ministry of Internal Affairs, citizens under police control are not guaranteed with sufficient safeguards against torture and other ill-treatment. For instance, it is important that the process of upgrading the video surveillance systems installed in agencies under the ministry has begun and patrol inspectors have been equipped with body cameras with improved technical specifications. However, surveillance cameras are mostly installed at the building entrance, in front of the space allocated for an officer on duty and not in those places where an arrested person, a witness or a person volunteering for an interview stay. It is clear that the video surveillance system cannot serve comprehensively as a safeguard against ill-treatment. Also, the equipment of patrol inspectors with body cameras cannot be considered enough to achieve the objective until it is statutorily determined that the police have a duty to video-record their communication with citizens. As of today, video recording depends on the desire of a patrol police officer. It should be also emphasised that agencies under the Ministry of Internal Affairs still do not guarantee such important means of legal protection as registering all persons brought to police stations indicating their status, the time of entering/leaving administrative buildings; registering when and who requested a call to family/consulate/lawyer and contacted family/consulate/lawyer.

3.1. ILL- TREATMENT BY POLICE OFFICERS

In 2018, the number of the Public Defender's proposals concerning institution of investigation on alleged violence by police officers has decreased. In particular, in 2018, the Public Defender applied to the Chief Prosecutor of Georgia with a proposal to institute investigation on alleged violence by police against citizens on 5 occasions and in 2017, on 10 occasions. Compared to 2017, the number of applications lodged with the Office of the Public Defender of Georgia concerning police ill-treatment also decreased in 2018

According to the official statistical data available on the website of the Ministry of Internal Affairs,¹³¹ in 2018, the number of complaints against police is reduced. In particular, compared to 2017, the number of claims of arrested persons alleging physical abuse by police is decreased by 27.¹³²

¹³⁰ We were informed by the Ministry of Internal Affairs about the activities concerning TDIs planned for 2019 during the 2018 presentation of Department of Temporary Detention Isolation on 7 February 2019.

¹³¹ Information available at: <https://goo.gl/EF9LCV> (accessed 04.03.2019).

¹³² In 2017, 283 arrested individuals brought into TDIs had claims concerning physical abuse by police; and 256 individuals in 2018.

As regards the timing of injuries found on the bodies of persons brought to TDIs, the indicator of injuries sustained after the arrest have almost **doubled**. According to the official statistical data of the Ministry of Internal Affairs, in 2017, there were 65 incidents when body injuries were found after arrest; in 2018, there were 116 such incidents.¹³³ It should be noted that based on the same data, 40% of incidents involving injury after arrest throughout Georgia in 2018 are registered in Ajara. **Compared to 2017, in Ajara, the number of sustaining injuries after the arrest is increased almost by 9 in 2018.** In particular, Batumi TDI has documented 47 incidents of sustaining injuries after arrest on the body of persons brought to the TDI. Whereas, in 2017, there were only 5 such cases in the same Batumi TDI. This indicator has not increased in other regions. Moreover, in some regions there is even a decrease in the numbers. Accordingly, based on the above data, it can be concluded in express terms that police treatment towards arrested persons has considerably deteriorated in Ajara.

As noted above, in TDIs, where members of the Special Preventive Group conduct monitoring, they study the case-files of all arrested persons brought to the respective TDI before the visit day and select those cases which raise suspicions about ill-treatment due to the circumstances surrounding the arrest, place, number and nature of injuries sustained. Based on this principle, in 2018, the Special Preventive Group identified 508 suspicious arrests. These cases involved arrests both in administrative and criminal proceedings. Based on analysing the data by the Special Preventive Group, it is identified that out of the above 508 cases, in 136 cases (26.8 %) individuals sustained injuries during arrest and/or after arrest in administrative proceedings. As regards the trends over the years, in 2016, individuals arrested in administrative proceedings sustained injuries during arrest and/or after arrest in 12.8% of suspicious cases studied by the Special Preventive Group; in 2017, the same indicator was 26.4%. Based on the above, the Special Preventive Group concluded that police treatment of persons arrested in administrative proceedings considerably deteriorated in 2017. In 2018, the dynamics of the previous year has not changed in this regard. In particular, the percentage of the cases where individuals arrested in administrative proceedings have body injuries during arrest and/or after arrest is 26.8%. This indicator is noteworthy, and it merits close scrutiny and appropriate response from the Ministry of Internal Affairs.

According to the data processed by the Special Preventive Group, the following trend is maintained: in approximately one third of the examined cases, (in 2018 – 27.6 %; in 2017 – 30.1%; in 2016 – 31.3 %), the detention protocol does not indicate the injury which is described in medical records made in TDIs. In such cases, there is a strong presumption that an arrested person was possibly subjected to physical violence when under police control. For the sake of fairness, it should be mentioned that the

¹³³ The official statistics of the Ministry of Internal Affairs are as follows: **injuries after arrest – 41; before arrest and after arrest – 37; during arrest and after arrest – 23; before arrest, during arrest and after arrest – 15.** The total number is 116. The trend of increase is also confirmed by the Special Preventive Group according to the data processed by SPSS programme: in 2017, 13 incidents of inflicting body injuries were reported and 57 such incidents were reported in 2018.

discrepancies between injuries could be partly because of the errors in description of injuries made by police officers. For instance, the administrative arrest protocol does not contain a column where a police officer should indicate injuries found on the body of an arrested person. This leads to establishing uneven standards. Some police officers enter the description of injuries in the detention protocol under the comment section and some do not. Discrepancies between the records could also be partly caused by the practice of superficial examination. In particular, police officers carry out superficial examinations and do not do full body examinations as it is done in isolators.

The Special Preventive Group finds those cases particularly suspicious where the individual brought to a TDI has injuries in the facial area and the police officer indicates in the detention protocol that the arrested person has no injuries. There are 19 such cases out of 508 incidents examined by the Special Preventive Group in 2018.¹³⁴ Similarly, there were 45 incidents¹³⁵ identified where, unlike the entries made in TDIs, the detention protocol had no reference to injuries in the facial area. It is clear that if a person had an injury during arrest, police officers should have noticed it and enter it into the detention protocol. Accordingly, the Special Preventive Group considers that it is necessary on the one hand to add a column to the protocol of administrative detention in which description of body injuries will be described and on the other hand to instruct police officers in express terms to document body injuries identified.

3.2. SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT

In order to prevent ill-treatment on the part of law-enforcement authorities, it is important to ensure at legislative level that arrested persons have minimum legal safeguards. Under Georgian legislation, minimum legal safeguards are provided for arrested persons such as: the right to receive information about the reasons of arrest and procedural rights in the language understandable for the arrested person; the right to have a legal representative, access to medical care and the right to inform family/relative about arrest. These are safeguards against torture and other ill-treatment. There are also safeguards such as: the duty to register each arrested person brought to police stations, the duty to bring an arrested person before the court, to maintain audio and video recordings, among them, the process of interrogation of arrested persons, etc.

At the same time, it is equally important to ensure that arrested persons are able to practically exercise their rights established by legislation. Below is given our assessment as to how these rights are realised in practice:

¹³⁴ Out of these 19 cases, in 15 cases a person was arrested in administrative proceedings and in four cases – in criminal proceedings.

¹³⁵ Out of these 45 cases, a person was arrested in administrative proceedings.

Informing about rights – the monitoring conducted by the Special Preventive Group in the reporting period showed that, similar to the previous years, informing an arrested person by the police about his/her rights remains a problem. Despite the fact that, under Article 174 of the Criminal Procedure Code, the arresting authority is obliged to notify the arrested person in an understandable manner about his/her right to a lawyer, right to silence and not to incriminate himself and that anything he/she says may be used against him/her in a court of law. Special Preventive Group established through interviewing arrested persons that in most cases during arrest and bringing arrested persons to the police station, police does not explain these rights verbally at all or they give incomplete information. Arrested persons have their rights explained mostly when placed in a TDI where they are given a list of their duties and rights including procedural rights which they confirm with their signature. It should be noted that informing about the right to silence, right not to incriminate oneself and right to counsel is particularly important at the early stage of arrest, namely, during arrest and/or immediately upon being brought to a police station.¹³⁶ From a police station, arrested persons are taken to a TDI, in numerous cases with a considerable delay. **Unlike TDIs, police stations are not supplied with brochures on procedural rights of arrested persons; also, no posters are posted in police stations to inform arrested persons.**

Access to a lawyer and informing family – In practice it is problematic to exercise the right to immediate access to a lawyer, whereas the arrested person is most vulnerable in the very first hours of detention in terms of pressure and ill-treatment on the part of police. According to the data processed by the Special Preventive Group by using the Statistical Program (SPSS), similar to the last year, the low indicator of involvement of a lawyer in criminal proceedings have not changed considerably in 2018.¹³⁷ Besides, the trend continues that persons arrested in administrative proceedings rarely use a lawyer's assistance. During the meetings organised in the regions local lawyers told the Special Preventive

¹³⁶ Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 September 2016, para. 23, available at: <https://rm.coe.int/pdf/16807843ca>, (accessed 04.03.2019). The CPT called upon the Lithuanian authorities to ensure without further delay that all persons detained by the police – for whatever reason – are fully informed of their rights from the very outset of their deprivation of liberty (that is, from the very moment when they are obliged to remain with the police). This should be ensured by providing clear verbal information upon apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out the detained person's rights in a straightforward manner. This form should be made available in an appropriate range of languages. Moreover, particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, para. 42, available at: <https://rm.coe.int/16807bf7b4>, (accessed 04.03.2019). The CPT recommended that the Cypriot authorities introduce a single form for recording the rights offered to detained persons as part of the custody records.

¹³⁷ **In 2018, in 11.9 % out of examined cases, a lawyer joined the proceedings within 24 hours and in 2017, lawyers joined the proceedings within 24 hours in 15% out of the examined cases.**

Group members that often police officers persuade arrested persons to waive their right to counsel and that they can reach an agreement in better terms. According to the lawyers, in some cases, they were not allowed to meet with their clients immediately. Lawyers explained it as police needing that period to exert pressure and “work” the arrested persons.

The Special Preventive Group has access to information about the involvement of lawyers in particular cases, namely, it is identifiable as to from which stage a lawyer got involved in the proceedings. However, the Special Preventive Group does not have access to such important data as to when did a detained person requested for a lawyer namely at what stage did a detained person requested to call a lawyer and within what time period after the request the lawyer was involved in the case. As mentioned above, it is crucial for a detained person to have access to a lawyer during the first hours of the detention.. Unfortunately, the information regarding the use of the right to a lawyer by detained persons is not registered in the territorial agencies of the Ministry of Internal Affairs. Therefore, we are unable to assess within the monitoring conducted as to in how many cases and when the detained persons requested to call a lawyer and whether police officers ignored this request in violation of the statutory requirements in force.

The CPT calls upon the Member States to the Council of Europe to ensure that all persons deprived of their liberty by the police, for whatever reason, be granted the right to notify a close relative or third party of their choice about their situation from the very outset of the deprivation of liberty (that is, from the moment when they are obliged to remain with the police). The exercise of this right should always be recorded in writing, with the mention of the exact time of the notification and the person who was notified.

Moreover, the CPT maintains that **the police should record in writing in the relevant registers** whether notification of custody has been carried out in each individual case, with the indication of the exact time of notification and the identity of the person who has been contacted.¹³⁸ The waiver of the right to legal assistance should be systematically signed by the detained person if he/she does not wish to exercise his/her right to access a lawyer so that any possibility of arbitrary registration of false information by police officers is excluded.¹³⁹

¹³⁸ Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 22 March 2017, para. 16, available at: <https://rm.coe.int/16808e2a0e>, (accessed 04.03.2019). Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, para. 31, available at: <https://rm.coe.int/16807c4b74>, (accessed 04.03.2019).

