



**Public Defender of Georgia**

**The Report of the National Preventive Mechanism**

**2021**

Prepared in accordance with Article 21 (g) of the Organic Law of Georgia on the Public Defender of Georgia

**2022**



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ევროკავშირი  
საქართველოსთვის  
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## **1. Review of the National Preventive Mechanism Activities**

### **1.1. Introduction**

In accordance with the amendments to the Organic Law of Georgia on the Public Defender of Georgia made on July 16, 2009, the Public Defender carries out the functions of the National Preventive Mechanism determined in the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the 2021 report of the National Preventive Mechanism, we review the human rights situation in the places of detention, deprivation and restriction of liberty as well as relevant state policies and legislation. The report provides information on monitoring visits conducted and findings made by the Special Preventive Group throughout the year. It also assesses the compliance of the public agencies with the obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and compliance with recommendations made in previous years.

In the report we also point out important international developments, such as the ad hoc visit of the European Committee for the Prevention of Torture (CPT) to Georgia and the discussion of Georgia's issues by the UN Subcommittee on Prevention of Torture (SPT) at the 44th International Session of the Subcommittee, where the obstacles faced in the penitentiary institutions by the members of the Public Defender's Office and the special preventive group were discussed.

In 2021, the pandemic caused by the new coronavirus was still a major challenge. Measures taken to protect public health have resulted in significant restrictions to people's daily lives. Against this background, the risks of human rights violations have naturally increased.

In 2021, no significant progress was made in the direction of the penitentiary system. Serious challenges are the overcrowding of establishments and informal ruling methods, which aims at silencing prisoners, banning them from talking about problems and maintaining illusory order in the establishments. Informal ruling is characterized by physical and severe psychological violence among prisoners. During the year, the practice of transferring prisoners to de-escalation rooms was preserved, which the Public Defender assesses as ill-treatment. Problematic was identifying and documenting ill-treatment, lack of rehabilitation activities, provision of adequate medical care to prisoners, legal status of vulnerable persons and conditions of detention.

As for the legal status of detainees in the internal affairs system, persons detained in 2021 were still talking about cases of excessive force and physical and psychological violence used by law enforcement officials. Such facts were especially problematic in the case of administrative detainees. Defining rights for detainees, timely access to a lawyer, informing the family and maintaining comprehensive registers of detainees are problematic. The lack of an obligation to use the body cameras, the production of audio and video recordings, including the recording of the interrogation of detainees remain as challenges. The police premises where the detainee is staying are not fully covered by video surveillance systems.

From year to year, no significant improvements are observed in psychiatric facilities, where patients continue to be victims of violence and where patients' legal safeguards are neglected. Despite the right clearly established by the law, patients with voluntary status cannot leave the hospital voluntarily. Psychiatric institutions do not meet even the minimum standards of psychosocial rehabilitation in the country; the existing infrastructural condition does not meet international and national standards. Patients are even restricted from access to fresh air due to the lack of walking yards or poor practices established in the facility. There is a poor situation in terms of sanitary-hygienic conditions. Insufficient epidemiological measures have been taken in psychiatric institutions. Community-based housing is not

sufficiently developed in the country for people with mental health issues. Patients have nowhere to go and therefore have to stay in psychiatric institutions for a long time.

Our annual report also reviews the positive changes that have taken place during the reporting period. In terms of epidemic management in penitentiary institutions, it should be noted that most of the medical staff of the institution is vaccinated. The process of vaccination of prisoners is actively underway and PCR testing is performed once in 2 weeks. Quarantine spaces are allocated in the institutions. The renewal of visits of specialists and planned referrals to institutions from the second half of the year should be positively noted. Also, conducting of training for doctors in documenting the injuries of accused / convicts and taking photos. Training of part of the staff of the Security and Legal Regimes on issues such as conflict prevention, mediation and the ethics of penitentiary staff is welcome.

Both the COVID-19 testing and periodic thermal-screening of detainees placed in temporary detention facilities by the Ministry of Internal Affairs are welcome. It should also be noted that in March 2021 temporary detention isolators started to fill in the protocol on requesting to contact / meet a lawyer. Among them, repair work conducted in a number of police facilities is welcome.

The Public Defender welcomes the development of the Mental Health Strategy 2022-2030 for Georgia by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia and the involvement of the Public Defender's Office in this process, including taking into consideration most of the Public Defender's recommendations. In addition, the work done to improve the infrastructure in several psychiatric institutions should be positively noted.

Despite the pandemic, the special preventive group, throughout the year, in conformity of all security measures, actively continued to monitor the closed facilities. During the year we had several important dialogues with international partners and actively participated in international and local events. We had several public activities and educational events. In 2021, we also updated our monitoring methodology and redesigned several tools. Significant activities were also carried out in terms of staff training.

## 1.2.Preventive visits

	<i>Number of facilities</i>	<i>Number of visits</i>
<i>Penitentiary institutions</i>	<i>7</i>	<i>29</i>
<i>MIA departments / divisions</i>	<i>35</i>	<i>36</i>
<i>Temporary Detention Isolators</i>	<i>19</i>	<i>26</i>
<i>Psychiatric facilities</i>	<i>7</i>	<i>15</i>
<i>Military units</i>	<i>11</i>	<i>13</i>
<i>MIA paramilitary units</i>	<i>3</i>	<i>3</i>
<i>External protection departments of the Special Penitentiary Service</i>	<i>5</i>	<i>6</i>
<i>Migration Centre</i>	<i>1</i>	<i>1</i>
<i>Total</i>	<i>88</i>	<i>129</i>

### *Penitentiary Establishment*



*In 2021, the National Preventive Mechanism conducted 29 monitoring visits to 7 out of 13 penitentiary institutions operating in Georgia (№2, №8, №14, №3, №6, №5, №17). Accordingly, in 2021, the coverage rate of Georgian penitentiary institutions was 54%.*

### *Police department / Division*



*In 2021, the National Preventive Mechanism conducted 36 monitoring visits to 35 out of 81 police departments / divisions operating in Georgia. Accordingly, in 2021 the coverage rate of police divisions / departments was 45%.*

### *Temporary Detention Isolator*



*In 2021, the National Preventive Mechanism made 26 visits to 19 out of 23 temporary detention isolators in Georgia. Accordingly, in 2021 the coverage rate for temporary placement isolators was 83%.*

### *Psychiatric Institution*



*In 2021, the National Preventive Mechanism conducted 15 monitoring visits to 7 out of 10 psychiatric inpatient institutions implementing the state program in Georgia (Imereti, Adjara, Tbilisi). Accordingly, in 2021, the coverage rate of psychiatric institutions in Georgia was 70%.*

### *Migration Centre*







*In 2021, the National Preventive Mechanism made 1 visit to the only temporary accommodation center of the MIA Department of Migration.*



A meeting was held with local criminal lawyers working in the Kakheti region. With the help of the Georgian Bar Association, an online questionnaire was also sent to the lawyers. The purpose of the meeting and sending the questionnaire was to obtain additional information about the abuse of force by the police and the legal safeguards of the detainees.

### 1.3. Reports

In 2021, the National Preventive Mechanism prepared 4 reports. The prepared reports were sent to the relevant agencies who were requested to provide information on the review and implementation of the recommendations made in the reports. After that, the reports were published on the website of the Public Defender of Georgia.

-  [2020 Annual Report of National Preventive Mechanism;](#)
-  [Report of the Public Defender on the monitoring carried out in the Penitentiary establishment №10;](#)
-  [Report of the Public Defender on the monitoring carried out in Tbilisi Mental Health Center;](#)
-  [Report on the monitoring of mental health institutions \(included in the annual report\).](#)

### 1.4. Constitutional litigation as a means of achieving a change

In order to implement the recommendations of the Public Defender, the Public Defender actively used the constitutional proceedings. The following 9 applications were prepared in cooperation with the Strategic Litigation Unit of the Public Defender:

In 2021, the following lawsuits were submitted:

- An application regarding the use of the right to a video-date in special risk institutions
- An application regarding the use of long visits and video dates by the accused
- An application regarding the restriction of the accused's short visits
- An application regarding the restriction of a prisoner's right to call as a disciplinary sanction
- An application regarding the placement of a prisoner in a de-escalation room.

In 2022, the following applications were submitted:

- An application regarding the placement of a convict in a single cell
- An application on suspension of prisoners' pensions
- An application on restriction of the right to refuse medical treatment and chemical restriction
- An application on restriction of patient rights.

### 1.5. Exercising the mandate of the National Preventive Mechanism without obstacles – an assessment tool

In order to assess the fulfillment of the obligations set forth in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the state agencies, we have developed a tool, in which the obligations set out in the Protocol are presented as indicators.<sup>1</sup> The performance of each indicator is assessed with relevant points:

- 0 points** - the issue raised in the indicator constitutes a systemic problem;
- 1 points** - the issue raised in the indicator was partly problematic;
- 2 points** - no significant problems were identified with the issue raised in the indicator.

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<sup>1</sup> Articles 19, 20 and 22 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Indicators \ Agencies	MIA system	Penitentiary system	Ministry of Healthcare
Monitoring visit carried out safely, without restrictions and obstacles;	2	1	2
Full access to information necessary for the monitoring	2	2	2
Opportunity to have a confidential conversation with persons under restriction/deprivation of liberty	2	1	2
Timely submission of the information/data requested from the state agencies	2	1	2
Readiness of the state agencies to carry out constructive dialogue and hold working meetings with the purpose of implementation of the recommendations or regarding the measures taken so far	Delayed due to pandemic	Delayed due to pandemic	Delayed due to pandemic
<b>Total</b>	<b>8</b>	<b>5</b>	<b>8</b>

The assessments in the table show the extent to which agencies have fulfilled their obligations in 2020 under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without obstructing the mandate of the National Preventive Mechanism. Detailed information on the compliance with the indicators by agencies is given below.

### **Ministry of Internal Affairs of Georgia**

In 2021, the monitoring visits to the temporary detention isolators of the Ministry of Internal Affairs, Police Establishments and the Temporary Accommodation Center of the Migration Department were conducted safely, without any restrictions or obstructions. A collaborative environment was created for the special preventive group. During the visits, the group fully received the necessary information and talked to the persons placed in police divisions and temporary detention isolators in a confidential environment without delay. The Ministry also provided us with the requested information in full and in a timely manner. However, the reasoning of the Ministry of Internal Affairs regarding the recommendations of the Public Defender remains a challenge. Noting with regret, the Ministry of Internal Affairs has not agreed for years with the recommendations that are based on the standards of treaty bodies established under of international conventions<sup>2</sup> and that have a high impact on the prevention of torture and ill-treatment.

Unfortunately, the Ministry cites the absence in different countries and at the international level of a common approach on the issues raised by the Public Defender as one of the reasons for non-compliance with the Public Defender's recommendations, which cannot be considered as a significant argument. For example, the Public Defender, in one of his recommendations, requested to provide a continuous audio-video recording of the interviews of a detainee in several police stations in a pilot mode. The Ministry's response states that the Ministry does not agree with the introduction of the obligation to record the interviews electronically in the legislation and notes that there is no international act that would oblige any country to introduce the legal obligation to record the interviews electronically. In addition, the response states that there is no common approach on recording, not only at the international

<sup>2</sup> Committee against Torture (CAT); Subcommittee on the Prevention of Torture (SPT); European Committee for the Prevention of Torture (CPT).

level, but also within countries, and the obligation to record often depends on the type of crime and the perpetrator.<sup>3</sup>

Treaty bodies established under international conventions, such as the Committee against Torture (CAT), the Subcommittee on the Prevention of Torture (SPT) and the CoE European Committee for the Prevention of Torture (CPT) have a clear position on this issue. The European Committee for the Prevention of Torture recommends that Member States conduct continuous electronic (audio and/or video) recording of the interviews of detainees at police stations, which is an important additional guarantee of protection against torture and ill-treatment.<sup>4</sup> The Committee against Torture in its country reports also recommended videotaping all interrogations.<sup>5</sup> The Annual Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted to the General Assembly, addresses the same issue.<sup>6</sup>

As for the common approach of the countries on the issue, naturally, there are countries where there is no obligation to make audio-video recordings, however, the fact that the production of audio-video is not introduced in some countries, does not mean that the country is an example of good practice. As mentioned above, audio/video recording of interviewing the detainees is a standard recognized by the UN and Council of Europe treaty bodies, and the obligation to provide safeguards against torture and other cruel, inhuman or degrading treatment or punishment derives from Article 2 of the Convention. The Committee of Ministers of the Council of Europe in its decision on the Tsintsabadze Group's case has called on the Government of Georgia to use audio-video recordings when communicating with persons under detention or deprivation of liberty and law enforcement officials in its decision on the Tsintsabadze Group's case.<sup>7</sup>

Taking into consideration the pre-established unchanged position of the Ministry on the recommendations of the Public Defender, the Ministry is not interested in conducting a constructive dialogue and holding working meetings on these recommendations. Holding such a working meeting was offered by the Public Defender in writing on April 16, 2021<sup>8</sup> to the Minister of the Interior, though neither the meeting was held nor we received a formal response to this written, official offer. It should also be noted that the pandemic has significantly disrupted face-to-face meetings, therefore, in 2021 the Public Defender is unable to assess the meeting component.

**Pursuant to Article 22 of the Optional Protocol to the Convention against Torture, public authorities are required to examine the recommendations made by the National Preventive Mechanism and to engage in dialogue with it on possible measures to implement those recommendations. The Public Defender calls on the Ministry of Internal Affairs to take active steps to establish an effective format of dialogue in order to fulfil its international obligations and to create effective format of dialogue with the National Preventive Mechanism.**

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<sup>3</sup> Reply MIA 4 21 03429972 sent by the Ministry of Internal Affairs on December 29, 2021.

<sup>4</sup> Report to the Government of Cyprus, European Committee for the Prevention of Torture, CPT/Inf (2018) 16, 26.04.2018, para. 16, Report to the Government of Serbia, European Committee for the Prevention of Torture, CPT/Inf (2018) 21.06.18, para. 41, Information is available on the website: <<https://rm.coe.int/16808b5ee7>> [Last viewed 21.02.2022].

<sup>5</sup> The final report of the Committee against Torture to the Russian Federation, CAT/C/RUS/CO/6, 28.08.2018, available at: <<https://goo.gl/JYvzY2>> [last viewed 21.01.2022]; Concluding Observations on Spain, Committee against Torture, CAT/C/ESP/CO/6, 29 May 2015, available at: <<https://goo.gl/gCjR69>> [last viewed 21.01.2022].

<sup>6</sup> Annual Report of the Special Rapporteur on the United Nations on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment before the General Assembly, E/CN.4/2003/68, 17 December 2002, para. 26 (g).

<sup>7</sup> Decision of the Committee of Ministers of the Council of Europe on the case of the Tsintsabadze Group, paragraph 13, available at: <<https://bit.ly/3a5Q0jT>> [Last viewed: 21.01.22].

<sup>8</sup> Letter №03-4 / 3695 sent on 16 April 2021.

## Ministry of Justice of Georgia

In early 2021, representatives of the Public Defender became the target of verbal attacks on the premises of various institutions, which were organized directly or indirectly by the prison administration. In particular, on January 14, 2021, a specific group of prisoners in Ksani № 15 facility did not allow the Public Defender's staff to interview the prison doctor. This was particularly troubling in the light of the fact that one of the inmates of №15 establishment had died a few days earlier from complications of COVID-19, and during that period, several family members of the inmates appealed to the Public Defender to visit the inmates.

On December 4, 2020, and January 13, 2021, the same inmate at Gldani №8 Establishment threatened the staff of the Public Defender's Office and demanded that their visit to the prison be terminated. №8 establishment is a closed type of prison and it is noteworthy that this particular prisoner always moved to a specific area of the prison when our staff was in the establishment.

On January 13, 2021, a specific group of prisoners behaved aggressively with the representatives of the Public Defender in Rustavi №17 establishment, who also demanded that the Public Defender stop the visits because "everything was fine" in the establishment.

The Public Defender then made a statement that preventive visits to the territory of penitentiary institutions were temporarily suspended. In May 2021, the European Committee for the Prevention of Torture (CPT) paid a special visit to Georgia to inspect the situation in semi-open facilities. The delegation of the Committee paid an emergency monitoring visit to Georgia for the second time during its activity. The first visit was in 2012, carried out after the distribution of so called "prison footage". Recently, the Public Defender has sent a number of concerned appeals to the Committee for the Prevention of Torture regarding the situation in penitentiary institutions. Among them, information on the obstacles created by the Ministry of Justice/Special Penitentiary Service for the National Preventive Mechanism was provided.

On May 17, 2021, a delegation of the European Committee for the Prevention of Torture (CPT), which paid a special visit to Georgia, met with the Deputy Public Defender, Giorgi Burjanadze, and the staff of the Public Defender's Office. During the meeting, the representatives of the Public Defender provided the Committee with detailed information on the challenges in the penitentiary system and the recommendations of the Public Defender of Georgia. The need to solve various problems immediately was discussed. The ombudsman's office welcomed the CPT's interest and thanked it for its prompt and timely response.

It should be noted that the European Committee for the Prevention of Torture in its report following the periodic visit in 2018, among many other important challenges, focused on the problem of informal ruling in penitentiary institutions, which has been the subject of a study by the Public Defender's Special Preventive Group in recent years. As it is known to the public, the special report published by the Public Defender in 2020 was followed by aggression by the Minister of Justice of Georgia, Tea Tsulukiani. Following such a reaction, carrying out monitoring in penitentiaries has become not only extremely difficult, but also dangerous for the ombudsman and a special preventive group. **Administration of establishments and a certain group of prisoners run by the so called "prison watchers", systematically verbally assaulted, threatened and attacked members of the Public Defender's Office. The apparent purpose of such action was to prevent them from having the opportunity to conduct confidential interviews with prisoners and to interfere with the monitoring process. The Public Defender of Georgia regularly provided information on these facts to the European Committee for the Prevention of Torture.**

**On April 1, 2021, Rati Bregadze was appointed as a Minister of Justice of Georgia.** Following an emergency visit by the European Committee for the Prevention of Torture (CPT), the Minister of Justice publicly stated that representatives of the Public Defender's Office would not have any problems in carrying out their activities. It should be noted that under the new Minister, the members of the Special Preventive Group of the Public Defender did not face any obstacles during the preventive monitoring visits carried out before the monitoring of Mikheil Saakashvili's condition. The members of the preventive group who arrived at the establishment to study Mikheil Saakashvili's condition were delayed for a long time (approximately 1.5 hours) at the Gori Military Hospital (23.11.2021) and the №12 establishment (11.01.2022), and in one case (28.12.2021) a representative of the Public Defender and a medical expert using a temporary special credentials of Public Defender were not allowed to enter the Gori Military Hospital at all.

In the second half of 2021, the process of providing requested information/data by the Special Penitentiary Service was also improved. The Ministry of Justice expressed readiness to hold a constructive dialogue and working meeting in the second half of the year. As a result, on July 14, 2021, at the initiative of the National Preventive Mechanism (Department) of the Public Defender, a working meeting was held with the representatives of the Special Penitentiary Service. The meeting was dedicated to creating different formats of cooperation and planning future meetings. Several recommendations implemented by the Special Penitentiary Service were also discussed at the meeting. Despite the meeting, the situation in terms of dialogue did not improve in the following period. It should also be noted that the pandemic has significantly disrupted face-to-face meetings, therefore, in 2021 the Public Defender is not be able to assess the meeting component.

It should be noted that the desire and suggestions of the Public Defender's Office alone are not enough to create effective dialogue formats. **Pursuant to Article 22 of the Optional Protocol to the Convention against Torture, public authorities are required to consider the recommendations of the National Preventive Mechanism and to engage in dialogue with it on possible measures to implement those recommendations. The Public Defender calls on the Ministry of Justice to take active steps to establish an effective format of dialogue in order to fulfil country's international obligations and establish effective dialogue format with the National Preventive Mechanism.**

#### **Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia**

In 2021, monitoring visits to psychiatric institutions were conducted safely, without restrictions and barriers. A collaborative environment was created for the special preventive group. During the visits, the group received the necessary information in full and talked to the beneficiaries in psychiatric institutions in a confidential environment without delay. The Ministry provided us with the requested information in a timely manner.

Despite the abovementioned, the systemic recommendations issued by the Public Defender to psychiatric institutions were not implemented during the year. It should be noted that in response to the ombudsman's recommendations, the Ministry constantly gives promised in recent years that In the framework of the assistance from the French Agency for International Development the process of reviewing, updating and harmonizing mental health legislation with EU law is being carried out and that it plans to implement the ombudsman's recommendations In this process. It is unfortunate that the Public Defender has not received specific information on which legislative acts are planned to be

updated; Public Defender was not involved<sup>9</sup> in the working process either.<sup>10</sup> Clearly, in such circumstances, there is a reasonable doubt as to whether the intention of the Ministry to implement the recommendations of the Public Defender is real.

**Pursuant to Article 22 of the Optional Protocol to the Convention against Torture, public authorities are required to consider the recommendations of the National Preventive Mechanism and to engage in dialogue with it on possible measures to implement those recommendations. The Public Defender calls on the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, to take active steps to establish an effective format of dialogue with the purpose to fulfill country's international obligations and establish effective format for dialogue with the National Preventive Mechanism.**

### **Cooperation with the State Inspector's Service**

The year of 2021 was distinguished in terms of cooperation with the State Inspector's Service. The State Inspector's Service provided us with the requested information in a timely and detailed manner. The Inspector's Service has always been ready to engage in constructive dialogue and workshops on measures planned or taken to implement recommendations. Accordingly, several workshops were held during the year to discuss activity-related issues. The first working meeting was held on March 12, 2021.

On July 4-6, 2021, a joint 3-day event organized by the Office of the Public Defender and the State Inspector's Service was dedicated to better prevention and detection of ill-treatment. In addition, on September 24-26, 2021, the staff of the Public Defender's Office, together with representatives of the State Inspector's Service and other state agencies, participated in an event organized by the LEPL Legal Aid Service and the Representation of the High Commissioner for Human Rights in Georgia (OHCHR) on "Prohibition of Torture".