¹³⁹ Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, para. 37, available at: <https://goo.gl/EF9LCV>, (accessed 04.03.2019). In this report, the CPT introduces the

Based on the above, we deem it necessary that the Ministry of Internal Affairs should study to what degree the right of an arrested person to contact his/her family/consulate and lawyer is respected by the agencies under its authority and to inform the Office of the Public Defender of Georgia regarding the outcomes of the study. The monitoring bodies such as internal monitoring bodies within the ministry and the external monitoring body – the Special Preventive Group of the Public Defender – should have the possibility to examine whether the rights guaranteed for arrested persons are illusory or practical and effective. Therefore, the Ministry of Internal Affairs should develop a concrete mechanism which will enable examination of to what degree the right of arrested detained person to contact his/her family/consulate and lawyer and the right to be notified about arrest are exercised in practice.

As regards informing the family about arresting a person, it should be positively noted that according to the data processed by the Special Preventive Group, the dynamics of informing families about arrests improved in 2018. In particular, in 86.8% of the cases examined by us in 2018 and in 71% of the cases examined by us in 2017, families were notified within 3 hours after arrests.

Access to a doctor and medical examination – during monitoring, the members of the Special Preventive Group have not identified a single case where an arrested person was denied medical care. Medical examination in a confidential environment remains a significant challenge in this regard. The monitoring results show that TDI employees routinely attend medical examination of an arrested person which compels him/her to conceal the real causes of injuries out of fear when he/she was subjected to ill-treatment by police. It is noteworthy that the CPT also indicated this problem in its report on the visit to Georgia in 2014.¹⁴⁰

Unfortunately, it should be noted that the medical examination of injuries on arrested persons by TDI doctors does not ensure achieving one of the major objectives of medical examination as determined by the Istanbul Protocol, i.e., assessment of the incident of alleged ill-treatment by a medical professional.¹⁴¹

In order to identify an incident of ill-treatment, it is most important that a medical professional establishes a link between the injuries found on an arrested person's body and the origin of those

standard under which the waiver of the right to legal assistance should be systematically signed by the detained person if he/she does not wish to exercise his/her right to access to a lawyer.

¹⁴⁰ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, available at: <https://rm.coe.int/16806961f8>, (accessed 04.03.2019), para. 28.

¹⁴¹ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), para. 105: In formulating a clinical impression for the purpose of reporting physical and psychological evidence of torture, there are [the following] important questions to ask: [...] "Are the physical and psychological findings consistent with the alleged report of torture? [...] Does the clinical picture suggest a false allegation of torture?"

injuries based on the person's account. When describing injuries, they limit their entries to general information under which the injury was inflicted and indicating these circumstances. However, the origin of the injury and circumstances of sustaining the injury are not one and the same notions. Doctors often establish consistency between physical signs of an injury and the origins indicated by an arrested person so that they do not even have information about the specific origin of the injury.¹⁴² Based on the forms of medical examination that are filled in by TDI doctors in a faulty manner, it is often revealed that doctors do not make any effort to obtain detailed and more credible information in order to ascertain whether the circumstances indicated by an arrested person could cause the injury concerned. This issue is particularly important in the context of a victim of ill-treatment. It is common knowledge that victims of alleged ill-treatment belong to a vulnerable group, who – due to the inflicted psychological trauma – are scared, helpless and not ready for a certain period to report and complain about the crime committed against them.¹⁴³

Also, similar to the previous years, TDI doctors document injuries on arrested persons in a faulty manner. In particular, these are the following shortcomings found in the forms filled in based on medical examination (the form is approved by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 in accordance with the Istanbul Protocol): in some cases an alleged violence is not assessed despite injuries found on the body – the respective column is left empty; there are also occasions, when there are no entries regarding the origin of an injury and a doctor makes a note about the consistency of an injury with its origin, etc.

As regards photographing injuries, in some TDIs (for instance in Kutaisi and Telavi TDIs) doctors cannot take quality photographs of injuries. In general, no TDI keeps systematised photo materials.

It should be positively pointed out that compared to 2017, there are fewer cases in 2018, when multiple injuries were found on an arrested person, including in the facial area and near eye-sockets but no notification were sent to a prosecutor.¹⁴⁴ In 2018, the Special Preventive Group identified 110 such incidents (out of studied and statistically processed 508 cases).

Audio and video recordings – the Committee recommends the member states to ensure continuous electronic (audio and/or video) recording of police interviews, which is one of the most important

¹⁴²For instance, an arrested person had injuries in the form of bruises in the facial area and it is explained that injuries were sustained during working at home. A medical professional concluded in the documentation that the described injuries and the arrested person's account are consistent. It is unclear in this case as to how the doctor assessed the link between the injuries and the origin of the injuries since there is indication as to what particular work was done by the arrested person and with what object or under what impact the injuries were sustained.

¹⁴³ Istanbul Protocol, Psychological consequences of torture, available at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>, p. 46.

¹⁴⁴Percentage indicator according to years is as follows: in 2017 – 30.1%, in 2018 – 21.6%.

additional safeguards against torture and other ill-treatment.¹⁴⁵ The Committee Against Torture (hereinafter the “CAT”) welcomes implementation of video surveillance systems in police stations.¹⁴⁶

According to the Georgian legislation, interrogation/interview of arrested persons in police stations is not mandatory and is within the discretion of the police.

In 2018, adequate coverage of internal and external premises of police divisions by video cameras remained a problem. There are no video cameras installed either on internal or external premises in some of the district divisions.¹⁴⁷ Furthermore, it should be noted that in the absolute majority of those police divisions where surveillance is conducted on the internal premises, the cameras are mostly installed at the building entrance, in front of the space allocated for an officer on duty. In this context, it is crucial to have video cameras installed in interrogation rooms for arrested persons. As mentioned above, video recording of arrested persons’ interrogation is a well-established standard of the European Committee for the Prevention of Torture. It should also be pointed out that installing video cameras in police stations in those places where an arrested person, a witness or a person agreeing to be interviewed voluntarily, among others, in offices, does not contradict the Georgian legislation and cannot be deemed as a breach of police officers’ right to respect for private life. In particular, under Article 12.3 of the Law of Georgia on Personal Data Protection, “A video surveillance system may be

¹⁴⁵ Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, para. 16, available at: <https://rm.coe.int/16807bf7b4>, (accessed 04.03.2019); Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, para. 41, available at: <https://rm.coe.int/16808b5ee7>, (accessed 04.03.2019); see also Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38 to the UN General Assembly, E/CN.4/2003/68, 17 December 2002, para. 26(g).

¹⁴⁶ The concluding observations on the sixth periodic report of the Russian Federation, CAT/C/RUS/CO/6, 28.08.2018, available at: <https://goo.gl/YvzY2>, (accessed 11.03.2019); in the concluding observations of 2018 the CAT recommended to the Russian Federation to ensure that video recordings of all interrogations are maintained and video surveillance installed in all areas of custody facilities where detainees may be present. In the concluding observations on the sixth periodic report of Spain, the CAT considered the following to be exceptions from the above rule: the possible violation of the detained person’s right to respect for private life and confidentiality of legal and medical consultation. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers. See the concluding observations on the sixth periodic report of Spain, CAT/C/ESP/CO/6, 29 May 2015, available at: <https://goo.gl/gCjR69>, (accessed 04.03.2019) The CAT made the following recommendation to Spain: “The State Party ensure the audio visual recording of all procedures in police stations and places of detention involving persons deprived of their liberty, including those in incommunicado detention, except in cases where it might violate the right to privacy or detainees’ right to confidential consultation with their lawyer or doctor. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers.”

¹⁴⁷ The Zhandukheri Unit of the Lentekhi District Division; the third unit of the Batumi City Division; the fourth unit of the Batumi City Division; the Borjomi District Division; Bakuriani Unit of the Borjomi District Division; the Mokhe Police Unit of the Adigheni District Division; the Aspindza District Division; the Gandzi Unit of the Ninotsminda District Division; the Gorelovka Unit of the Ninotsminda District Division.

installed at a workplace only in exceptional cases if it is necessary for human security and property protection or to protect secret information and examination/tests and if these goals cannot be reached by other means.”

The security of the arrested person, his/her protection from torture and other ill-treatment is a legitimate aim which will justify installing surveillance system at such places.

The Public Defender’s Office welcomes the process of updating the video surveillance system in the agencies under the Ministry of Internal Affairs to improve their technical specifications. The ministry informed us that the respective works have been completed in all police divisions of the Tbilisi Police Department (40 units), 15 divisions in Shida Kartli, 27 divisions in Kvemo Kartli, 9 units in Mtskheta-Mtianeti and 16 division in Kakheti. The rest of the units will have been equipped with surveillance systems by the end of March 2019. As regards the terms of storing recordings of surveillance systems, the ministry informed us that the new recorder of the surveillance system has the capacity to store recordings for the term recommended by the Public Defender of Georgia, i.e., minimum 14 days.¹⁴⁸ It should also be pointed out that it is important to determine statutorily the term of storing video recordings of surveillances systems and we hope that the above recommendation will be fulfilled in the near future.¹⁴⁹

Equipment of police officers with body cameras and conducting video recording of communication with citizens is a significant safeguard against ill-treatment. The Public Defender has been recommending to the Ministry of Internal Affairs for years to determine by a normative act the obligation of police officers to video record their interaction with citizens as well as the procedure and terms of storing video recordings. On 26 December 2018, Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 concerning approving instructions On the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia was amended. In particular, Article 12¹ was added to the order. Under Article 12¹, a patrol officer is obliged to place the recordings obtained through body camera attached to the uniform on the special server where the recordings will be stored for 30 days. Unfortunately, this change did not apply to patrolling police officers and under the wording in force a patrolling police officer **has the right** to carry out recording with the use of technical means as established by law.¹⁵⁰ Accordingly, the law still does not determine the **obligation of video recording** of patrol officers’ communication with citizens and video recording

¹⁴⁸ Letter no. MIA 1 19 00309059 of the Chief of Administration of the Ministry of Internal Affairs of Georgia, dated 6 February 2019.

¹⁴⁹ The recommendation made by the Public Defender to the Ministry of Internal Affairs in the 2017 report concerned amending Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data Therein and determining 14 days as the minimum term of storing video recording obtained through surveillance systems.

¹⁵⁰ Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 concerning approving instructions On the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia, Article 14.1.

depends on patrolling police officers' discretion. Apart from patrol officers, officers of the Central Criminal Police Department and territorial agencies also have communication with citizens as a part of their official duties. Apart from the fact that they do not have the duty to record their communication with citizens (this falls within the discretion of an officer), there are also no provisions on the procedure and terms of storing the recording with regard to them.

It is commendable that patrol police officers have been equipped with body cameras with better specifications since May 2018. The new equipment has longer working and recording modes, centralised control and data storage capacity.¹⁵¹ As regards police officers of territorial agencies, according to the information supplied by the Ministry of Internal Affairs, except for the Kakheti Police Department units, inspector-investigators and senior inspector-investigators of districts use body cameras when performing official duties.¹⁵² During the monitoring, the Special Preventive Group established that police officers of territorial agencies had been given the old cameras previously used by patrol-inspectors, the technical capacities of which in terms of making recording are weak. Accordingly, it is important to have these old cameras gradually replaced with new ones with improved specifications in the next year.

Duration of being under police control – unfortunately, the recommendation made by the Public Defender's Office on numerous occasions is still unfulfilled. This recommendation concerned amending the Criminal Procedure Code to the effect of determining the obligation of the arresting authority to immediately take an arrested person to a TDI.

Under the Georgian legislation, an arresting official shall immediately take an arrested person to the nearest police station or other law-enforcement agency.¹⁵³ There is no statutory term determined for those cases where an arrested person is taken to a police station so that the arrestee can stay in that station before they take him/her to a TDI. The monitoring revealed that, in rare cases, arrested persons are kept in police stations before taking them to TDIs from 13 hours to 24 hours. Usually, the period for which arrestees are kept in police stations is 5-6 hours.

As regards, the total duration of the stay under police control which includes the period from a person's actual arrest till placing him/her into a TDI, this indicator has not changed in 2018, compared to 2017.¹⁵⁴ The Special Preventive Group requested information from police divisions and departments concerning investigative actions conducted with the participation of arrested persons in particular criminal cases.

¹⁵¹ Letter no. MIA 1 19 00309059 of the Chief of Administration of the Ministry of Internal Affairs of Georgia; dated 6 February 2019

¹⁵² Letter no. MIA 8 18 02975975; Dated 10 December 2018. According to the letter, the units of Kakheti Police Department of the Ministry of Internal Affairs are unable to use body cameras when performing official duties due to technical problems.

¹⁵³ The Criminal Procedure Code of Georgia, Article 174.2.

¹⁵⁴ The monitoring conducted by the Special Preventive Group in the reporting period identified cases, where an individual was held under police control for the first 18 hours, also for 21, 22 and 24 hours.

Based on the information supplied, there are cases identified where arrested persons were kept under police control before being taken to a TDI for a lengthy period without any need.¹⁵⁵ Moreover, in rare cases, there have been no investigative actions conducted with regard to arrested persons in police stations, including questioning. If the necessity to bring an arrested person to a police station is explained by drawing an arrest report and/or to have it signed by the head of a police station, we believe these activities require rather a short period of time and unreasonable delay of arrested persons at police stations cannot be justified with this argument. As regards the need to question arrested persons in police stations, we believe that it is also possible to conduct questioning in a TDI based on the respective infrastructural changes.

It is common knowledge that in case of lengthy stays under police control there is a high risk of physical violence and psychological pressure from police officers. The Public Defender's Office believes that there are strong arguments in favour of bringing arrested persons to a TDI right after arrest.

First, it should be noted that there are stronger safeguards in TDIs for arrested persons against their ill-treatment than in police stations. For instance, when an arrested person is taken to a TDI, he/she immediately undergoes medical examination in accordance with the Istanbul Protocol.

Second, unlike police stations, the TDI employees rigorously register the timestamp of bringing an arrested person in a respective logbook. If arrested persons are taken to TDIs straight after their arrest, it will enable us to ascertain the actual time of those persons' arrest, since in this case it is simpler to calculate the time needed for bringing a person to a TDI. As regards police stations, in the inspection conducted by the Special Preventive Group it was identified that, similar to the previous years, documentation about arrested persons are still erroneously maintained in the of territorial agencies. In particular, logbooks on Registering Arrested Persons and on Persons Transferred to a Jail (a TDI) are maintained in duty stations of territorial police agencies. In certain cases, the following cannot be determined from the information entered into these logbooks: when a person was arrested; the date and time when an arrested person was taken to a police station; and the time when a person was taken to a TDI and released (the respective columns are empty).

Third, in terms of material conditions (WC, rooms for meeting with a lawyer, rooms for medical examination, etc) are better in TDIs than in police stations Fourth, a TDI is the place where an arrested person can open up more and file a complaint against his/her arresting official and report ill-treatment he/she was subjected to that in police stations, where, usually those very arresting officials are employed.

¹⁵⁵For instance, a person arrested by the Gori District Division was held for 11 hours until taking that person to the Khashuri TDI. During this period, the arrested person was questioned for 15 minutes and an arrest report was drawn with the arrestee's participation, which needed 53 minutes. Accordingly, the rest of the time, approximately 10 hours, that person was held under police control without any need.

Based on the above arguments, we believe that it will be a significant step forward in terms of improving legal safeguards for arrested persons to ensure that arrestees are taken straight to a TDI immediately upon their arrest.¹⁵⁶ However, in order to ascertain whether this step will actually bring results, we find it expedient to implement this change in a pilot test in several less busy TDIs, according to regions.

Under Article 21 of the Organic Law on Police, the police may invite a person by a notification to interview him/her at a police station. This person does not legally have any status and his/her appearance before police authorities and leaving police premises are formally voluntary. In the cases of abuse of power by police, pressure or physical violence against individuals invited by this procedure, citizens are not protected by procedural safeguards from ill-treatment. Moreover, there is no record of their entering and leaving the police station which could be used to prove that certain person indeed stayed with the police. Therefore, we believe that any person that is kept in police should enjoy procedural safeguards, irrespective of his/her status.¹⁵⁷ To this end, it is important to develop a mechanism which will enable the monitoring bodies to receive credible information about a person's status, his/her entering and leaving a police station.

Judge's role – A judge can play an important role in terms of avoiding incidents of ill-treatment from police. This role is acknowledged by Article 2.1 of the UN Convention Against Torture, which refers to the importance of judicial preventive measures against torture.¹⁵⁸

The Public Defender's Office welcomes and considers it to be an important change – the amendment to the Criminal Procedure Code of Georgia that will come into force on 1 July 2019. From this date, judges of Georgia will have a legal possibility to apply to a competent investigative authority in case of suspicion concerning torture or other ill-treatment an accused/convicted person could be subjected to or when an accused/convicted person him/herself states about it before the court.¹⁵⁹

We maintain that judges should be given such possibility also in administrative proceedings on administrative violations with regard to individuals imposed with administrative responsibility.

¹⁵⁶Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia A/HRC/31/57/Add.3, 06.11.2015, para. 108.

¹⁵⁷ Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 21 December 2017, CPT/Inf (2018)41, 06.09.2018, para. .29, available at: <https://rm.coe.int/16808d2c2a>, (accessed 04.03.2019).

¹⁵⁸“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2.1

¹⁵⁹The Criminal Procedure Code of Georgia, Article 191¹.

3.3. TEMPORARY DETENTION ISOLATORS

The positive changes made concerning TDIs were already discussed in the introduction. The faulty practices of examination of injuries on arrested persons by medical professionals employed in TDIs and documenting these injuries were addressed as well. This subchapter concerns the rest of the shortcomings identified during the monitoring.

One of the challenges in the reporting period was the absence of medical centres in 14 TDIs which is half of the number of TDIs under the Department of Temporary Detention Isolation of the Ministry of Internal Affairs (29 in total).

A problem of understaffing of TDIs was identified as well. It should be particularly mentioned that there are no female employees in 21 TDIs, which creates problems during personal examination of women to be placed in TDIs.

A number of Isolators are not provided with adequate systems of natural and artificial ventilation or light; sanitation and hygiene are not satisfactory; privacy of WCs in cells is not properly ensured. This is particularly problematic in multiple-occupancy cells where an arrested person attends to nature call in the presence of another person/s. Each arrested person is supplied only with dry food in isolators which is harmful to health.

3.4. ADDITIONAL STATISTICAL DATA ON THE MINISTRY OF INTERNAL AFFAIRS

3.4.1. PERCENTAGE OF SUSPICIOUS INCIDENTS IN 2018, ACCORDING TO ISOLATORS (SPSS)

No.	Isolator ¹⁶⁰	Arrested During Monitoring ¹⁶¹	Number of Forms ¹⁶²	Time of Monitoring
1.	Kakheti reg. TDI (Telavi)	166	25 (15.1 %)	18.06.
2.	Sagarejo TDI	200	56 (28 %)	22.06.
3.	Sighnaghi TDI	76	8 (10.5 %)	19.06.
4.	Kvareli TDI	169	25 (14.8 %)	19.06.
5.	Imereti, Ratcha-Lechkhumi and Kvemo Svaneti reg. TDI (Kutaisi)	497	51 (10.3 %)	21-22.07
6.	Zestaponi TDI	120	11 (9.2 %)	23.07
7.	Baghdati TDI	16	2 (12.5 %)	25.07.

¹⁶⁰ Information about persons in police custody is registered and stored in temporary detention isolators (hereinafter the “TDI”) Medical examination is carried out in a TDI. This allows following up injuries sustained before the admission to a TDI. Ranking TDIs does not imply that injuries have been inflicted in a TDI and it is only for maintaining statistics to make entries.

¹⁶¹ The number of persons placed in a TDI from 1 January 2018 until the date when monitoring was carried out.

¹⁶² For obtaining systematised information from case-files, the monitoring group used a specifically designed questionnaire.

8.	Tchiatura TDI	93	17 (18.3 %)	24.07.
9.	Samtredia TDI	142	16 (11.3 %)	26.07
10.	Abrolauri TDI	21	3 (14.3 %)	26.07.
11.	Ajara and Guria reg. TDI (Batumi)	1294	163 (12.6 %)	26-29.07.
12.	Kobuleti TDI	172	12 (7 %)	30.10
13.	Ozurgeti TDI	114	12 (10.5 %)	31.10
14.	Lanchkhuti TDI	47	2 (4.2 %)	01.11.
15.	Akhalsikhe TDI	270	18 (6.7 %)	24.08.
16.	Akhalkalaki TDI	26	0	25.08 ¹⁶³
17.	Khashuri TDI	231	22 (9.5 %)	25.08
18.	Shida Kartli and Samtskhe-Javakheti Regional TDI (Gori)	440	35 (7.9 %)	23.08
19.	Zugdidi TDI	120	6 (5 %)	20.05.
20.	Senaki TDI	186	9 (4.8 %)	21.05
21.	Poti TDI	161	10 (6.2 %)	22.05.
22.	Chkhorotsku TDI	44	5 (11.4 %)	22.05.
	Total	4605	Total: 508 (11 %) ¹⁶⁴	

3.4.2. PERCENTAGE OF SUSPICIOUS INCIDENTS¹⁶⁵ IN ISOLATORS ACCORDING TO YEARS (SPSS)

No.	Percentage of Suspicious Incidents, According to Isolators	2015	2016	2017	2018
1.	Kakheti reg. TDI (Telavi)	14.7 %	21 %	21.7 %	15.1 %
2.	Sagarejo TDI	15.8 %	32.6 %	20 %	28 %
3.	Sighnaghi TDI	4.8 %	13.5 %	9.2 %	10.5 %
4.	Kvareli TDI	9.7 %	27.3 %	20.1 %	14.8 %

¹⁶³ Opened in April 2018.

¹⁶⁴ 2017 - 13 %.

¹⁶⁵ When assessing an incident as suspicious, the Special Preventive Group took into account the circumstances around the arrest indicated in arrest reports, localisation, number and nature of injuries described in external examination reports or medical documentation filled out in a TDI.

The questionnaire would not be filled in if an arrestee only had scar marks, scabs or minor scratches.