In the light of effective cooperation with the State Inspector's Service, the Public Defender of Georgia is extremely concerned about the expedited abolition of the State Inspector's Service by the Parliament of Georgia. In the opinion of the Public Defender, this process lacked transparency and prior consultations with stakeholders. The Public Defender considers that this decision contradicts the Constitution of Georgia, human rights and is aimed at interfering in the activities of an independent institution.<sup>11</sup>

## **1.6. Assessment of the Implementation of Recommendations**

### **System of the Ministry of Internal Affairs**

In the 2020 report of the National Preventive Mechanism, the Public Defender of Georgia in order to prevent ill-treatment within the MIA system addressed 23 recommendations to the Minister of Internal Affairs of Georgia, 1 proposal - to the Parliament of Georgia, and 1 recommendation - to the State Inspector's Service. The proposal to the Parliament of Georgia was not implemented, as was not the recommendation addressed to the State Inspector.

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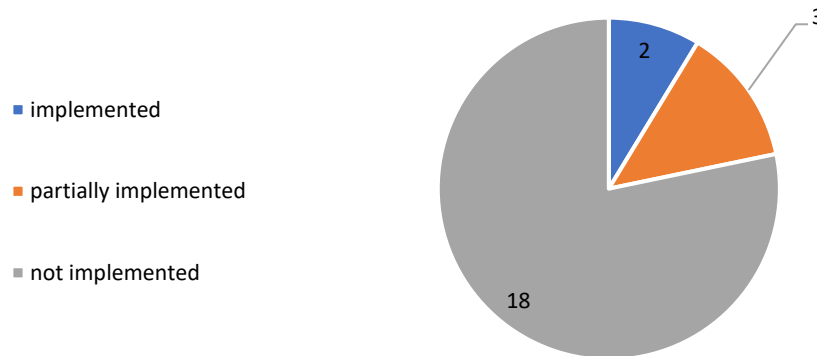
<sup>9</sup> On April 16, 2021, by letter №03-4 / 3694 addressed to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the Public Defender offered the Minister to hold a working meeting to discuss ways to implement the recommendations, but the Public Defender did not receive a response.

<sup>10</sup> The 2021 response states that the completion of the process was hampered by a new coronavirus pandemic.

<sup>11</sup> The statement of the Public Defender of Georgia regarding the attempt to abolish the State Inspector's Service is available at the following address: <https://cutt.ly/CIMwWYk> [Last viewed: 24.01.22].

Out of 23 recommendations addressed to the Minister of Internal Affairs of Georgia, 2 recommendations were implemented, 3 recommendations were partially implemented, and the remaining 18 recommendations are unfulfilled. It should be noted that compared to 2020, the number of implemented and partially implemented recommendations has increased in 2021, although the number of unfulfilled recommendations is still high. In addition, the Ministry of Internal Affairs does not agree with 17 recommendations.

***23 Recommendations issued for preventing ill-treatment in Police Establishments and Temporary Detention Isolators***

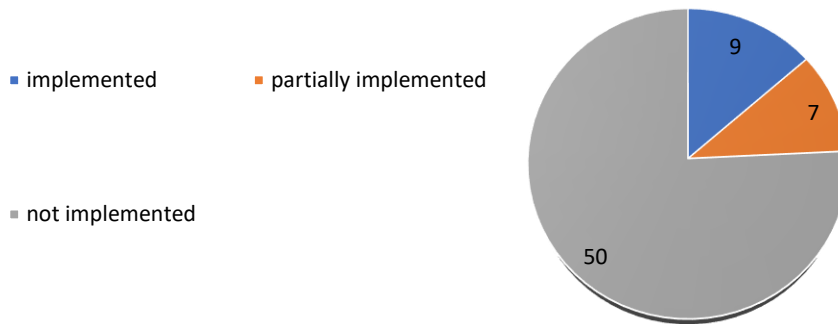


**Penitentiary system**

In the 2020 report of the National Preventive Mechanism, the Public Defender of Georgia addressed the Minister of Justice of Georgia with 66 recommendations, the Government of Georgia - with 1 recommendation, the President of Georgia - with 1 recommendation and the Parliament of Georgia - with 10 proposals to prevent ill-treatment in the penitentiary system. None of the 10 proposals addressed to the Parliament of Georgia has been implemented. The recommendations issued to the Government of Georgia and the President of Georgia were not implemented.

Out of 66 recommendations addressed to the **Minister of Justice of Georgia**, 9 recommendations have been implemented, 7 recommendations have been partially implemented, and 50 recommendations are unfulfilled at this stage. It should be noted that compared to 2020, the rate of completed and partially implemented recommendations has increased in 2021, although the number of unfulfilled recommendations is still high. In addition, the Ministry of Justice does not agree with 22 recommendations because it does not acknowledge the problem, which makes the implementation of the recommendations practically impossible.

*Number of recommendations issued to the Ministry of Justice - 66*

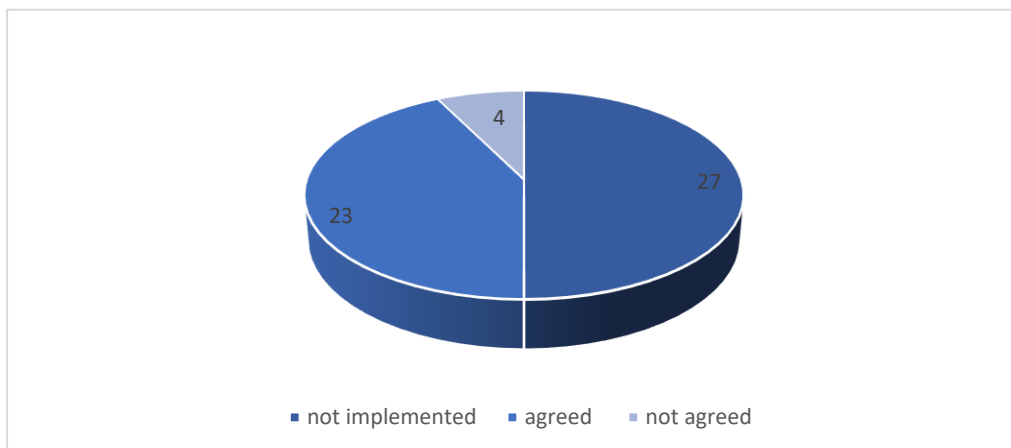


**Psychiatric institutions**

In the 2020 report of the National Preventive Mechanism, the Public Defender of Georgia addressed 27 recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs and 4 proposals to the Parliament of Georgia in order to prevent ill-treatment in psychiatric institutions. None of the 4 proposals issued to the Parliament of Georgia has been implemented.

None of the 27 recommendations issued to the **Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia** have been implemented, but the Ministry agrees with 23 recommendations and intends to implement them. As for the remaining 4 recommendations, the Ministry does not acknowledge the problem and is not going to implement them.

***27 Recommendations Issued to the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs***





## 1.7. Dialogue with International Partners

- The Public Defender sent letters to the UN Subcommittee on Prevention of Torture (SPT), the Council of Europe Committee on Prevention of Torture (CPT) and the UN Special Rapporteur on Torture. Illegal actions taken against the staff of the Public Defender's Office, a special preventive group in a number of penitentiary institutions are discussed in the letters;
- On March 18, 2021, the Public Defender, the Deputy Public Defender and representatives of the National Preventive Mechanism (Department) participated in a working meeting with the UN Subcommittee on Prevention of Torture (SPT);
- The Public Defender joined the joint statement of the National Preventive Mechanisms of different countries organized by the Association for the Prevention of Torture (APT) on the occasion of International Women's Day;
- On May 17, 2021, Deputy Public Defender Giorgi Burjanadze and staff of the Department of National Preventive Mechanism met with members of the European Committee for the Prevention of Torture (CPT). The meeting was held within the framework of the special visit of the Committee to Georgia;
- On 28 June 2021, Nika Kvaratskhelia, Head of the National Preventive Mechanism (Department), attended the final meeting of the Steering Council of the Council of Europe project, Juveniles and Adult Detainees Support (JADES);
- On August 23, 2021, the Public Defender joined the Global Society for the Prevention of Torture in calling for the protection of the Afghan National Preventive Mechanism;<sup>12</sup>
- On September 1, 2021, staff from the Department of National Preventive Mechanism held a remote meeting with a representative of the Association for the Prevention of Torture (APT). During the meeting, the activities of the Georgian National Preventive Mechanism and the prospects of future cooperation with the Association for the Prevention of Torture were discussed;
- On September 20, 2021, Deputy Public Defender Giorgi Burjanadze and Nika Kvaratskhelia, head of the National Preventive Mechanism, met with representatives of the US Embassy in Georgia, Gvantsa Saur, and the new Director of the Bureau of International Narcotics and Law Enforcement Affairs (INL), Sarah R. and a new adviser of the same Bureau on the penitentiary affairs, Scott Wiggins. The conversation focused on the situation in Georgian penitentiaries.

### Participation in international events

- On February 23, 2021, a representative of the National Preventive Mechanism attended a webinar organized by the Association for the Prevention of Torture entitled " First hours of detention: Insights from Brazil, Madagascar and Thailand";

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<sup>12</sup> Information is available in English at: [https://www.apr.ch/sites/default/files/inline-files/24.08\\_ENG\\_Statement\\_pdf.pdf](https://www.apr.ch/sites/default/files/inline-files/24.08_ENG_Statement_pdf.pdf) [Last viewed: 21.02.22].

- On March 10, 2021, Nika Kvaratskhelia, head of the Department of National Preventive Mechanism of Georgia, delivered a speech at the international event "Global Prison Trends - During and After the Global Pandemic". It is noteworthy that this was the 14th UN event on crime prevention and criminal justice;
- On March 17, 2021, staff from the National Preventive Mechanism participated in a webinar organized by the European Network of Ombudspersons for Children on "Implementing the UN Global Survey Recommendations on Children with Disabilities at National and European Context: The Possible Role, Events and Impact of Independent Institutions on the Rights of Child";
- On June 2, 2021, representatives of the Department of National Preventive Mechanism attended the international conference: "Prevention of Torture in the Criminal Justice System - The Role and Responsibilities of Representatives of the Police and Other Law Enforcement Agencies";
- On June 15-17, 2021, a representative of the Department of National Preventive Mechanism attended an online workshop organized by the Association for the Prevention of Torture (APT) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on "Monitoring the legal status of the older persons in prisons";
- On July 19, 2021, representatives of the National Preventive Mechanism participated in a working meeting held with representatives of the International Training Center for Visits to Places of Deprivation of Liberty; The purpose of the meeting was to share information about the experience and needs of the Georgian National Preventive Mechanism;
- On July 21, 2021, a representative of the National Preventive Mechanism participated in a training entitled "Sexual and Gender-Based Violence (SGBV) in Places of Deprivation of Liberty". The training was organized by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR);
- On November 3, 2021, the staff of the National Preventive Mechanism participated in the OSCE (OSCE/ODIHR) Regional Workshop - "Effective and Human Rights-compliant Interviewing Principles for Investigation and Information Gathering";
- On November 25, 2021, the staff of the National Preventive Mechanism attended an online conference organized by the International Center for Migration Policy Development (ICMPD) on the forced-return monitoring;
- On November 3, 2021, the staff of the Department of National Preventive Mechanism attended a regional webinar organized by the Association for the Prevention of Torture (APT) on so-called Mendez principles.