5.	Imereti, Ratcha-Lechkhumi and Kvemo Svaneti Regional TDI (Kutaisi)	15 %	39.1 %	14,7 %	10.3 %
6.	Zestaponi TDI	10 %	12.9 %	10.2 %	9.2 %
7.	Baghdati TDI	11.3 %	15.6 %	20.8 %	12.5 %
8.	Tchiatura TDI	22.8 %	18.3 %	21.2 %	18.3 %
9.	Samtredia TDI	12.6 %	20.1 %	16 %	11.3 %
10.	Ambrolauri TDI			8.7 %	14.3 %
11.	Ajara and Guria reg. TDI (Batumi)	10.4 %	11.7 %	11 %	12.6 %
12.	Kobuleti TDI	16.9 %	7.7 %	9.4 %	7 %
13.	Ozurgeti TDI	16.9 %	20 %	14.1 %	10.5 %
14.	Lanchkhuti TDI	0	7.1 %	14.6 %	4.2 %
15.	Akhaltzikhe TDI	23.9 %	9 %	11.1 %	6.7 %
16.	Khashuri TDI			12.2 %	9.5 %
17.	Shida Kartli and Samtskhe-Javakheti Regional TDI (Gori)			10.8 %	7.9 %

PERCENTAGE OF SUSPICIOUS INCIDENTS ACCORDING TO REGIONS FOR THE PAST FOUR YEARS (SPSS)

Region	2015	2016	2017	2018
Imereti, Ratcha-Lechkumi, Kvemo Svaneti	14.2 %	19.9 %	14.5 %	11.2 %
Kakheti	11.9 %	23.6 %	18.9 %	18.6 %
Guria	15.4 %	17.4	14.3 %	8.7 %
Ajara	11.2 %	11 %	11.1 %	11.9 %
	Total: 11.7 %	Total: 15.7 %	Total: 13.8 %	Total: 12.9 %

TIME OF SUSTAINING INJURY (SPSS)

Time of Sustaining Injury	2016	2017	2018
Before Arrest	427 (73.9 %)	276 (58.8 %)	326 (64.2 %)
During Arrest	121 (20.9 %)	152 (32.4 %)	112 (22 %)
After Arrest	22 (3.8 %)	13 (2.8 %)	57 (11.2 %)

No Recording	8 (1.4 %)	28 (6 %)	13 (2.6 %)
	Total: 578	Total: 469	Total: 508

3.4.3. COMPLAINTS AGAINST POLICE ACCORDING TO YEARS (SPSS)

Code	Has Complaints			No Complaints		
	2016	2017	2018	2016	2017	2018
CAV ¹⁶⁶	62 (71.3 %)	65 (74.7 %)	93(84.5 %)	333 (69.1 %)	211 (60.6 %)	295 (73 %)
CC ¹⁶⁷	25 (28.7 %)	22 (25.3 %)	17(15.5 %)	149 (30.9 %)	137 (39.4 %)	98 (27 %)
	Total: 87	Total: 87	Total: 110	Total: 482	Total: 348	Total: 393

3.4.4. DURATION OF POLICE CUSTODY¹⁶⁸(SPSS)

Duration of Police Custody	2016	2017	2018
1-3 Hour	337 (59.8 %)	281 (61.3 %)	319 (63.3%)
4-6 Hour	139 (24.6 %)	101 (22.1 %)	124 (24.6%)
7-9 Hour	53 (9.4 %)	37 (8.1 %)	39 (7.7%)
10-12 Hour	21 (3.7 %)	19 (4.1 %)	8 (1.6 %)
13-15 Hour	9 (1.6 %)	15 (3.3 %)	3
16-18 Hour	4 (0.7 %)	3 (0.7 %)	3
19 Hour	1 (0.2 %)	0	0
20 Hour	0	0	0
21 Hour	0	0	3
22 Hour	0	1 (0.2 %)	2
24 Hour	0	0	2
29 Hour	0	1 (0.2 %)	0
Total:	564	458	504

¹⁶⁶The Code of Administrative Violations

¹⁶⁷ The Criminal Code.

¹⁶⁸ Covers the period from the moment of arrest until placement in an isolator.

Proposal to the Parliament of Georgia:

- To amend the Code of Administrative Violations of Georgia to the effect of determining that, in case of suspicion concerning torture or other ill-treatment, to which a person under administrative responsibility could have been subjected or when a person under administrative responsibility him/herself states about it before the court, the judge must notify a competent investigative authority for follow-up.

Recommendations

To the Ministry of Internal Affairs of Georgia:

- The Ministry of Internal Affairs should examine whether arrested persons' right to contact their family member/relative/lawyer and the right to be informed about the arrest is respected; to develop a mechanism through which it will be possible to examine the exercise of the said rights; to inform the Public Defender's Office about the results of the examination;
- To ensure the process of notification of rights by police to persons in police custody is recorded with technical means (audio and video recording) in a pilot mode in several police stations;
- To install video surveillance cameras in police departments, divisions and stations, and at all places where an arrested person, a witness or a person volunteering for an interview stay
- To amend Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data Therein and determining 14 days as the minimum term for storing video recording obtained through surveillance systems installed in police departments, divisions and units;
- To continue the process of equipping police officers with body cameras with better specifications similar to patrol police; also, to equip officers of territorial agencies with body cameras with improved technical capacities;
- To determine by secondary legislation the obligation of patrol inspectors to video-record their communication with citizens; to determine the procedure for storing the video recordings and the terms thereof;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and to add an additional column to the sample of a protocol approved by Annex 9 for entering the following information: the time of preparing the report; description of injuries on an arrested person's body; the circumstances of the arrest; whether there was any resistance to the police; and whether any force was used and in which form;

- To increase the number of those TDIs where a medical centre is functioning and to ensure documenting injuries on the persons taken to those TDIs is carried out in accordance with the procedure approved by Order no. 691 of the Minister of Internal Affairs of Georgia of 8 December 2016;
- To develop a guideline document/instruction for police officers regarding explaining rights to arrested persons;
- To ensure in a pilot mode uninterrupted video recording of questioning an arrested in several police stations;
- To ensure provision of police departments, divisions and units with brochures on the rights of an arrested person which will be handed out to arrested persons. Furthermore, to ensure that posters are posted on visible places on the walls of the police administrative buildings with the contact details of the Public Defender's hotline;
- To ensure in a pilot mode the practice of taking an arrested person straight to a temporary detention isolator immediately after arrest;
- To ensure developing a guideline with detailed instructions for medical professions employed in TDIs concerning comprehensive documentation of injuries on detained persons;
- To ensure developing detailed technical instructions for medical professionals employed in TDIs about taking quality photographs;
- To ensure laying down rules for uniform and systematised storage of photographs taken by medical professions employed in TDIs; and
- To ensure conducting training sessions for medical professions employed in TDIs about instructions on photo-recording injuries on detained persons and storing the respective photographic material.

4. PROTECTION OF MIGRANTS FROM ILL-TREATMENT

Whether a place where those held during migration proceedings is a place of detention depends on whether the individuals held there are free to leave it at will. If not, these constitute places of deprivation of liberty and all the safeguards applicable to those held in detention must be respected fully.¹⁶⁹ Foreigners being in Georgia without a legal basis can be placed in the Temporary Accommodation Centre (hereinafter the "TAC") up to 3 months for their expulsion from Georgia. This term can be extended for another 6 months based on the reasoned motion filed with a court.¹⁷⁰ Besides,

¹⁶⁹ Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, para. 45, published on 7 February 2018.

¹⁷⁰ The Law of Georgia on the Legal Status of Foreigners and Stateless Persons, Article 64.

asylum-seekers arrested in accordance with Article 9.2 of the Law of Georgia on International Protection can be placed in the centre.¹⁷¹

In the reports published in 2015-2017, the Public Defender issued the following recommendations for the protection of persons placed in the TAC from ill-treatment and improvement of their living conditions: 11 recommendations were made to the Ministry of Internal Affairs of Georgia; 1 proposal was made to the Parliament of Georgia and 1 recommendation was made to the Government of Georgia. 1 out of the 11 recommendations made to the Ministry of Internal Affairs has been fulfilled; 2 recommendations have been fulfilled partially and 8 recommendations have not been fulfilled. The proposal made to the Parliament of Georgia and the recommendation to the Government of Georgia has not been fulfilled.

The monitoring findings of the Special Preventive Group are given in the chapters below.

4.1.ALTERNATIVE MEASURES TO PLACEMENT IN THE TAC

Under international human rights law, the right to liberty and security of person has paramount importance. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of their liberty except on the grounds and procedures established by law.¹⁷² It is important to apply these principles to migrants, among others, especially to asylum seekers who, by virtue of their status, are not persons accused of committing a crime.¹⁷³

In the view of the United Nations Special Rapporteur on the human rights of migrants, the obligation to always consider alternatives to detention (non-custodial measures) before resorting to detention should be established by law. Detailed guidelines and proper training should be developed for judges and other state officials, such as police, border and immigration officers, in order to ensure a systematic application of non-custodial measures instead of detention.¹⁷⁴

Detention of migrants should only be used as a last resort and only after less restrictive alternatives have been found to be unsuitable in the individual case considered. It may be important to consider whether detention is being used as a last resort, or if it is being used in an automatic fashion.¹⁷⁵

¹⁷¹ The Law of Georgia on International Protection, Article 9.

¹⁷² International Covenant on Civil and Political Rights, Article 9(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 16(4); Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5.

¹⁷³ Under the legislation concerning refugees and international human rights law, arrest of asylum seekers must be considered a last resort.

¹⁷⁴ Report of the Special Rapporteur on the human rights of migrants, para. 53, 2 April 2012, A/HRC/20/24.

¹⁷⁵ Visiting Immigration Centres: A Guide for Parliamentarians, p. 28, the Council of Europe (2013), available at : <http://tiny.cc/hies8y>, (accessed 10.04.19).

Under Article 65.1 of the Law of Georgia on the Legal Status of Foreigners and Stateless Persons, “The court may decide to impose alternative measures to the placement of aliens at a temporary accommodation centre.” Besides, Article 21^{42.4} of the Administrative Procedure Code also lays down the possibility of using alternative measures by a court instead of placing migrants into the TAC. However, it is to be noted that, under Article 4 of the Rules⁵ on Arresting a Foreigner and Placement in the Temporary Accommodation Centre,¹⁷⁶ the Migration Department is authorised to apply to a court with a motion to place a foreigner in the TAC only. Interviews of the members of the Special Preventive Group with the administration of the establishment revealed that, stemming from the aforementioned rule, the TAC does not apply to the court requesting the application of alternative measures. Considering the fact that the TAC possesses and processes important personal data about a person in custody (identity, place of residence, financial situation and flight risk),¹⁷⁷ it is important to increase its role and it should be vested with the authority of filing motions on the application of alternative measures.

4.2.ADMISSION TO THE TEMPORARY ACCOMMODATION CENTRE

Under Article 5.3 of the Rules of Arresting and Placing a Foreigner in the Temporary Accommodation Centre, a foreigner is subject to inspection along with his/her personal items and undergoes a preliminary medical examination. It is noteworthy that this procedure is conducted for security reasons.¹⁷⁸ However, obtaining information about the state of health and external examination are cited as the objectives of the preliminary medication examination.¹⁷⁹

During the monitoring, the Special Preventive Group learned that, when admitting arrested foreigners to the TAC (interviews with arrested persons), the personal inspection of foreigners and their preliminary medical examination are not completely separated in the practice and these two procedures are conducted at the same time. Moreover, these procedures in most cases involve requests to strip completely and squat.

The Special Preventive Group emphasises that the personal examination of an arrested foreigner should be a completely separate procedure from the preliminary medical examination. The personal examination is a security measure that should be carried out by security staff following a particular procedure. The preliminary medical examination should be aimed at identifying medical needs by a

¹⁷⁶ Approved by Order no. 631 of the Minister of Internal Affairs of Georgia of 19 August 2014.

¹⁷⁷ In the motion filed with a court concerning placing a foreigner in the TAC, the migration centre refers to such circumstances as the impossibility of identifying the person, the absence of permanent place of residence, financial situation, etc.

¹⁷⁸ A foreigner and his/her personal items are inspected in order to avert threats if there is a threat that a foreigner will use his/her items to harm himself/herself, another person, or another person's property.

¹⁷⁹ The medical personnel of the TAC interview the person about his/her state of health and conducts scrupulous external examination.

medical professional as well as identifying incidents of possible torture and other ill-treatment, documenting them and referring to the respective investigative authorities.

It is noteworthy that strip-searches can only be conducted on the basis of a concrete suspicion and in an appropriate setting and carried out in a manner respectful of human dignity.¹⁸⁰ Persons who are searched should not normally be required to remove all their clothes at the same time¹⁸¹ and do squats. An arrested person should be able to opt for an alternative method of full search (scanner) when personal examinations and strip-searches are necessary.