## **1.8. Relations with the Public**

### **Informing the public about the activities of the National Preventive Mechanism**

One of the objectives of the National Preventive Mechanism is to inform public and raise public awareness about the human rights situation in places of deprivation and restriction of liberty.

Information is provided to the public through the publication of post-visit, special and annual reports, as well as through various events, meetings and the media.

**On June 26, 2021, in connection with the International Day for the Protection of Victims of Torture, infographics were prepared on the situation in penitentiary institutions, bodies of the Ministry of Internal Affairs and psychiatric institutions.**

### **Public meetings**

- On June 8, 2021, in Kutaisi, the Public Defender's Office organized a public meeting on the topic: "Mental Health in Georgia - Challenges and Recommendations of the National Defender / National Preventive Mechanism". The meeting was aimed at mainstreaming and discussing mental health topics;
- On June 10, 2021, in Batumi, the Public Defender's Office organized a public meeting on the topic: "Mental Health in Georgia - Challenges and Recommendations of the National Defender / National Preventive Mechanism". The meeting was aimed at mainstreaming and discussing mental health topics.

### **Educational Activities**

- On November 30, 2021, the staff of the National Preventive Mechanism conducted an online seminar with students at Ilia State University, where they spoke about the human rights challenges in psychiatric hospitals, the mandate and activities of the National Preventive Mechanism;
- On December 9, 2021, the staff of the National Preventive Mechanism held an educational meeting with the students of the Faculty of Law of Tbilisi State University, where we talked about the mandate of the National Preventive Mechanism and the situation in terms of preventing torture in places of deprivation and otherwise restriction of liberty.

### **Participation in local events**

- On February 16, 2021, the Deputy Public Defender, Giorgi Burjanadze, and representatives of the Department of National Preventive Mechanism participated in the meeting of the Interagency Council for Combating Torture;
- On May 26, 2021, staff from the Department of National Preventive Mechanism attended an online presentation by the Eurasian Harm Reduction Association (EHRA), the Global Initiative in Psychiatry Foundation (GIF-Tbilisi), the Rubicon Community Organization, and the Ilia State University Institute of Addiction Studies of a joint study entitled "Survey of Satisfaction of Customers with Replacement Therapy Services in Western Georgia".
- On May 28, 2021, Nika Kvaratskhelia, Head of the National Preventive Mechanism Department, attended the Congress of the Georgian Psychiatric Association;
- On June 16, 2021, the staff of the Department of National Preventive Mechanism attended the presentation of the report - "Assessing the Impact of Strengthening the skills of the Mental Health Problems Management of Primary Health Care Personnel in Tbilisi and Batumi".
- On June 14, 2021, a representative of the National Preventive Mechanism attended a presentation organized by the Institute for Democracy and Safe Development: "Final Report

on Monitoring the Implementation of Chapters 3, 4 and 5 of the Government Action Plan for Human Rights (2018-2020)";

- On September 24-26, 2021, representatives of the National Preventive Mechanism participated in a bench bar on "Prohibition of Torture". The event was organized by the LEPL Legal Aid Service and the Representation of the High Commissioner for Human Rights in Georgia (OHCHR);
- On October 11, 2021, the staff of the National Preventive Mechanism attended an online presentation organized by the Centre for Disability Rights of the Public Defender's Office on the prevention and management of COVID-19 in psychiatric facilities.

### **1.9. Relations with NGOs and donor organizations**

In 2021, the National Preventive Mechanism actively collaborated with various local and international NGOs and donors.

In 2020, under a memorandum signed with the NGO "Rehabilitation Initiative for Vulnerable Groups (RIVG)"<sup>13</sup> a joint study was conducted on the impact of the COVID-19 pandemic in the penitentiary system on the health and other conditions of prisoners and staff. The monitoring visits and research were carried out in the framework of the project funded by the Embassy of the Kingdom of the Netherlands, "Assessment of the health and legal status of prisoners and penitentiary system staff".

#### **Advisory Council**

On March 1, 2021, the Public Defender approved the new composition of the National Preventive Mechanism Advisory Council.<sup>14</sup> The statute of the Advisory Board has also been updated.<sup>15</sup>

On May 14, 2021, at the meeting of the National Preventive Mechanism Advisory Council, the application submitted by the non-governmental organization "Rehabilitation Initiative for Vulnerable Groups (RIVG)" regarding the research conducted in penitentiary institutions together with the National Preventive Mechanism was considered. The participants also talked about the challenges that the members of the National Preventive Mechanism face in the implementation of their activities.

The purpose of the Advisory Council is to promote the effective operation and transparency of the National Preventive Mechanism. The Council submits its opinions to the Public Defender on the following issues: a) the plan of activities to be implemented by the National Preventive Mechanism; b) working methodology; c) thematic researches; d) professional training of the members of the National Preventive Mechanism; e) other strategic documents of the National Preventive Mechanism; f) other issues important for the effective operation of the National Preventive Mechanism. The opinion of the Council is of a consultative nature. Its invited members facilitate the National Preventive Mechanism in establishing communication with academia, donor organizations and other stakeholders.

In addition to the representatives of the Public Defender's Office, the Council also includes invited members. They can be: a) a person engaged in educational/academic activities in the field related to the mandate of the National Preventive Mechanism; b) a member of an international organization working in the field of torture prevention and criminal justice; c) a member of an international non-governmental

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<sup>13</sup> In accordance with the rule of cooperation with non-governmental organizations of the Public Defender's Office. Available at: <<https://bit.ly/3r8l4G7>> [Last viewed: 11.01.2022].

<sup>14</sup> Information on the composition of the Advisory Council is available at: <https://www.ombudsman.ge/res/docs/2021062417135333610.pdf> [last viewed: 11.01.22].

<sup>15</sup> The Statute of the National Preventive Mechanism Advisory Council is available at: <https://www.ombudsman.ge/res/docs/2021062417135330752.pdf> [last viewed: 11.01.22].

organization working in the field of torture prevention and criminal justice; d) Member of a local non-governmental organization working in the field of torture prevention and criminal justice.<sup>16</sup>

### 1.10. Working methodology

Against the background of the epidemic caused by the new coronavirus in Georgia, the National Preventive Mechanism had to conduct monitoring visits in 2021 under special conditions. Prior to the monitoring, the special preventive group adapted the working methodology to the challenges. The rules for conducting safe monitoring visits in pandemic conditions were defined and members were given appropriate instructions. To minimize the risk of new coronavirus spreading during monitoring and to protect staff and persons staying in the facilities, the service purchased personal protective equipment and explained to users how to use them.<sup>17</sup>

A number of meetings were held in 2021 to review and improve the working methodology of the National Preventive Mechanism:

- On 22 February 2021, the staff of the Department of National Preventive Mechanism attended an online workshop organized by the Council of Europe to refine the monitoring methodology of the Temporary Detention Isolators of the Ministry of Interior;
- On April 12, 2021, the staff of the National Preventive Mechanism (Department) participated in an online workshop aimed at refining the methodology for monitoring the Temporary Detention Isolators of the Ministry of Interior; the working meeting was organized by the Council of Europe with the participation of an expert Giorgi Chkheidze;
- On April 13, 2021, the staff of the National Preventive Mechanism (Department) participated in an online workshop aimed at refining the monitoring methodology (medical issues) of the Temporary Detention Isolators of the Ministry of Interior; the working meeting was organized by the Council of Europe with the participation of an expert Sophio Morgoshia;
- On November 2, 2021, the staff of the National Preventive Mechanism (Department) participated in an online meeting with Council of Europe expert Olivera Vulic and discussed the recommendations prepared by the expert to properly integrate the issue of drug addiction in the penitentiary monitoring tool.

Updated / created monitoring tools in 2021		Updated / created monitoring tools in 2021
1	Impact of the COVID-19 pandemic on the health and legal status of prisoners and staff in the penitentiary system - upgrading of the monitoring tool;	
2	Updating the monitoring tools of the bodies of the Ministry of Internal Affairs;	
3	The following tools for monitoring human rights in the field of defense have been developed: <ul style="list-style-type: none"> <li>• Monitoring tool for paramilitary units of the Ministry of Internal Affairs</li> <li>• A tool for monitoring the external protection departments of the Penitentiary Department of the Special Penitentiary Service</li> </ul>	

<sup>16</sup> See the following e-address: <<https://bit.ly/2O1Ekqg>> [Last viewed: 25.03.2021].

<sup>17</sup> In the wake of the worsening epidemiological situation in the country, the Public Defender took additional measures to minimize the risk and members of the special prevention group underwent PCR testing before entering the facilities.

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| <ul style="list-style-type: none"><li>• A tool for monitoring the military units of the Georgian Defense Forces.</li></ul> |
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### **1.11 Employee training**

- On January 26, 2021, an online training was conducted for the Office of the Public Defender entitled “Discriminatory Behavior, Characteristics of Vulnerable Groups; Effective communication”;
- On July 28-29, 2021, a representative of the National Preventive Mechanism attended an online training - "Methods of data collection and analysis";
- On October 12-15, 2021, the staff of the Department of National Preventive Mechanism participated in an international training on the forced return of migrants from EU countries. The training was supported by the International Center for Migration Policy Development (ICMPD), the European Union Agency for Fundamental Rights and the European Border and Coast Guard Agency (FRONTEX) with the financial support of the European Union;
- On November 18-19, 2021, staff from the Department of National Preventive Mechanism participated in a seminar on mental health;
- On November 29-30, 2021, the staff of the Department of National Preventive Mechanism attended a training on "Trends in the development of case law of the Constitutional Court of Georgia“.

## 2. Penitentiary System

### 2.1. Introduction

Carrying out monitoring visits to penitentiary institutions is an obligation of the National Preventive Mechanism and an essential component of its mandate.<sup>18</sup> Article 35 of the Constitution of Georgia directly stipulates that the creation of obstacles to the activities of the Public Defender is punishable by law. At the end of 2020 and the beginning of 2021, the representatives of the Public Defender became the objects of verbal attacks on the territory of various penitentiary institutions, which were organized directly or indirectly by the administration of the institutions. Accordingly, in January 2021, the Public Defender had to make a decision to temporarily suspend preventive visits. On May 17, 2021, a delegation of the European Committee for the Prevention of Torture (CPT) arrived in Georgia on an emergency visit, which inspected the situation and held meetings with representatives of state agencies. Following an emergency visit by the European Committee for the Prevention of Torture (CPT), the Minister of Justice publicly stated that representatives of the Public Defender's Office would not have any problems in carrying out their activities.

Despite the epidemiological situation, the National Preventive Mechanism resumed preventive visits to penitentiary institutions as soon as possible.<sup>19</sup> The service took all possible measures to minimize the risk of spreading the virus. In particular, members of the National Preventive Mechanism were equipped with personal protective equipment, and all persons participating in the monitoring visit were regularly PCR tested, upon access to the COVID-19 vaccine, all staff at the National Preventive Mechanism underwent a full course of vaccination. It should be noted that after the appointment of the new Minister, the members of the Special preventive group of the Public Defender's Office did not face any obstacles during the monitoring. Monitoring visits were conducted safely and without restrictions.

In 2021, a special preventive group conducted preventive visits to №2,<sup>20</sup> №3,<sup>21</sup> №5,<sup>22</sup> №6,<sup>23</sup> №8,<sup>24</sup> №14<sup>25</sup> and №17<sup>26</sup> facilities. At the same time, in the framework of the Memorandum signed with the Non-Governmental Organization (Rehabilitation Initiative for Vulnerable Groups (RIVG)), in August-September 2021, in parallel with preventive visits, a joint study was conducted on the topic "Impact of the COVID-19 pandemic on the health and legal status of prisoners and staff in the penitentiary system". In total, in 2021, 29 preventive visits were carried out to penitentiary institutions, during which, in addition to group interviews, individual interviews were conducted with up to 600 prisoners, the documents produced in the institutions were examined, including medical cards, interviews were held with penitentiary staff, the infrastructural conditions of the facilities have been studied, etc.

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<sup>18</sup> Article 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>19</sup> The UN Subcommittee on Prevention of Torture, in its updated Recommendations for Member States and National Preventive Mechanisms during the COVID-19 pandemic, specifically emphasizes the importance of continuing prevention visits and calls on National Preventive Mechanisms to resume/continue preventive visits through physically visiting the closed facilities. Para: 16 (a), available at <https://undocs.org/CAT/OP/12> [Last viewed: 20.01.2022].

<sup>20</sup> Monitoring visits were carried out in №2 penitentiary institution on: 04.08.2021; 05.08.2021; 06.08.2021; 07.08.2021; 03.10.2021; 19.10.2021.

<sup>21</sup> Monitoring visits were carried out in №3 penitentiary institution on: 11.08.2021; 12.08.2021.

<sup>22</sup> Monitoring visits were carried out in №5 penitentiary institution on: 06.09.2021; 07.09.2021; 08.09.2021; 09.09.2021; 10.09.2021.

<sup>23</sup> Monitoring visits were carried out in №6 penitentiary institution on: 02.09.2021; 03.09.2021.

<sup>24</sup> Monitoring visits were carried out in №8 penitentiary institution on: 16.07.2021; 22.07.2021; 23.07.2021; 21.09.2021; 22.09.2021; 23.09.2021; 24.09.2021; 15.11.2021.

<sup>25</sup> Monitoring visits were carried out in №14 penitentiary institution on: 08.08.2021; 09.08.2021; 10.08.2021.

<sup>26</sup> Monitoring visits were carried out in №17 penitentiary institution on: 15.09.2021; 16.09.2021; 17.09.2021.

In addition to the information obtained as a result of monitoring visits to the institutions, this report is also based on the analysis of appeals/complaints received by the Public Defender's Office from penitentiary institutions, information received from the Penitentiary Service of the Ministry of Justice and public information published on the website of the National Statistics Office. The report also analyzes the existing legislative and regulatory framework and the changes adopted in 2021.

**The results of the monitoring conducted in 2021 show that the overcrowding of facilities and the informal ruling methods remain a serious challenge with the aim of silencing prisoners, banning them from talking about problems and maintaining illusory order in the institutions. Informal ruling is characterized by physical and severe psychological violence among prisoners. The practice of transferring prisoners to de-escalation rooms was maintained throughout the year, which the Public Defender assesses as ill-treatment. Problems of identifying and documenting ill-treatment, lack of rehabilitation activities, provision of adequate medical care to prisoners, legal status of vulnerable persons and conditions of imprisonment were problematic. Due to the pandemic, prisoners had limited access to the outside world during the year, but no compensatory measures and alternative means of contact were introduced. Despite measures taken to prevent the spread of the virus, COVID-19 was still prevalent in institutions. It should also be noted that the penitentiary system has a high rate of vaccination, both in prisoners and staff.**

## **2.2. Status of implementation of recommendations<sup>27</sup>**

In the 2020 report of the National Preventive Mechanism, the Public Defender of Georgia addressed the Minister of Justice of Georgia with 66 recommendations, the Government of Georgia - with 1 recommendation, the President of Georgia with - 1 recommendation and the Parliament of Georgia - with 10 proposals to prevent ill-treatment in the penitentiary system. None of the 10 proposals submitted to the Parliament of Georgia has been implemented. The recommendations issued to the Government of Georgia and the President of Georgia were not implemented.

Out of the recommendations issued to the **Parliament of Georgia**, 7 recommendations were related to increasing the prisoners' contact with the outside world,<sup>28</sup> 1 recommendation was to improve the living conditions of the accused,<sup>29</sup> 1 proposal referred to the reduction of the time limit by several years for appealing to a court by a convict sentenced to life imprisonment requesting the parole.

For its part, **the Government of Georgia** has not implemented the recommendation to ensure that the country conducts forensic medical examinations in accordance with the Istanbul Protocol in order to effectively document and investigate torture and other cruel, inhuman or degrading treatment or punishment.

The recommendation issued to **the President of Georgia**, which requested to set a term of 15 years for using the authority to pardon the persons with life imprisonment, has not been implemented.

Out of 66 recommendations issued to the **Minister of Justice of Georgia**, 9 recommendations have been implemented, 7 recommendations have been partially implemented, and 50 recommendations are unfulfilled at this stage. It should be noted that compared to 2020<sup>30</sup>, the rate of implemented and partially

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<sup>27</sup> The state of implementation of the recommendations issued in 2020 is fully assessed in the relevant subsections.

<sup>28</sup> See subchapter: Contact with the outside world.

<sup>29</sup> The Public Defender requested amendments to the Code on Imprisonment to define the obligation to provide the accused with a minimum living space of 4 sq.m.

<sup>30</sup> In 2020, the rate of implemented and partially implemented recommendations was 8%.



implemented recommendations has increased in 2021<sup>31</sup>, although the number of unfulfilled recommendations is still high.

3 of the **implemented recommendations** were related to the improvement of the epidemiological situation<sup>32</sup>; 2 recommendations related to the protection of prisoners' health<sup>33</sup>; the purpose of 2 recommendations was to strengthen the prisoner's daily schedule and rehabilitation<sup>34</sup>, while 1 recommendation was related to the prevention of violence.<sup>35</sup>

3 of the **partially implemented recommendations** were related to improving the working and living conditions of penitentiary staff in the face of a pandemic; 1 recommendation referred to improving the existing material conditions in the institutions; 1 recommendation – daily schedule and rehabilitation, 1 recommendation - juveniles, and 1 recommendation - to improve the condition of foreigners.

The Public Defender welcomes the steps taken by the Ministry of Justice to implement the recommendations, but regrets that the recommendations that have a significant impact on the process of transforming the penitentiary system have not been implemented for years. Accordingly, recommendations implemented or partially implemented by the Ministry of Justice in 2021 cannot be considered as a substantial advance of the penitentiary system.

It is unfortunate that the rate of unfulfilled recommendations by the Ministry of Justice is still high. Recommendations that have a major impact on the prevention of torture and ill-treatment and the establishment of significant institutional safeguards have been unfulfilled for years. In addition, no recommendations implementation of which was even more important during the pandemic period has been agreed with.

In 2021, 7 high-impact recommendations<sup>36</sup> aimed at eliminating practices deemed ill-treated by the Public Defender and are based on the standards of the European Committee for the Prevention of Torture (CPT) were not implemented.<sup>37</sup> It is noteworthy that all the above recommendations are reflected in the resolution of the Parliament of Georgia and are mandatory for implementation, however, only 2<sup>38</sup> of these 7 recommendations are agreed<sup>39</sup>, and denies the existence of a problem in terms of other 5 recommendations. The same is the situation regarding other recommendations of the Public Defender and of the European Committee for the Prevention of Torture (CPT)<sup>40</sup> concerning the elimination of informal ruling and the prevention of violence in penitentiaries. Unfortunately, the Ministry of Justice has not complied with the 2 recommendations issued for the purpose of improving the detection and documentation of ill-treatment.<sup>41</sup>

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<sup>31</sup> In 2021, the rate of implemented or partially implemented recommendations was 19.1%.

<sup>32</sup> See subsection: Epidemiological situation.

<sup>33</sup> The recommendation of the Public Defender referred to the visits of medical specialists and the renewal of the planned referral.

<sup>34</sup> The recommendation concerned the admission of social workers and psychologists to penitentiary institutions

<sup>35</sup> The recommendation concerned the training of staff in the Security and Legal Regime Divisions.

<sup>36</sup> See sections: Practice Equivalent to ill-treatment..

<sup>37</sup> Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT / Inf (2019) 16), para. 94, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [Last viewed: 27.12.21].

<sup>38</sup> According to the information received, the experience established in foreign countries is being studied to ensure a safe environment in the de-escalation rooms; the Ministry, in the process of revising the statute of the penitentiary institution, intends to discuss the issue of setting a maximum term for the isolation of prisoners.

<sup>39</sup> Information provided by the Ministry of Justice to the Parliament of Georgia on April 14, 2021 by letter №4702.

<sup>40</sup> Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT / Inf (2019) 16), para. 47, September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [Last viewed: 27.12.21].

<sup>41</sup> See section: Deficiencies in detecting and documenting ill-treatment.

The Public Defender praises the Ministry of Justice for its outstanding caution and measures taken to prevent the spread of COVID-19, although only three of the eight recommendations issued by the Public Defender to reduce the risk of infection in institutions were implemented, and the ministry denies existence of the problems referred by five recommendations.<sup>42</sup> It is noteworthy that 3 of these 5 recommendations are reflected in the Parliament Resolution and are binding.

11 recommendations of the Public Defender concerned the protection of prisoners' health<sup>43</sup>, of which 8 recommendations are reflected in the Parliament Resolution, however, the Ministry of Justice has implemented only 2 recommendations, 4 recommendations are accepted and planned to be implemented, and in the case of other 5 recommendations, the Ministry denies the existence of a problem.

Out of 7 recommendations issued by the Public Defender in the direction of rehabilitation-resocialization of convicts<sup>44</sup>, which are reflected in the resolution of the Parliament, 2 recommendations have been implemented, 1 recommendation has been partially implemented, and 4 recommendations are unfulfilled. Similarly, all the recommendations issued by the Public Defender to improve the situation of foreign prisoners<sup>45</sup> are reflected in the resolution of the Parliament, however, only 1 of the 6 recommendations has been partially implemented, and other 5 recommendations are unfulfilled. The same is true of the recommendations reflected in the Parliamentary Resolution on the improvement of the physical environment, namely, only one recommendation has been partially implemented and other 3 recommendations are unfulfilled.

5 recommendations of the Public Defender related to improving the prisoners' contact with the outside world, of which 3 recommendations are reflected in the resolution of the Parliament, although none of the recommendations has been implemented. It is noteworthy that out of 5 recommendations, the Ministry of Justice accepts only 1 recommendation, while in the case of the remaining 4 recommendations, it does not acknowledge the problem. In addition, 6 recommendations of the Public Defender are related to juvenile issues, of which 5 recommendations are reflected in the resolution of the Parliament. Of these, 1 recommendation has been partially implemented and 5 recommendations are unfulfilled.