The Special Preventive Group believes that medical examination in the TAC should be carried out in accordance with the standards of medical service instructions applicable to persons placed in TDIs, approved by Order no. 691 of the Minister of Internal Affairs of Georgia.

The CPT in its report on the visit to Georgia, carried out on 10-21 September 2018, emphasizes that the same screening, recording injuries and reporting procedures be applied at the TAC as those already in place at the TDIs with on-site health-care staff,¹⁸² and that the doctors working at the Centre be provided with appropriate training in this respect.

4.3. LEGAL SAFEGUARDS OF PERSONS IN CUSTODY

The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when irregular migrants are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to legal aid.¹⁸³

Under Article 2.4 of resolution no. 525 of the Government of Georgia on Approving the Procedure for the Removal of a Foreigner from Georgia, legal consultation¹⁸⁴ is provided for a foreigner in the removal procedure. During the monitoring, foreigners have not had any complaint regarding legal consultations

¹⁸⁰ Report to the Bulgarian Government on the visit to Bulgaria, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, published on 29 January 2015.

¹⁸¹ Report to the Czech Government on the visit to the Czech Republic, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, para. 85, published on 31 March 2015.

¹⁸² Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 38, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

¹⁸³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Safeguards for irregular migrants deprived of their liberty, extract from the 19th General Report of the CPT, published in 2009, para. 82, available in English at: <https://rm.coe.int/16806cce8e>, (accessed 01.05.19).

¹⁸⁴ Legal consultation means legal advice available for all regarding any legal issues.

available for them. However, some of them expressed their wish to have full legal aid concerning the removal process.¹⁸⁵

It is noteworthy that the access to legal consultation under the law cannot be considered to be a full-scale legal aid. It is important to ensure that persons set for removal should benefit from full legal aid in the decision-making process about their removal.

It should be taken into account that the Law of Georgia on Legal Aid determines the group of persons eligible for legal aid and foreigners set for removal are not among them. Therefore, in order to ensure the exercise of this right, it is necessary to make appropriate changes to the legislation. It is noteworthy that the Public Defender made a recommendation in the 2015 parliamentary report regarding this issue. This recommendation has not been fulfilled to this day.

4.4. CONDITIONS IN THE TEMPORARY ACCOMMODATION CENTRE

Similar to the visits made in 2015 and 2017, the infrastructure in the TAC and situation in terms of sanitation and hygiene conditions should be positively assessed in 2018 too. However, individuals held in the TAC cannot move freely in the facility's premises. The individuals held in the TAC are mostly locked in their wings and only at the specified time,¹⁸⁶ together with the security personnel of the TAC, can go to the yard, dining room, computer and meetings room.

Considering that a person can be placed in the TAC for up to 9 months,¹⁸⁷ it is important to ensure that the TAC infrastructure, regime and recreational activities provide to the maximum extent possible psychological and emotional relief for the persons placed in custody to be removed from Georgia. To this end, it is necessary to arrange a recreational room in the TAC, equipped with recreational means (for instance, table games).

The CPT, in its report to the Georgian Government on the visit to Georgia carried out on 10-21 September 2018, invited the Georgian authorities to make more efforts to offer some organised activities (e.g.

¹⁸⁵ Legal aid means drafting legal documents, representation before court on criminal, administrative and civil cases as well as administrative bodies at the state's expense.

¹⁸⁶ Free time spent in the daytime at the TAC covers 6 hours. During this period, a person in custody can use a computer twice a day for 30 minutes each time; besides, in good weather (the yard is not covered and therefore, it is impossible to use it in bad weather), a person accommodated in the centre can go into the establishment yard; there is a basketball court arranged in the yard but there is no exercise equipment (in practice, persons accommodated in the centre can only spend one hour in the open air. In addition, arrested persons can use one TV set placed in the meetings room, which often leads to conflict among persons in custody. Evening activities include one-hour rest in wings, dinner, roll call and allocation to rooms.

¹⁸⁷ Foreigners being in Georgia without a legal basis can be placed in the TAC up to 3 months with a view of their expulsion from Georgia. This term can be extended for another 6 months based on the reasoned motion filed with a court.

lectures, handicraft, art and cooking classes) to foreign nationals accommodated at the Centre for extended periods (up to several months).

In order to maintain the physical and mental health of the persons accommodated in the centre, it is necessary to ensure in practice that they can stay in the open air for an unlimited period of time and arrange exercise equipment in the yard. Besides, in order to ensure contact with the outside world for the persons in custody, it is necessary to increase the time allocated for the use of computers in the centre in the daytime.

Nutrition

The Public Defender welcomes that the recommendation regarding including vegetables on the menu has been fulfilled. However, there is still no fruit on the menu.¹⁸⁸ The steps made based on the Public Defender's recommendation towards providing cards for persons placed in the TAC so that the persons in custody could buy food in the canteens serving the TAC personnel on the centre's premises.

The CPT made a recommendation that offering the detainees the possibility to cook their meals by themselves should be seriously considered.¹⁸⁹

Medical Services

The centre employs two doctors and one psychologist. During the daytime, from 9 a.m. until 6 p.m., there is always one medical professional present in the centre. If a medical professional is needed at night, the centre's doctor or an ambulance is called in. During the visit, arrested persons did not complain about medical services. It is commendable that, as a result of the fulfilment of the Public Defender's recommendations, the practice of destruction of expired medicines has been introduced.

It is noteworthy that, when placed in the Migration Centre, the arrested person undergoes the initial examination by the medical personnel. This covers external examination and gathering short anamnesis.¹⁹⁰ There is no screening when admitting a person to the TAC. It is important to ensure that the preliminary examination covers screening for contagious diseases¹⁹¹ and mental health. During the visit to the establishment, the group met a person with disabilities who needed appropriate care. Due

¹⁸⁸ The same is mentioned by the CPT in its report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 35, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

¹⁸⁹ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 35, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

¹⁹⁰ Medical history about the patient's relevant circumstances before the disease and the history of the development of the disease; it is gained by a medical professional based on the information given by the patient or other people who know the person and can give suitable information.

¹⁹¹ Tuberculosis, Hepatitis B and Hepatitis C, HIV/AIDS.

to the absence of a nurse, the physician had to take up those duties. It is important that the TAC should be able to contract a nurse in such cases.

The CPT is of the view that it would be advisable to recruit nursing staff and organise a 24/7 health-care coverage at the TAC.¹⁹²

Proposal to the Parliament of Georgia:

- In 2019, amend the Law of Georgia on Legal Aid to the effect of determining that an alien set to be removed shall be eligible for legal aid at the state's expense.

Recommendation to the Ministry of Internal Affairs of Georgia:

- In 2019, amend the Rules of Arresting and Placing a Foreigner in the Temporary Accommodation Centre approved by Order no. 631 of the Minister of Internal Affairs of Georgia of 19 August 2014 and determine the power of the arresting authority, at any stage of the arrest procedure and motion before the court regarding the application of alternative measures instead of applying for placing the foreigner into custody;
- Differentiate strip-search and cavity search; establish the respective procedures for each;
- In 2019, amend Order no. 631 of the Minister of Internal Affairs of Georgia approving Arresting a Foreigner and Placement in the Temporary Accommodation Centre to the effect of:
 - determining that personal examinations and strip-searches are only conducted based on concrete and reasonable suspicion;
 - determining that removal of all the clothes at the same time, doing squats during personal examinations and strip-searches are prohibited; and
 - laying down the right of an arrested person to opt for an alternative method of full search (scanner) when personal examinations and strip-searches are necessary.
- In 2019, take all necessary measures to ensure that medical examination in the TAC is carried out in accordance with the standards of medical service instructions applicable to persons placed in TDIs approved by Order no. 691 of the Minister of Internal Affairs of Georgia. Furthermore, ensure the retraining of the medical personnel in documenting injuries in accordance with the instructions;
- In 2019, arrange a recreational room in the TAC, equipped with recreational means (for instance, table games);
- In 2019, offer organised activities (e.g., lectures, handicraft, art and cooking classes) to persons placed in the TAC for up to 9 months;

¹⁹² Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 37, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

- In 2019, ensure in practice that persons placed in the TAC can stay in the open air for an unlimited period of time; arrange exercise equipment in the yard;
- In 2019, increase the time allocated for the use of computers in the centre in the daytime to ensure contact with the outside world for the persons in custody;
- In 2019, include fruit in the menu;
- In accordance with the CPT recommendation, offering detainees the possibility to cook their own meals should be seriously considered.
- In 2019, take all the measures to ensure that the preliminary examination covers screening for contagious diseases (Tuberculosis, Hepatitis B and Hepatitis C, HIV/AIDS, etc.) and mental health screening with appropriate means; and
- To ensure that a nurse is called in the TAC in the cases of placement of a person with special needs.

5. PSYCHIATRIC ESTABLISHMENTS

In 2017, the Public Defender of Georgia issued 18 recommendations concerning the situation in psychiatric establishments, out of which 4 proposals were made to the Parliament of Georgia; 2 recommendations to the Government of Georgia; 10 recommendations to the Ministry of Labour, Healthcare and Social Security of Georgia; 1 recommendation to the Office of the Chief Prosecutor of Georgia; and 1 recommendation to the Ministry of Internal Affairs of Georgia. None of the recommendations made to the Parliament of Georgia and the Government of Georgia has been fulfilled. One recommendation to the Ministry of Internal Affairs of Georgia was fulfilled partially. One recommendation made to the Office of the Chief Prosecutor of Georgia was fulfilled. Out of the 10 recommendations made to the Ministry of Labour, Healthcare and Social Security of Georgia, 1 was fulfilled, 2 were fulfilled partially and 7 recommendations were not fulfilled.

The Public Defender and the Special Preventive Group welcome the steps made in 2018 to improve conditions in psychiatric establishments. In this regard, the Surami Psychiatric Clinic¹⁹³ should be mentioned, where in 2018, rehabilitation works aimed at renovating the infrastructure were conducted and various parts of the infrastructure were renovated. In 2018, the power supply, washing block and the patients' reception section were renovated in the Academician B. Naneishvili National Centre for Mental Health;¹⁹⁴ a new building was arranged and some of the patients were transferred there. The Public Defender and the Special Preventive Group welcome the steps taken by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. However, it should be noted that the situation in the Academician B. Naneishvili National Centre for Mental Health has improved for only a small part of patients. The majority of the patients

¹⁹³ Address, the city of Surami, 12, Rusia Str.

¹⁹⁴ Address: the city of Khoni; the village of Kutiri.

still live in the old building. Providing quality food, personal hygiene items, clothing and linen for patients in the above facilities remains problematic.

The increase in the funding of the 2019 programme of mental health care¹⁹⁵ is to be noted positively. The budget of each component of the programme¹⁹⁶ increased accordingly. However, unfortunately, despite almost 9-% increase in the shelter component, the cost per 24 hours of a beneficiary's stay in a shelter remains the same.¹⁹⁷ Furthermore, despite the increase in the funding, the price of a bed-day for patients receiving long-term treatment has also not been changed.¹⁹⁸

Despite the above positive steps, mental health care remains one of the most important challenges in the country and needs significant fundamental reforms. According to the existing situation, similar to the previous years, the following issues remain problematic in the Bediani Psychiatric Hospital – the Centre of Mental Health of East Georgia and the Academician B. Naneishvili National Centre for Mental Health: overcrowding in wards;¹⁹⁹ the absence of private space for patients and the failure to respect their privacy; inadequate environment for patients; the failure to uphold sanitary and hygienic norms of buildings and personal hygiene of patients; the existing practice of physical and chemical restraint; lack of access to timely and adequate treatment of somatic diseases; absence of appropriate psychosocial rehabilitation and supporting services; lengthy hospitalisation neglecting patients' will and involuntary medical intervention. In the 2015 parliamentary report, the Public Defender assessed the above as inhuman and degrading treatment of patients and the position of the Special Preventive Group remains the same in this regard.