Unfortunately, for years, the Ministry of Justice has not accepted the most of the recommendations because it does not acknowledge the problems referred by the recommendations, although the recommendation has been accepted nationally by the Georgian Parliament and internationally by the European Committee for the Prevention of Torture. Consequently, the rate of implementation of substantive recommendations does not vary from year to year.

A penitentiary system in line with international standards is inconceivable without the effective exercise of an oversight function by the Parliament. The Public Defender hopes that the Parliament of Georgia will be more actively involved in the process of overseeing the implementation of the recommendations addressed to the Ministry of Justice within the framework of parliamentary mandate. For its part, the

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<sup>42</sup> The recommendations reflected in the resolution are: assessment of the risks of infection in institutions and the needs for elimination of these risks; development of a COVID-19 prevention and control plan in penitentiary institutions; ensuring that convicts with symptoms of respiratory disease use face-masks, as well as informing prisoners about preventive measures to prevent the spread of the coronavirus.

<sup>43</sup> See section: Penitentiary Healthcare.

<sup>44</sup> See section: Daily schedule and rehabilitation.

<sup>45</sup> See section: Foreign national and stateless persons.

Public Defender is ready to engage in the process of substantial changes in the penitentiary system in close cooperation and communication with the Parliament and the Ministry of Justice.

### **2.3. Protection from torture and other cruel, inhuman or degrading treatment or punishment**

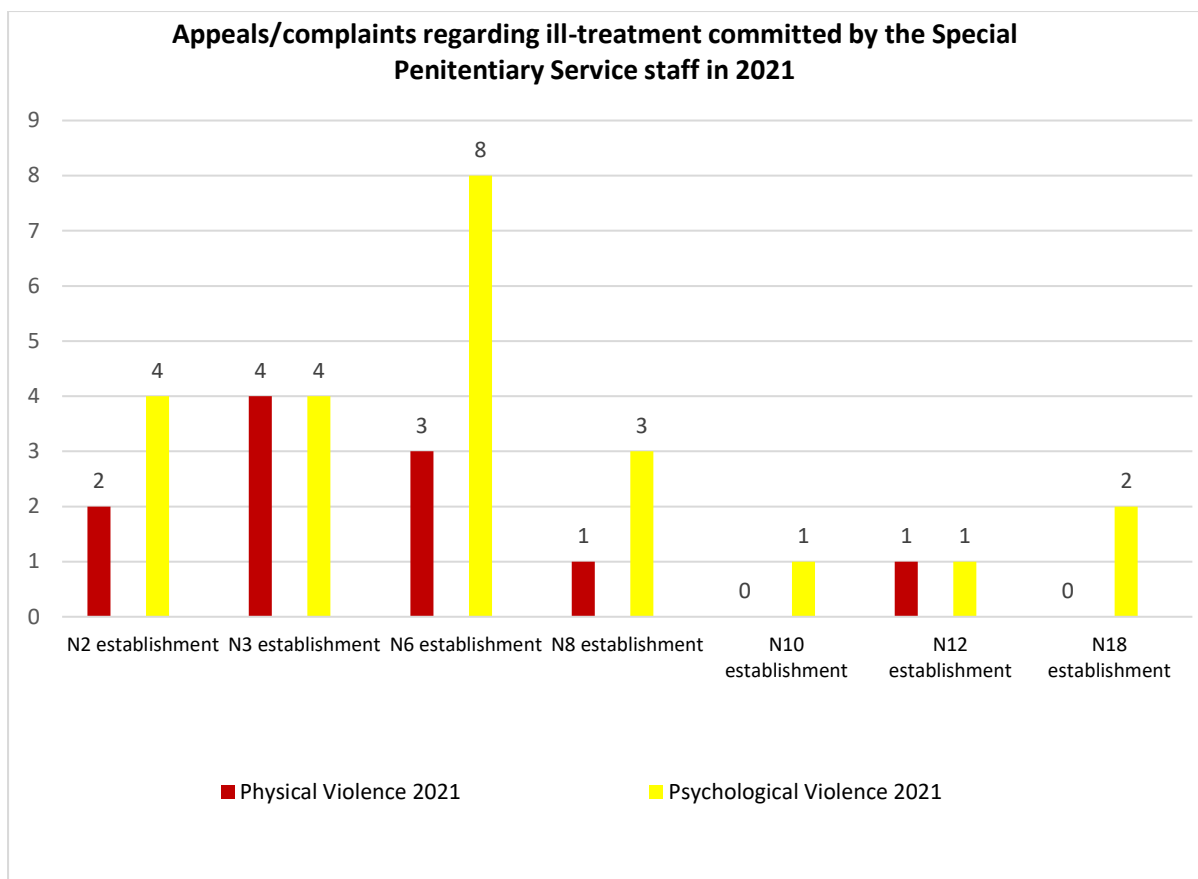
#### **2.3.1. Violence**

##### **2.3.1.1. Violence by the personnel of the establishment**

To assess the situation with regard to violence against prisoners by penitentiary staff, the Special preventive group analyzed the appeals/complaints sent by inmates of penitentiary institutions to the Public Defender's Office<sup>46</sup>, which related to the alleged facts of physical and psychological violence committed against them by the staff of the Special Penitentiary Service in 2021. In 2021, a total of 36 such appeals/complaints were submitted to the Public Defender's Office. 13 of them were related to physical and psychological violence, and 23 - to the psychological violence. 11 appeals/complaints were related to alleged incidents in №6 penitentiary institution, of which 3 related to physical and psychological violence and 8 - to psychological violence; 8 appeals/complaints were related to alleged facts taking place in №3 penitentiary institution, of which 4 related to physical and psychological violence and 4 - to psychological violence; 6 appeals/complaints related to alleged incidents in №2 penitentiary institution, of which 2 related to physical and psychological violence and 4 - to psychological violence; 4 appeals/complaints were related to alleged facts in №8 penitentiary institution, of which 1 related to physical and psychological violence and 3 - to psychological violence; 2 appeals/complaints were related to 12 alleged incidents in №12 penitentiary institution, of which 1 related to physical and psychological violence and 1 to psychological violence; 2 appeals/complaints related to the alleged facts of psychological violence in №18 penitentiary institutions; 1 appeal/complaint related to the alleged fact of psychological violence in №10 penitentiary institution; also, 2 appeals/complaints related to the facts of physical and psychological violence allegedly committed during the transportation.

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<sup>46</sup> This refers to written appeals/complaints sent by prisoners to the Public Defender's Office and information provided through the hotline.



In the above-mentioned appeals/complaints, the prisoners indicated that due to the writing of the complaints, including appeals to the Public Defender, in the penitentiary establishments №2, №3, №6, №10 and №12 they were subject to retaliation. In particular, according to the prisoners, one of the heads of №12 establishment physically abused the prisoner;<sup>47</sup> in №3 and №10 penitentiaries, there were cases of verbal abuse and threats against a prisoner by the staff;<sup>48</sup> in addition, inmates reported that other inmates incited by staff in №2 and №6 penitentiary establishments systematically verbally abused them by shouting from their cells. In complaints to the Public Defender, detainees also allege that in №3, №6 and №8 penitentiary establishments, detainees are forcibly transferred to de-escalation rooms for no reason and for the purpose of punishment. Prisoners say that in such cases they are handcuffed. In one case, an inmate stated that the staff in №6 establishment placed him in a de-escalation room and beat him, and he received bodily injuries. The detainees also claim that №2, №3, №6, №8, №10, №12 and №18 penitentiary staff, and in some cases, supervisors, subjected them to rude and cynical talk, verbal abuse, deteriorating conditions and threats to add punishment.<sup>49</sup> In addition, one inmate stated that twice, at different times, the escort officers physically assaulted him. According to him, in one case, while being in a civilian clinic, escort staff beat him with their hands and feet on his face and body. The second time, he was abused in a car, and this time he received injuries to his head, eyebrows and hands. In addition, according to one prisoner in №2 establishment, the prison staff physically assaulted him several times in the head with a water bottle.

When assessing the extent of violence against prisoners by penitentiary staff, in addition to the information received during preventive visits, the available data on criminal cases produced by the State

<sup>47</sup> According to the prisoner, he was hit in the face.

<sup>48</sup> Prisoners explain that they are threatened with worsening conditions and increased sentences.

<sup>49</sup> In one case, an inmate at facility №6 stated that he had been threatened with rape.

Inspector's Service are taken into account. According to the information provided by the State Inspector's Service,<sup>50</sup> in 2021, investigation was launched on 29 criminal cases for alleged physical and/or psychological violence against prisoners by penitentiary staff in 2021, among them 10 criminal cases under Article 144<sup>3</sup> and 19 criminal cases under Article 333. In 26 of these 29 criminal cases, the prisoner reported physical violence against him, and in 3 cases - inhuman and degrading treatment. Out of the mentioned 29 cases, the alleged violence took place in the following penitentiary institutions: №2 establishment - 5 cases, №3 establishment - 6 cases, №6 establishment - 5 cases, №8 establishment - 9 cases, №12 establishment - 1 case and №18 establishment - 2 cases. In addition, in 1 case, ill-treatment was allegedly committed by staff of the Special Penitentiary Service Escort and Special Events Division, and in 1 case, an investigation was launched into alleged ill-treatment by various units of the Special Penitentiary Service, including employees of different institutions. It should be noted that the General Prosecutor's Office of Georgia has not initiated criminal proceedings against any employee of the Special Penitentiary Service in any of the criminal cases.

### **2.3.1.2. Violence among the inmates**

As in previous years, physical and psychological violence among prisoners in penitentiaries is problematic in 2021, often caused by overcrowding and informal ruling. The cause of the prisoner conflict is often household issues, such as the unauthorized use of a prisoner's phone card by one prisoner, the request/seizure of a cigarette, and the extortion of money.

Physical and verbal confrontations between inmates of the same cells are still frequent in №2 and №8 remand detention facilities and in closed facilities. It should be noted that due to the overcrowding of the mentioned institutions, it is not possible to separate the pre-trial detainees and the convicts from each other, which often leads to a conflict between them. In both closed and semi-open penitentiaries, there are frequent cases when one inmate is confronted by several inmates, which is especially dangerous because at this time there is a high risk of serious damage to the health of the inmate and of loss of life. In this regard, it is noteworthy that on July 26, 2021, a case occurred in №17 penitentiary institution, where one prisoner died because of a group confrontation of prisoners, and two prisoners received health injuries.<sup>51</sup>

In addition, it should be noted that the documents produced in penitentiary institutions describe the facts of bodily injuries of prisoners, which are recorded as everyday-life injuries, although the nature of these injuries, location and analysis of information on their origin raises reasonable suspicions that the injury was probably caused by violence. For example, in establishment №17, convicts had bruises on their cheeks and temples, and excoriations on their back and shoulders. The convict himself says he received injuries as a result of falling out of bed. In the same establishment, a convict had hemorrhages in the

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<sup>50</sup> Letter SIS 8 21 00032218 of December 17, 2021 of the Service of the State Inspector of Georgia and letter SIS 9 22 00001753 of January 27, 2022 of the Service of the State Inspector of Georgia.

<sup>51</sup> According to the information provided by the State Inspector of Georgia by the letter SIS 1 21 00028531 of November 15, 2021, the Eastern Division of the Investigation Department of the State Inspector's Service is investigating the criminal case №199260721001, on the fact of violation by an employee of the Special Penitentiary Service or a person equated to him/her, of the rule established in the service which resulted in the death of a convict placed in №17 penitentiary institution on July 26, 2021, the crime envisaged by the second part of Article 342 of the Criminal Code of Georgia. As well as on the facts of premeditated murder of a convict and intentional grievous bodily harm to the health of convicts, according to the signs of the crime provided for in the first part of Articles 108 and 117 of the Criminal Code of Georgia. According to the conclusion of the medical examination conducted within the investigation, the cause of death of the convict was traumatic damage to the brain structure, fragmentary fracture of the skull valve and linear fractures of the base bones, traumatic hemorrhage in the brain, caused by open blunt trauma to the brain. The case is being investigated and all necessary investigative and procedural actions will be taken to ensure an objective, thorough and comprehensive investigation.

area of the left cheek, right temple and right shoulder, excoriations in the area of the left shoulder and waist, which, according to him, he received as a result of falling out of bed. In the same establishment, a convict had a hemorrhage in the area of his left eye, an excoriation in the forehead, as well as hemorrhages and excoriations in the spinal area, which, according to him, he received as a result of falling from the second tier of the bed. In the same establishment, the convict had hemorrhage in his left eye socket, excoriation on his nose, and hemorrhage on his left thigh. The convict said he received injuries as a result of accidentally falling in a cell and hitting his head on the corner of the bed. Also, for example, a prisoner in №8 penitentiary institution had bruises on his left eyeball, an excoriation on his right temple, a scratch on his left shoulder, multiple excoriations in the area of his ribs and spine, which he said he received as a result of falling from the second tier of the bed.

Informal methods of ruling penitentiary institutions remain a serious challenge, with the aim of silencing prisoners, banning them from talking about problems, and maintaining illusory order in the institutions. Informal ruling is characterized by physical and severe psychological violence among prisoners, which is mainly manifested in extortion, humiliation, isolation and in punitive measures against those prisoners who do not obey the rules of informal governance. Therefore, inmates who are victims of violence often do not talk to the facility administration and medical staff about the real causes of the injury in order to avoid the expected retaliation.

In this regard, the information of the Medical Department of the Special Penitentiary Service on the sources of injuries received by prisoners is noteworthy, according to which, in 2021, 2172 inmates received bodily injuries, of which 310 were identified as injuries inflicted by another person, and 93 cases did not indicate the source of injuries.<sup>52</sup> In cases of violence between prisoners, the administrations of the institution send a notification to the General Inspectorate of the Ministry of Justice, which launches an investigation. In 2021, the General Inspectorate of the Ministry of Justice received information on 509 alleged cases of violence among prisoners.<sup>53</sup> It is noteworthy that in 2020, the General Inspectorate received a total of 465 such notifications.

### **2.3.2. A practice that equates to ill-treatment**

#### **2.3.2.1. Existing regime and restrictions in high risk and closed type penitentiary facilities as ill-treatment**

During the reporting period, the restrictive regime and established incident management practices in special risk (№3 and №6) and closed-type (№2 and №8) penitentiary institutions remain significant challenges in terms of ill-treatment of prisoners. Prisoners in these facilities, without any activities of interest to them, stay in the cell for 23 hours and spend only 1 hour in walking yards, poor infrastructure of which does not allow for the refreshment and recreation of prisoners;<sup>54</sup> no multidisciplinary work is carried out and rehabilitation-re-socialization programs for convicts are not properly implemented; disciplinary and security measures restricting to contact with the outside world are actively applied to prisoners, including isolation in solitary confinement and de-escalation rooms, where prisoners are additionally restricted from accessing their belongings, taking a shower and taking a walk. The management of the mentioned penitentiary institutions is mainly based on the principles of static

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<sup>52</sup> Letters №309509 / 01 of December 21, 2021 and №15421 / 01 of January 18, 2022 of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia.

<sup>53</sup> Letters of the General Inspection of the Ministry of Justice of Georgia №16190 of December 13, 2021 and №317 of January 12, 2022.

<sup>54</sup> These courtyards are cell-type rooms that are enclosed by a wall on all four sides and have metal grilles on the open ceiling. Exercise equipment is minimally presented in the yards.

security, which implies the severest restrictions, prohibition regime, and is not focused on a positive change in the behavior of convicts.

During the visit to the penitentiary institution №3, it was found out that 17 convicts in the institution were from Eastern Georgia and their family members also lived in Eastern Georgia. During the visit, it was also revealed that during 2021, 10 of these 17 convicts had been subject to a disciplinary sanction of restricting telephone conversations for a period of 2 months. It should be noted that convicts whose family members live in Eastern Georgia are often unable to visit them and mainly make contact by telephone. Consequently, restricting the right to make telephone calls for such convicts is, in practice, equivalent to a complete restriction of contact with the outside world.<sup>55</sup>

As in previous years, a significant proportion of inmates in penitentiary institutions suffer from psychological problems. Restrictive regimes in special risk and closed-type institutions and restrictions on contact with the outside world aggravate their mental state. Restrictive environment leads to aggression on the part of prisoners towards both staff and other prisoners and creates a violent environment. It is noteworthy that according to the information sent to the investigative body from the institutions, in the penitentiary institution №3 from January 1, 2021 to August 12, 2021, there were 18 alleged cases of physical confrontation, of which 2 were conflicts between prisoners and 16 were conflicts between prisoners and facility staff; in №6 penitentiary institution, from January 1, 2021 to September 3, 2021, there were 7 alleged cases of physical confrontation, of which 2 were conflicts between prisoners and 5 were conflicts between a prisoner and an employee of the institution.

The Public Defender has repeatedly stated that prisoners placed in closed-type and special risk facilities should enjoy a relatively light day regime within their detention facility. In particular, they, along with other prisoners, should be allowed to engage in a variety of activities. Developing a different activity plan for inmates may be even more important in special risk facilities than in regular facilities. Engaging in these activities may alleviate the devastating impact on the inmate of the locked space in which they are being held. Activities should be as diverse as possible (education, sports, employment, vocational training, etc.).<sup>56</sup> The purpose should be to establish a positive relationship between staff and prisoners, which is especially important not only in terms of humane treatment of prisoners, but also in terms of effective control of the facility and the safety of staff. Institutions should systematically study the causes of each incident and develop a specific plan to prevent them, which should aim at positive changes in the behavior of prisoners, and this should be done in an atmosphere of communication and care.

The assessment of the Public Defender and the Special Preventive Group remains unchanged, according to which the existing practice of restricting the rights of prisoners in closed (№2 and №8) and special risk (№3 and №6) penitentiary institutions and the lack of activities tailored to their needs, not only contradicts to the principle of normalization<sup>57</sup>, but also has a negative impact on the physical and mental

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<sup>55</sup> On July 22, 2021, the Public Defender of Georgia appealed against the norms of the Imprisonment Code, which envisages the restriction of the right of contact with the outside world in the form of a disciplinary sanction, with a constitutional lawsuit №1633. Constitutional lawsuit available: <<https://constcourt.ge/ka/judicial-acts?legal=11961>> [Last viewed: 14.02.2022].

<sup>56</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), General Report 11, CPT / Inf (2001), 16, Strasbourg, Council of Europe, 2001, p. 32. et seq.

<sup>57</sup> "Prison life should be as close to the positive aspects of public life as possible." European Prison Rules, Rule №5. Available <<https://bit.ly/3tZ7GbA>> [Last viewed: 10.12.2021].

health of prisoners, which in turn increases the risks of violence against prisoners,<sup>58</sup> contradicts international standards<sup>59</sup> and could amount to cruel, inhuman and degrading treatment.

### **2.3.2.2. Prolonged isolation of prisoners as ill-treatment**

Visits in 2021 revealed that, as in previous years, the practice of prolonged isolation of prisoners in closed and high-risk facilities remains a problem.

In №2, №3, №6 and №8 penitentiary facilities, as in 2020, isolation of prisoners was frequently used in 2021. At the time of the visit to the penitentiary facility №3, a total of 45 inmates were in the facility, 34 of them were placed alone in the cells. It should be noted that their number during the visit in 2020 was also 34. During a visit to №6 facility, it was revealed that, as in 2020, more than half of the prisoners were placed separately.<sup>60</sup>

For years Public Defender of Georgia<sup>61</sup> has been addressing with recommendations to the Minister of Justice of Georgia, requesting amendments to the regulations of penitentiary institutions to set a maximum period for the isolation of prisoners, as well as to write down an obligation to review the measure of isolation in 14 days after the application of this measure and afterwards in the same time interval. Unfortunately, the recommendation was not followed. The statutes of the special risk penitentiary institutions still allow the directors of the institutions to place a prisoner in a solitary confinement cell for a long time without a reasoned decision and to limit the possibility of contact with another prisoner.<sup>62</sup>

The European Committee for the Prevention of Torture always pays special attention to the issue of isolation of prisoners, as this measure can be extremely damaging to the mental, somatic or social well-being of a person. This damage may arise immediately and increase, when the prisoner is isolated for a long and indefinite period of time. Enforcement of imprisonment does not in itself imply the imposition of additional restrictions on prisoners in the enforcement process and, therefore, their use must be justified.<sup>63</sup> Isolating prisoners for months and years is contrary to international standards and, according to the Public Defender, constitutes ill-treatment.<sup>64</sup>

### **2.3.2.3 Placing prisoners in de-escalation rooms and solitary (safe) cells - as ill-treatment**

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<sup>58</sup> See the report of the Public Defender "Impact of prison conditions prisoners' health", 2018, p. 118-124, available at the following address: <<https://bit.ly/3qYPlcz>>, [Last viewed: 10.12.2021].

<sup>59</sup> European Committee for the Prevention of Torture (CPT) 21st General Report, CPT / info (2011) 28, Strasbourg, Council of Europe, 2011, paragraph 52. Available at: <<https://rm.coe.int/1680696a88>>, [last viewed: 10.12.2021].

<sup>60</sup> See the Report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia. P. 55. Available at: <<https://bit.ly/3IxTYjS>> [Last viewed: 14.12.2021].

<sup>61</sup> Parliamentary Report of the Public Defender of Georgia 2020, p. 86, available at the following address: <<https://bit.ly/3rMgv5L>>, [Last viewed: 10.12.2021]

<sup>62</sup> On July 27, 2021, the Public Defender of Georgia filed a constitutional lawsuit №1637 with the Constitutional Court requesting the recognition as unconstitutional of the statutes of №2, №3, №5, №6 and №8 penitentiary institutions, which envisage the use of de-escalation rooms by non-medical staff as well as prolonged and multiple use of this measure, including on the recommendation of medical staff. Available at: <<https://www.constcourt.ge/ka/judicial-acts?legal=12023>>. [Last viewed: 14.02.2022].

<sup>63</sup> 21st General Report of the European Committee for the Prevention of Torture, para. 55. CPT / Inf (2011) 28 <<https://rm.coe.int/1680696a88>>, [Last viewed: 10.12.2021]

<sup>64</sup> See. Judgment of the European Court of Human Rights in the case of HARAKCHIEV AND TOLUMOV v. BULGARIA App. nos. 15018/11 and 61199/12, para. 204. Available at: <<https://bit.ly/3tX4ZqQ>> [Last viewed: 10.12.2021].