There is a problem of the presence of security personnel during conversations between a patient and a medical professional in the forensics unit of the Academician B. Naneishvili National Centre for Mental Health. The CPT is of the view that the core security in patient accommodation areas should be provided by health-care staff, using appropriate means of environmental and dynamic security. The routine presence of security staff, not just on the perimeter but actually within patient accommodation areas, is unnecessarily intimidating to patients and not conducive to the establishment of a therapeutic

¹⁹⁵ In 2019, the budget of the programme was set at 24 million Lari. In 2018, the programme budget was 20,550 million Lari.

¹⁹⁶ Community ambulance services, psychological rehabilitation; children's mental health; psychiatric crisis intervention service for adults; community based mobile team service; psychiatric inpatient services for adults with mental disorders; psychiatric inpatient services for children with mental disorders; the shelter component for disabled persons with mental disorders.

¹⁹⁷ In 2018, the budget of the shelter component was GEL 567.3 and the cost per 24 hours of a beneficiary's stay in a shelter was GEL 17. In 2019, the budget of the shelter component is GEL 620.5 and a cost per 24 hours of a beneficiary's stay in a shelter remains GEL 17.

¹⁹⁸ In 2019, similar to 2018, the price of a bed-day for patients receiving long-term treatment is 23 GEL.

¹⁹⁹ Patients are not provided with the minimum standard of eight square metres of living space as established by Order no. 385 of the Government of Georgia of 17 December 2010 on Approving the Statute on the Procedure and Terms of Licensing Medical Activities and Issuing a Permit for Inpatient Facilities, Annex 2.

environment. The CPT recommends that the role of security staff at Kutiri Psychiatric Hospital is reviewed accordingly.

Similar to the previous years, the situation in ten large facilities operating nowadays remains a serious challenge in the country. The conditions and therapeutic environment existing in ten large operational facilities do not ensure patients' dignified life and protection of their rights. It is important that the policy making state agencies take effective steps in the shortest possible time to contribute to deinstitutionalising the process and developing community based, among others, family-type services in mental health care.²⁰⁰

5.1. PHYSICAL AND CHEMICAL RESTRAINT

The Special Preventive Group shares the spirit of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the "CRPD")²⁰¹ and the approach of the World Health Organisation to mental health care which is rights-based and recovery oriented.²⁰² The Special Preventive Group maintains that the state should facilitate the reduction of the use of means of physical²⁰³ and chemical²⁰⁴ restraint against patients in inpatient facilities and their complete eradication. It is noteworthy that the legislation does not determine the de-escalation technique²⁰⁵ as the alternative means to physical and chemical restraint. Therefore, the alternative method (de-escalation technique) to physical and chemical restraint is not applied in psychiatric facilities.

The approach of the state and psychiatric facilities do not ensure the reduction and elimination of the resort to physical and chemical restraint. In the opinion of the Special Preventive Group, this is caused by the following factors: the absence of legislative regulation of alternative means to physical and chemical restraint; the absence of legislative regulation of chemical restraint;²⁰⁶ the problem related to

²⁰⁰ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 123, available in English at: <https://rm.coe.int/1680945eca>, (accessed 17.06.19).

²⁰¹ Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, available in English at: <https://www.ohchr.org/.../GC/GuidelinesArticle14.doc>, (accessed 06.03.2019).

²⁰² Quality Rights is WHO's global initiative to improve the quality of care provided by mental health services and promote the human rights of people with psychosocial, intellectual and cognitive disabilities, 2017, available at: http://www.who.int/mental_health/policy/quality_rights/en/ (accessed 06.03.2019).

²⁰³ Under Article 16.2 of the Law of Georgia on Psychiatric Care, "Methods of physical restraint are isolation in a specialised ward and/or the physical immobilising of a patient."

²⁰⁴ Chemical restraint implies forcible administration of medication for the purpose of controlling a patient's behaviour; see the Means of restraint in psychiatric establishments for adults (Revised CPT standards), p. 2, available at: <https://rm.coe.int/16807001c3>, (accessed 11.03.2019).

²⁰⁵ De-escalation technique implies immediate assessment of potential crises and prompt intervention; orientation towards the solution of a problem, empathy and reassurance; possessing stress management or relaxation technique such as breathing exercises, allowing personal space; offering a choice and allowing to think.

²⁰⁶ Neither the legislation nor the regulations applying to facilities determine the alternative means to physical and chemical restraint.

registering the use of chemical restraint; the problem related to state monitoring on administering adequate psychiatric care and protection of patients' rights in psychiatric facilities; and psychiatric facilities being understaffed.

In the 2017 parliamentary report, the Public Defender issued a proposal for the notice of the Parliament of Georgia to amend the Law of Georgia on Psychiatric Care to the effect of determining the following: the maximum duration of physical restraint; the duty to make an entry into a special registry (a special logbook) concerning physical restraint used against a patient, including the body injuries sustained by a patient and/or staff member in the process; the form of a special registry (a special logbook); detailed instructions concerning the direct use of physical restraint; specifications of the means to be used during physical restraint; the details of where to use physical restraint and who can attend this process; the requirements to be met by a specialised isolation ward; issues related to the use of video surveillance in the process of physical restraint; and after the use of physical restraint the duty to discuss the issue with the patient and to inform him/her about the right to appeal against physical restraint; also to introduce the definition of chemical restraint; the legal grounds and procedure of its use as an exception and to introduce the obligation of approving by an order of the Minister of Labour, Health and Social Affairs of Georgia the detailed instruction on the use of chemical restraint.

Furthermore, the Public Defender recommended to the Minister of Labour, Health and Social Affairs of Georgia to amend the Instruction on the Rules and Procedures for the use of Means of Physical Restraint Against Patients with Mental Disorders as approved by Order no. 92/N of the Minister of Labour, Health and Social Affairs of Georgia of 20 March 2007. The Public Defender recommended to determine statutorily the following: the maximum duration of physical restraint; the duty to make an entry into a special registry (a special logbook) concerning physical restraint used against a patient, including the body injuries sustained by a patient and/or staff member in the process; the form of a special registry (a special logbook); detailed instructions concerning the direct use of physical restraint; specifications of the means to be used during physical restraint; the details of where to use physical restraint and who can attend this process; the requirements to be met by a specialised isolation ward; issues related to the use of video surveillance in the process of physical restraint; and after the use of physical restraint the duty to discuss the issue with the patient and to inform him/her about the right to appeal physical restraint. Unfortunately, the Public Defender's above recommendation and proposal have not been fulfilled.

5.2. FORCED MEDICAL TREATMENT OF PATIENTS FORMALLY PLACED VOLUNTARILY IN INPATIENT FACILITIES AND THE USE OF PHYSICAL RESTRAINT

Apart from the above problems, similar to the previous years, forced medical treatment of patients formally placed voluntarily in inpatient facilities and the use of physical restraint constituted a considerable challenge in the reporting period.

This notorious practice is also confirmed by the CPT in its report on the visit to Georgia, carried out in 2018.²⁰⁷ **The CPT stressed that if it is deemed necessary to restrain a voluntary patient, the procedure for the re-examination of his/her legal status should be initiated immediately.**²⁰⁸

In the 2017 parliamentary report, the Public Defender made a proposal for the notice of the Parliament of Georgia to amend Article 16 of the Law of Georgia on Psychiatric Care to the effect of determining that, as a rule, means of restraint should not be applied vis-à-vis formally voluntary patients. However, if it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status (voluntary/non-voluntary) should be initiated immediately. The Parliament of Georgia has not implemented this proposal.

5.3.INTER-PRISONER VIOLENCE

AS a result of the monitoring conducted in 2017, it was established that there is no violence-free, safe environment in the Surami Psychiatric Clinic,²⁰⁹ the Academician B. Naneishvili National Centre for Mental Health²¹⁰ and the **Republican Psycho-Neurological Clinical Hospital, LTD.**²¹¹ **On frequent occasions, there have been conflicts among patients, manifested in verbal abuse and sometimes even in physical altercation.**

The CPT in its report on the visit to Georgia carried out on 10-20 September 2018, discussed inter-patient/resident violence²¹² and stressed once again that the duty of care which is owed by staff in a psychiatric establishment to those in their charge includes the responsibility to protect them from other patients/residents who might cause them harm. This requires not only adequate staff presence and supervision at all times, but also that staff be properly trained in handling challenging situations/behaviour by patients.²¹³

Regarding this issue, the Public Defender recommended to the Ministry of Labour, Health and Social Affairs of Georgia to establish a normative framework to prevent violence among patients and ensure

²⁰⁷ According to the CPT report, the delegation was informed by doctors at Kutiri Psychiatric Hospital that formally voluntary patients were occasionally subjected to physical restraint.

²⁰⁸ Report to the Georgian Government on the visit to Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 136, available in English at: <https://rm.coe.int/1680945eca>, (accessed 10.06.19).

²⁰⁹ Address, the city of Surami, 12, Rusia Str.

²¹⁰ Address: the city of Khoni; the village of Kutiri.

²¹¹ Address: Batumi, 36, Kakhaberi Str.

²¹² During visits to the Academician B. Naneishvili National Centre for Mental Health and the Republican Psycho-Neurological Clinical Hospital, LTD, the members of the delegation themselves witnessed an episode of conflict among patients.

²¹³ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, (CPT/Inf (2019) 16), para. 108, available in English at: <https://rm.coe.int/1680945eca>, (accessed 10.06.19).

their safety and govern the following issues: Introduction of an adequate system of preliminary assessment of the risks derived from specific patients by the staff; multidisciplinary work; preventive measures to be taken to protect patients from violence and ensure their safety; conducting appropriate supervision/observation of patients by personnel, proper training of staff, development of strategy for standard operating procedures and de-escalation; prompt and adequate intervention immediately the threat; documenting incidents involving violence and response made; accountability and responsibility of the staff. Unfortunately, the indicated recommendation has not been fulfilled.

5.4.SOMATIC (PHYSICAL) HEALTH

In 2018, problems were identified in terms of accessibility of somatic healthcare services for the patients of psychiatric facilities²¹⁴ as well as providing them with respective medicines. The Mental Healthcare Programme²¹⁵ does envisage monitoring of somatic (physical) health and treatment of patients with mental health problems in psychiatric facilities. This leads to the aggravation of the patients' state of health and, sometimes, even death. Reimbursement is only provided for emergency cases within the Universal Health Care Programme and planned medical services are co-funded.²¹⁶ Patients cannot afford this in certain cases. Transporting patients to a different medical establishment is also problematic. This causes additional expenses for patients. Furthermore, the services of consultants are not free of charge in the Academician B. Naneishvili National Centre for Mental Health. Moreover, patients have to buy therapeutic medicines to manage their somatic (physical) health problems.

The problems of somatic healthcare are addressed also by the CPT in its report on the visit to Georgia carried out on 10-21 September 2018. It is completely unacceptable for the committee that psychiatric inpatients that lack financial means are requested to pay for somatic medical services. The CPT recommends that urgent action should be taken to remedy this.²¹⁷

When monitoring²¹⁸ the Academician B. Naneishvili National Centre for Mental Health, the Special Preventive Group studied the medical cards of deceased patients.²¹⁹ Medical cards of patients deceased

²¹⁴ See in detail, 2018 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pp. 273-274, available at: <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>, (accessed 11.06.2019).

²¹⁵ Resolution no. 693 of the Government of Georgia of 31 December 2018 on Approving 2019 State Healthcare Programmes, Annex no. 11 Mental Health (programme code 27 03 03 01).

²¹⁶ A patient pays for a part of medical services.

²¹⁷ Visit carried out on 10-21 September, para. 128, available at: <https://rm.coe.int/1680945eca>, (accessed 11.06.2019).

²¹⁸ The Academician B. Naneishvili National Centre for Mental Health was visited on 22-24 2019.

²¹⁹ The medical cards of patients deceased in the respective establishment or other medical establishments have been studied. It is noteworthy that there is no death statistics maintained in the establishment. This hindered the work of the Special Preventive Group. Despite the difficulties, the group managed to locate and examine 25 medical cards of the patients deceased from 1 January 2018 until 24 April 2019. 7 patients died in the

in the National Centre for Mental Health cite sudden death and acute cardiovascular failure in most cases. The possible reason could be insufficient monitoring of patients' somatic condition and the failure to take risk factors into account. The inaccessibility of medical services and the problems of managing physical healthcare in the centre can be proved by the fact that an inpatient medical card gives information only about mental health and there is no entry about the state of somatic health before the deterioration of a patient's condition or his/her death.

The examination of the certificates of the state of health (form no.100/A) issued by referral clinics in the medical cards of deceased patients shows that the state of health had worsened several days before their transfer to a general hospital; whereas, according to the medical cards kept in the National Centre of Mental Health, deterioration of the state of health is registered only on the day of the transfer. In several cases, worsening problems of somatic health could be attributed to the overdose of antipsychotic medicines²²⁰ or risky combination of prescribed medicines such as "Zopin" ("Clozapine") in combination with other antipsychotic medicines.²²¹

5.5. PROCUREMENT OF ANTIPSYCHOTIC MEDICINES

Psychiatric establishments, more than 50% of the shares of which is owned by the state, purchase antipsychotic medicines in accordance with the Law of Georgia on Public Procurement. Therefore, stemming from tender terms, usually, the cheapest and low-quality medicines are procured. In the 2017 parliamentary report, the Public Defender stressed the importance of quality medicines. In this regard, the Public Defender recommended to the Government of Georgia considering the priority of the quality of medicines, in accordance with Article 3.a-h) of the Law of Georgia on Public Procurement, to approve the special procedure of procuring medicines by psychiatric establishments (LTD), more than 50% of shares of which is owned by the state and to determine that these establishments are allowed to use simplified procurement procedures for these medicines. However, unfortunately, this recommendation has not been fulfilled.

5.6. THE RISK POSED TO THE PROVISION OF UNINTERRUPTED PSYCHIATRIC CARE IN THE LTD CENTRE OF MENTAL HEALTH OF EAST GEORGIA

Inpatients should receive adequate medical care. In this regard, it is noteworthy that the Internal Audit Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour,

establishment and 18 patients died in a short period, from 1 day to 2 weeks, after being transferred to another medical establishment.

²²⁰ According to one of the deceased patients' medical card, one of the medicines is prescribed with a maximum dose in combination with either average or minimum dose of another antipsychotic medicine and sometimes in combination with the third antipsychotic medicine, among others, Zopin.

²²¹ One of the patients was prescribed pill treatment: "Haloperidol" (maximum dose) – 30mg three times a day, "Zopin" ("Clozapine") 300mg and benzhexol – 6mg a day.

Health and Social Affairs of Georgia examined/assessed the state of uninterrupted medical care²²² and respective risks in the LTD Centre of Mental Health of East Georgia.²²³ The inspection revealed the following violations: the Bediani Psychiatric Clinic does not meet the general terms of licensing under the Statute on the Procedure and Terms of Licensing Medical Activities and Issuing a Permit for Inpatient Facilities approved by Order no. 385 of the Government of Georgia of 17 December 2010. Due to this, as early as on 3 April 2018, the LEPL Agency of State Regulation of Medical Activity fined the establishment. However, even by the time the Internal Audit Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia finished its inspection (February 2019), there had been no concrete steps taken by the management to comply with the licencing terms.

According to the finding of the Internal Audit Department, the wrong financial policy of the centre's management led to a debt of GEL 165,615 towards the providers. The inspection of the debt revealed that the centre failed to comply with the business plan approved by the LEPL National Agency of State Property; the costs of nutrition and medicines were artificially reduced, and salaries and other expenditures were increased.²²⁴ The amount the management spent on the salaries exceeded the amount determined by the business plan by GEL 81,624 which led to the debt. Therefore, the centre's business plan for 2018 was determined by the management from the very beginning so that it failed to be tailored to the centre's needs. The expenditure for the needs determined by the LEPL Agency of State Regulation of Medical Activity is completely ignored from the planned income of 2018 and has not been planned at all. The centre's administration could not plan and implement preventive measures in order to avoid the risks of the hindering provision of medical care. As a result, the establishment faced the real risk of having its license revoked and suspension of activities.

Based on the identified violations, the Internal Audit Department made the following recommendations: 1) the report on the examination/assessment of the state of uninterrupted medical care and respective risks in the LTD Centre of Mental Health of East Georgia should be sent to the National Agency of State Property; 2) taking into account the violations/failures identified in the report, the LEPL Agency of State Regulation of Medical Activity should consider the responsibility of the Director General of the centre; 3) the issue should be taken to the LEPL Agency of State Regulation of Medical Activity; 4) to take into account the centre's financial situation when imposing sanctions for the breach of licensing terms (debt towards providers in the amount of GEL 165,615) and the fact that repeated imposition of a fine on a license-holder does not necessarily lead to a tangible outcome in terms of improving the licensing terms and to consider the issue of complying with licensing terms

²²² Since somatic medical care is not covered by the Mental Health Care Programme, the term "medical care" referred to in the conclusion actually means psychiatric care.

²²³ Incorporates the Surami Psychiatric Clinic and the Bediani Psychiatric Clinics.

²²⁴ Beneficiaries' nutrition and medicine costs were determined to be 30% instead of 38% of projected revenue. The centre's management is unable to adduce the reason thereof. The expenditure amounted to 34%, i.e., GEL 78,913 more than planned and GEL 80,067 less than the projected revenue indicator.

through third parties based on Article 34.13 of the Law of Georgia on Licenses and Permits; and 5) within the revision of the Mental Healthcare component of the Healthcare State Programme, to examine the services provided in “acute cases” by the centre throughout August 2018.²²⁵

Stemming from the failure of the Bediani Psychiatric Clinic and its wrong financial policy, it is important that the risks hindering the provision of uninterrupted medical services should be addressed in the shortest time possible. It is important that such inspections should also be conducted in other psychiatric establishments as well in order to exclude any obstacles to the provision of medical care.

5.7.LEGAL SAFEGUARDS

Similar to the previous years, the perfunctory practice of obtaining the patient’s consent does not provide the patient with full, accurate and comprehensible information in a timely manner.²²⁶ This is confirmed by the fact that the interviewed patients do not have any information about their rights and, **while some of them have signed the informed consent forms when placed in an establishment, they constantly request to be discharged from the inpatient facility.** Formally, voluntary and actually involuntary inpatients (who are beyond judicial review) are unable to protect their rights. It is without question that if a person is placed in an inpatient facility voluntarily, he/she has the right to refuse treatment any time²²⁷ and leave that inpatient facility.²²⁸

Similar to the previous years, the internal complaints and feedback procedure in psychiatric establishments can be deemed to be a mere formality, as patients almost never use this procedure or complaint boxes. The interviewed patients are not aware of their rights and they have no information as to whom they should address their complaints. It is important to take measures to address the following issues: a) informing patients about their rights in the language they understand; b) establishing a simple and accessible complaints procedure based on patients’ needs assessment; and c) ensuring internal and external proactive monitoring. The National Preventive Mechanism also believes that, when determining terms and other procedural issues related to handling complaints, it is crucial to take into account the special needs of patients in psychiatric establishments and those practical

²²⁵ Inpatient acute care services include containing acute psychotic symptoms or treating behavioural or affective symptoms that endanger the life and health of the patient or those around them.

²²⁶ Under Article 4.b) of the Law of Georgia on a Patient’s Rights,

b) informed consent - consent given by a patient or, if he/she is a minor, by the patient’s legal representative, to providing certain medical care after he/she is informed of:

b.a) the essence and necessity of the medical care;

b.b) expected consequences of the medical care;

b.c) potential risks to the health and life of a patient related to the medical care;

b.d) alternatives to the planned medical care and associated risks and possible benefits;

b.e) expected consequences if the medical care is refused; and

b.f) financial and social issues related to the information specified in sub-paragraphs (b.a - b.e) of this article.

²²⁷ The Law of Georgia on a Patient’s Rights, Article 23.

²²⁸ The Law of Georgia on Psychiatric Care, Article 17.3.b).

difficulties they could face when exercising their right to appeal. Therefore, it is important to establish a simple and accessible complaints procedure concerning psychiatric assistance and human rights violations with due regard to patients' special needs and determining the mandatory and uniform internal complaints and feedback procedure for all psychiatric establishments by adopting a normative act to that effect. The recommendation made in the 2017 parliamentary report concerning this issue is still unfulfilled.²²⁹

The Public Defender and the Special Preventive Group believe that it is necessary to ensure an assessment by independent experts of the effectiveness of state supervision over psychiatric assistance, the monitoring system of patients' rights and to ensure the development of appropriate recommendations. In this regard, we were informed by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia that, with the technical assistance of the Council of Europe, efforts are underway to develop a mechanism of internal inspection and monitoring of the facilities. According to the ministry, the questionnaire of the WHO Quality Rights Toolkit²³⁰ will serve as a basis for the development of the mechanism of internal inspection and monitoring of the facilities, which is commendable. Unfortunately, the ministry has not supplied information as to what has been accomplished with the CoE's assistance, whether the existing mechanisms were assessed, whether the relevant best practices were researched and what steps are planned to be made in the near future. Therefore, the recommendation concerning the assessment of the effectiveness of the state supervision over psychiatric assistance and the monitoring system of patients' rights by independent experts cannot be considered to have been fulfilled.

In terms of enhancing regular, systemic and proactive state supervision of psychiatric facilities, certain efforts by the LEPL Agency of State Regulation of Medical Activity are noteworthy. In particular, in 2018, this agency assessed 5 psychiatric facilities²³¹ in terms of the compliance of their inpatient services with the licensing terms and concluded that none of them fully met the licensing terms. Therefore, it is important to ensure strict control over redeeming the shortcomings identified in these facilities and to conduct periodic examinations of all psychiatric facilities.

The Special Preventive Group maintains that the examination of compliance of inpatient services with licensing terms is only one element of regular, systemic and proactive monitoring of psychiatric facilities and the capacity of a facility to provide inpatient services is examined under this head. After this, it should be proactively assessed as to what degree patients receive psychiatric care based on the

²²⁹ The 2017 parliamentary report by the Public Defender, p. 76.

²³⁰ In November 2018, 5 staff members of the ministry participated in the training session on the use of WHO Quality Rights Toolkit questionnaire.

²³¹ The following facilities were inspected: The Centre for Mental Health of East Georgia (incorporates the Surami Psychiatric Clinic and the Bediani Psychiatric Clinic); the Kutaisi Mental Health Centre; the National Centre for Mental Health (the village of Kutiri); the Senaki Inter-District Psycho-Neurological Clinic and the Rustavi Mental Health Centre.

bio-psycho-social model,²³² with due respect for patients' rights. In this regard, the activities carried out in 2018 cannot be considered to be satisfactory. We were informed by the LEPL Agency of State Regulation of Medical Activity that, in 2018, the agency only drew 4 revision reports²³³ with regard to 8 patients and all of those cases concerned medical assistance provided in 2017. Such work cannot be considered as either regular or systemic since it does not allow generalising the situation.

Stemming from the above, it is important to determine in the Law of Georgia on Psychiatric Care the external supervision/monitoring grounds for supervision over psychiatric assistance and the monitoring system of patients' rights. This should be done based on the assessment of the existing system of state supervision over psychiatric assistance and the monitoring system of patients' rights as well as the best international practices. In the opinion of the Special Preventive Group, this should, at least, incorporate regular, systemic and proactive nature of supervision and monitoring, the bio-psycho-social model and a human rights-based approach, as well as accountability to the public.

5.8. THE PROBLEM OF LENGTHY HOSPITALISATION

Similar to the previous years, there are also problems with regard to lengthy hospitalisation of patients. **Despite the fact that often patients do not need active treatment, they cannot leave the hospital as they have nowhere to go or their family avoids taking them back. This is caused by the lack of support services in the community.**²³⁴ In this regard, the Public Defender's recommendation – given in the 2017 parliamentary report regarding needs assessment of patients placed in psychiatric establishments for more than 6 months for discharging and referring them to community-based services – remains unfulfilled.

Unfortunately, the only shelter in the entire country is in the Academician B. Naneishvili National Centre for Mental Health, which can house 100 beneficiaries.

The shelter is arranged within the premises of the establishment and is isolated from the community. The Special Preventive Group believes that placing patients with mental health problems in large institutions contradicts the Convention on the Rights of Persons with Disabilities. Stemming from the above-mentioned, the Public Defender calls upon the relevant state agencies to take effective steps in

²³² Under Article 4.c) of The Law of Georgia on Psychiatric Care:

“Psychiatric care - a set of measures aiming at the examination and treatment of a person with a mental disorder and the prevention of exacerbation, and the facilitation of social adaptation and community reintegration of a person with a mental disorder.”

²³³ Resolution no. 638 of the Government of Georgia of 30 December 2016 on Approving State Programmes of Health Care in 2017, Article 18.

²³⁴ During conversations with the Special Group members, some of those patients who were fully aware of their mental condition, expressed the wish to be discharged from the inpatient facility and continue treatment at home could not understand why they were not discharged without their family member's signature, considering they were placed in the hospital on a voluntary basis.

the shortest possible time to contribute to deinstitutionalising the process and developing community-based, family-type services in mental healthcare to contribute to the integration of the beneficiaries.

It is necessary to elaborate a plan for setting up shelters based on the estimated number of potential beneficiaries. Determining the number of persons to be discharged and referred to community-based services will enable determining the required financial resources.²³⁵

5.9. PSYCHOSOCIAL REHABILITATION

The monitoring conducted in psychiatric facilities showed that the volume of psychosocial rehabilitation²³⁶ is still extremely limited and the existing interventions are fragmented and are not tailored to needs. Conversations with patients indicate the formal nature of these interventions; family members are not involved in the process of the resocialisation of patients.

Against the background of staff shortage²³⁷ and under-qualified²³⁸ personnel, which is further aggravated by hard working conditions and low remuneration, the management of mental disorders in the facilities is still based on pharmacotherapy exclusively; the bio-psycho-social approach is not implemented. **There are no multi-disciplinary teams in psychiatric establishments (for instance, in the Surami Psychiatric Clinic and the Bediani Psychiatric Clinic of LTD Mental Health Centre of Eastern Georgia and the Senaki Inter-District Psycho-Neurological Clinic) that would assess the individual needs of beneficiaries, elaborate individual plans and ensure their implementation.** According to patients, they are not occupied with any worthwhile activities during the day.²³⁹

It is problematic how inpatient support persons are appointed in psychiatric clinics and how their social packages are managed. For instance, the head of the clinic is the support person for 9 patients placed

²³⁵ It should be borne in mind that when those long-term patients are discharged, the financial resources allocated for their long-term inpatient treatment will be released and it will be possible to use these resources as patient's social benefits. In its turn, this can facilitate the families to assume the role of a social supporter and, whenever families fail to do so, the existing financial resources can be spent on providing a shelter (it is the assessment of the Public Defender that the shelter component should be considered as a community service).

²³⁶ Mainly occupational therapy and art therapy.

²³⁷ During the visit to the Bediani Psychiatric Clinic on 26-28 September 2018, the position of a social worker was vacant. During the visit to the Academician B. Naneishvili National Centre for Mental Health on 6-7 March 2018, the position of a psychologist was also vacant.

²³⁸ For instance, during the visit to the Bediani Psychiatric Clinic on 26-28 September 2018, it was established that the professional qualification of a social worker employed in the Bediani Psychiatric Clinic did not comply with the requirements of Article 42.1.c) of the Law of Georgia on Social Work. In particular, the employed social worker did not have a bachelor's degree, master's degree/equivalent of master's degree or doctorate in the field of social work or a certificate of a social worker as stipulated by law.

²³⁹ No sport competitions or recreational activities are organised and psychical activity is not encouraged. Cultural activities are rare and only organised during important holidays. Only some patients participate in these events.

in the Bediani Psychiatric Clinic. The Public Defender and the Special Preventive Group believe that this **leads to a conflict of interest and the risk of undue influence**.²⁴⁰

The CPT discusses similar problems in its report on the visit to Georgia, carried out in 2018. At Kutiri²⁴¹ and Khelvachauri²⁴² Psychiatric Hospitals, the delegation noted that most of the legally incompetent patients (there were many of them) had the director of the establishment or another staff member appointed as their legal guardian (a support person is implied). The CPT reiterated its view that granting guardianship to the staff of the very same establishment in which the concerned patient is placed may easily lead to a conflict of interest. The committee called upon the Georgian authorities to find alternative solutions that would better guarantee the independence and impartiality of guardians.²⁴³

Stemming from the above, the Public Defender and the Special Preventive group believe that it is most important that the Agency of Social Services of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia should examine how adequately former and present staff members of the Bediani Psychiatric Clinic, the LTD Academician B. Naneishvili National Centre for Mental Health and LTD Batumi Medical Centre act as support persons for the beneficiaries in the respective establishments.²⁴⁴ In those cases, where it is established that a person acting as a support person has not been discharging his/her functions adequately, a motion should be filed with the court to relieve such persons of their duties.²⁴⁵ It should be ensured that the functions of a support person are vested with a person specifically authorised by the social services of custody and guardianship.

Proposals

To the Parliament of Georgia:

- To amend the Law of Georgia on Psychiatric Care to the effect of determining in express terms the procedure of examination of complaints and external supervision/monitoring grounds for supervision over psychiatric assistance and the monitoring system of patients' rights;

²⁴⁰ Under Article 12.4 of the Convention on the Rights of Persons with Disabilities and Optional Protocol, States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards, in accordance with international human rights law, to prevent abuse. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, **are free of conflict of interest and undue influence**, proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.

²⁴¹ The Academician B. Naneishvili National Centre for Mental Health is implied.

²⁴² LTD Batumi Medical Centre is implied.

²⁴³ Available at: <https://rm.coe.int/1680945eca>, para. 144, (accessed 26.05.2019).

²⁴⁴ The Civil Code of Georgia, Article 1300.3.

²⁴⁵ See Article 1305⁵.

- To determine in the legislation the alternative methods (de-escalation technique) to physical and chemical restraint;
- To amend the Law of Georgia on Psychiatric Assistance to the effect of defining chemical restraint, grounds for its exceptional use and procedure; to determine the obligation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to approve detailed instructions for the use of chemical restraint;
- To amend Article 16 of the Law of Georgia on Psychiatric Care to the effect of determining the following: maximum duration of physical restraint; obligation of documenting physical restraint in a special register (a special logbook); requirements to be met by a special isolation ward; issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of his/her right to appeal; and
- To amend Article 16 of the Law of Georgia on Psychiatric Care to the effect of determining that means of restraint should not be applied *vis-à-vis* formally voluntary patients unless there is an extreme urgency of resorting to physical restraint; if it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status (voluntary/involuntary) should be initiated immediately.

Recommendations

To the Government of Georgia:

- To ensure that, in 2019, the amount of daily expenditure for a shelter beneficiary is, at least, set equal to the cost of a bed-day for patients receiving long-term treatment in an inpatient facility;
- In accordance with Article 3.a-h) of the Law of Georgia on State Procurement, to approve the special procedure of procuring medicines by psychiatric establishments (LTD), in which more than 50% of shares are owned by the state, and to determine that these establishments are allowed to use a simplified procurement procedure for these medicines; and
- To amend the Mental Healthcare Programme and, in accordance with the guidelines existing in the country, to provide for the management of side effects of medicines through relevant examinations and consultations.

To the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- To ensure the eradication of risks against unimpeded services in the Bediani Psychiatric Clinic in shortest terms possible;
- To ensure that risks hindering the uninterrupted provision of medical services are eradicated in shortest terms possible in the Bediani Psychiatric Clinic;

- To ensure, in 2019, the inspection of all psychiatric establishments in accordance with Article 10 of the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia as approved by resolution no. 473 of the Government of Georgia of 14 September 2018;
- To ensure needs assessment of patients placed for more than 6 months in psychiatric establishments for discharging and referring them to community-based services; to elaborate a plan of setting up shelters based on an estimated number of potential beneficiaries;
- To ensure the assessment of the effectiveness of the existing state supervision system of psychiatric assistance and monitoring the system of patients' rights by independent experts;
- To ensure regular, systemic and proactive monitoring of psychiatric facilities by the LEPL Agency of State Regulation of Medical Activity and the Agency of Social Services; to ensure the compliance of the conditions in psychiatric facilities with the standards approved by the Statute on the Procedure and Terms of Licensing Medical Activities and Issuing a Permit for Inpatient Facilities;
- To determine the mandatory and uniform internal complaints and feedback procedure for all psychiatric establishments by adopting a normative act to that effect;
- To establish a simple and accessible complaints procedure concerning psychiatric assistance and human rights violations;
- For preventing violence among patients and maintaining safety, create a normative framework governing the following issues: implementation of an appropriate system of preliminary assessment of risks posed by an individual patient by personnel; multidisciplinary work, preventive measures to be taken for protecting patients from violence and ensuring security; appropriate supervision/observation of patients by personnel; adequate training of personnel; elaboration of standard operational procedures and de-escalation strategy; timely and adequate intervention immediately after a threat arises; documentation of incidents of violence and responses; and, accountability and responsibility of personnel;
- To amend Instructions for the Rules and Procedures of the Use of the Methods of Physical Restraint against Patients with Mental Disorders as approved by Order no. 29/N of the Ministry of Labour, Health and Social Security of Georgia of 20 March 2007 to the effect of determining the following: maximum duration of physical restraint; the obligation of documenting physical restraint in a special register (a special logbook), including the injuries sustained in the process by a patient and/or personnel; layout of a special register (a special logbook); detailed instruction for using physical restraint; specifications of special means to be used during physical restraint; place where physical restraint should be used and who can be present during the process; requirements for a special isolation ward; issues related to the use of video surveillance during physical restraint; and, the obligation to consult a patient after the end of the measure and to inform him/her of the right to appeal;
- To ensure the identification of the factors hindering multidisciplinary work in all psychiatric establishments, elaborate the plan for their eradication and notify the Public Defender about the outcomes of the assessment; and

- To examine how adequately former and present staff members of the Bediani Psychiatric Clinic, the LTD Academician B. Naneishvili National Centre for Mental Health and LTD Batumi Medical Centre act as support persons for the beneficiaries in the respective establishments.²⁴⁶ In those cases where it is established that a person acting as a support person has not been discharging his/her functions adequately,²⁴⁷ to request the court to relieve such persons of their duties and ensure that the functions of a support person are vested with a person specifically authorised by the social services of custody and care.

²⁴⁶ The Civil Code of Georgia, Article 1305⁵.

²⁴⁷ The Civil Code of Georgia, Article 1300.3.