An inspection during the reporting period revealed that, as in previous years, in 2021 as well prisoners are subjected to prolonged, inappropriate and punitive use of de-escalation rooms<sup>65</sup> and a solitary (safe) cell<sup>66</sup>, which in the Public Defender's opinion equates to cruel, inhuman and degrading treatment.

#### Long-term placement of prisoners in de-escalation rooms and solitary (safe) cells

The recommendation issued by the European Committee for the Prevention of Torture in Georgia in 2018 states that the maximum time for a person to be placed in a de-escalation room should not exceed 24 hours.<sup>67</sup> For years, the Public Defender has been demanding a reduction of the time of placement in a de-escalation room to 24 hours. Nevertheless, according to the regulations of the penitentiary institutions, the period for the transfer of the accused / convict to the de-escalation room is still 72 hours. In addition, the number of re-placement of a prisoner for security reasons in the de-escalation room and in a solitary (safe) cell is unlimited.

During the reporting period, monitoring in №2, №3, №6 and №8 penitentiaries revealed that prisoners were placed in de-escalation rooms and solitary (safe) cells for the most part, still for a maximum period, and there was still virtually uninterrupted placement of the same person over several days and weeks, at intervals of minutes and hours. For example, in №8 penitentiary institution, in one case, the measure of placing a prisoner in a de-escalation room was applied to a prisoner 16 times in a row, he was, in fact, continuously placed there for 48 days. In №2 and №8 penitentiary institutions, cases of placement of prisoners for up to 35 days in the de-escalation room are sometimes observed, and cases of placement for more than 15 days are frequent. As for the special risk institutions, in №3 and №6 penitentiary institutions there are sometimes cases of placing prisoners in de-escalation rooms for up to 10 days.

#### Misuse of de-escalation rooms and solitary (safe) cells

An inspections of closed and special risk penitentiary facilities in 2021 revealed that, as in previous years, in closed and special risk penitentiary facilities due to the lack of adequate psychosocial support services and other appropriate situation management resources, the administration often places prisoners with mental health problems in a de-escalation room and in a solitary (safe) cell for a long time. For example, according to the documentation produced in №2 facility, in one case, the accused was placed in a de-escalation room as soon as he was admitted to the facility, where he remained continuously for 30 days, and transferred directly from the de-escalation room to the National Mental Health Center (Khoni).

During the reporting period, it was found that placing a prisoner in a de-escalation room / solitary (safe) cell is still ineffective in preventing the self-harm and calming the prisoner. De-escalation rooms and solitary (safe) cells are not arranged in such a way as to minimize the risk of self-harm, and the

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<sup>65</sup> According to the regulations of penitentiary institutions, if the accused / convict endangers his / her own or some else's life or health, taking into account the relevant infrastructure, on the recommendation of the medical staff and / or on the order of the head of the institution based on the report of the authorized employee of the institution, the accused / convict may be placed in the de-escalation room under the conditions of continuous access of staff and 24-hour visual surveillance of the person responsible for ensuring security in the facility, until the danger posed by the person placed in the de-escalation room has been eliminated, but not for more than 72 hours. The number of placement of a prisoner in a de-escalation room is not limited.

<sup>66</sup> According to the regulations of penitentiary institutions, to prevent the accused / convict from damaging himself / herself, others and property, to prevent crime and other offenses in the institution, disobedience of the accused / convict to the lawful request of the employee, to repel the attack, group disobedience and / or prevent mass riots, by the order of the director of the institution, the accused / convict may be placed in solitary confinement for not more than 24 hours..

<sup>67</sup> Report on the European Committee for the Prevention of Torture on the visit to Georgia on 10-21 September 2018 (CPT / Inf (2019) 16), para. 94, available in English at the following address: <<https://rm.coe.int/1680945eca>> [Last viewed: 10.12.2021].

conditions of detention in these cells often lead to deterioration in the psycho-emotional state of prisoners. It should be noted that according to the documentation produced in the above-mentioned penitentiary institutions, there are sometimes cases of self-harming by prisoners with mental health problems in de-escalation rooms and solitary confinement cells,<sup>68</sup> and in these cases handcuffs are used as well.

The Public Defender of Georgia has repeatedly addressed the Minister of Justice of Georgia with a recommendation to create a safe environment in de-escalation rooms and solitary (safe) cells, including covering walls and floors with soft materials, but the recommendation has not been implemented.

Unfortunately, the Public Defender's recommendation to ensure joint / multidisciplinary work of psychologist, psychiatrist, social worker, doctor and other staff of the institution to reduce / eliminate risks during placement in the de-escalation room and solitary (safe) cell has not been implemented. It should be noted that, as in previous years, the staff of the institution is not trained in non-violent crisis management skills and de-escalation methods. There is no multidisciplinary team work before de-escalation room and solitary (safe) cell placement or in parallel with placement to prevent and eliminate crises.

The position of the Public Defender is unchanged that the placement of prisoners with mental health problems in de-escalation rooms and solitary (safe) cells should only be an extreme measure, and before using this measure, the institution staff should use other, less restrictive means such as direct surveillance by personnel and electronic surveillance. In addition, if these measures are insufficient, transfer to the de-escalation room and solitary (safe) cell should be used as a momentary, urgent measure, which should not exceed 24 hours and at the same time the prison multidisciplinary team (psychologist, social worker and if needed – a psychiatrist) should provide adequate assistance. And if the work of a multidisciplinary team is insufficient to protect the safety of a prisoner with a mental illness, s/he should be immediately transferred to the psychiatric ward of №18 Defendants and Convicts' Medical Institution or to another psychiatric institution.

The Public Defender considers that prolonged placement of prisoners with mental health problems in a de-escalation room and solitary confinement cell and failure to provide adequate psychiatric care violates the requirements of Article 15 of the Convention on the Rights of Persons with Disabilities and constitutes cruel, inhuman and degrading treatment.<sup>69</sup>

#### *Use to de-escalate rooms and solitary (safe) cells for punitive purposes*

During inspections of penitentiaries, according to information received by a Special Preventive Group, in some cases, prisoners are placed in de-escalation rooms and solitary (safe) cells, without any legal basis (risk of harm to their own or someone else's life and health). In particular, according to the information received in №6 and №8 penitentiaries, the real reason for being placed in the indicated cells is sometimes the prisoner's protest, violation of regime requirements and verbal arguments with the staff of the institution.

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<sup>68</sup> Prisoners in de-escalation rooms and solitary confinement use self-harm mainly by hitting their head and limbs on the cell wall or door.

<sup>69</sup> In the case of *Kucheruk v. Ukraine* (no. 2570/04), a long-term and repeated handcuffing of a prisoner with a mental illness because the institution did not have sufficient resources to manage a prisoner's conduct and to provide psychiatric care, was considered as a violation of Article 3 of the European Convention on the Prohibition of Torture by the European Court of Human Rights. Para. 131. Available at: <<https://hudoc.echr.coe.int/eng?i=001-82200>>, [last viewed: 10.12.2021].

In a report after its visit to Georgia, the European Committee for the Prevention of Torture expressed serious concerns about the practice of using the de-escalation room. The Committee assessed the practice of frequent use of de-escalation rooms for 72 hours as de facto punishment. In addition, the Committee noted that placing too many interviewed prisoners in a de-escalation room was seen as a retaliatory punishment for the difficult behavior they show.<sup>70</sup>

It should be noted in de-escalation rooms and solitary confinement, inmates are often not allowed to take a shower or take a walk; they have limited access to the store, telephone calls, personal correspondence and appointments. In the de-escalation rooms and solitary (safe) cells, inmates have limited access to hygiene items and changeable clothing. In de-escalation rooms and solitary confinement prisoners' legal rights are restricted, their living conditions deteriorate, they are not provided with psychosocial assistance, and there are frequent cases when de-escalation/solitary confinement is accompanied by disciplinary action, which strengthens their feeling that it serves to 'teach' and punish them.

It should be noted that the imposition of disciplinary sanctions in №8 penitentiary institution is sometimes based on noise in the de-escalation room. It is unclear to the Special Preventive Group why a prisoner should be disciplined for making noise in a de-escalation room when the de-escalation room is essentially a place where a person should be emptied of negative emotions. One of the ways to get rid of negative emotions can be screaming and making noise.

In the 2020 parliamentary report, the Public Defender recommended to the Minister of Justice of Georgia to amend the regulations of penitentiary institutions, and define the placement of a prisoner in a de-escalation room and a solitary (safe) cell as an extreme measure and to ensure that when using this measure, it is necessary to substantiate why de-escalation room and solitary confinement were considered as an unalternative measure. According to the recommendation, the regulation should also stipulate that before using the de-escalation room and the solitary (safe) cell, facility staff should use other, relatively less restrictive means, such as direct staff surveillance and electronic surveillance. Unfortunately, the recommendation was not followed.

In its 2020 parliamentary report, the Public Defender also recommended to the Minister of Justice of Georgia that the Monitoring Department of the Special Penitentiary Service conduct a systemic inspection to prevent ill-treatment of prisoners and to study the practice of the use of de-escalation rooms for prisoners with mental health problems in penitentiary institutions and prolonged placement in solitary confinement cells, use of handcuffs and non-delivery of psychiatric care and to act accordingly, to examine the practice of transferring prisoners to de-escalation rooms and solitary confinement cells without legal grounds for punitive purposes and to take appropriate measures. We have not received any information on the status of implementation of this recommendation.<sup>71</sup>

As the problem of de-escalation cells has been unresolved for years, on July 27, 2021, the Public Defender of Georgia filed a constitutional lawsuit with the Constitutional Court and requested to be recognized as unconstitutional the norms of the penitentiary institutions №2, №3, №5, №6 and №8, which provide for the use of de-escalation rooms by the decision of non-medical staff, as well as - long-

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<sup>70</sup> Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT / Inf (2019) 16), para. 101, Visit of September 10-21, 2018, available in English at the following address: <<https://rm.coe.int/1680945eca>> [Last viewed: 10.12.2021].

<sup>71</sup> On November 2, 2021 the Office of the Public Defender of Georgia addressed a letter №03-4/10452 to the Monitoring Department of the Special Penitentiary Service of the Ministry of Justice of Georgia regarding the implementation of this recommendation, but received no response.

term and multiple use of this measure, including by the recommendation of medical staff. The Public Defender considers that the disputed norms violate Article 9, Paragraph 2 of the Constitution of Georgia, according to which "torture, inhuman or degrading treatment, inhuman or degrading punishment is inadmissible."<sup>72</sup>

#### **2.3.2.4. Practice of full search of prisoners as ill-treatment**

In the reporting period, during visits to №2, №3, №5, №6 and №8 penitentiary institutions, members of the Special Preventive Group were informed that in these institutions during the initial placement, removal and return of prisoners, as in previous years, in 2021 there was a practice of exposing them completely and crouching.

The European Committee for the Prevention of Torture notes that during a full examination it is inadmissible for a person to request the full exposure of different parts of the body at the same time.<sup>73</sup> Contrary to this standard, the regulations of penitentiary institutions<sup>74</sup> allows for full body exposure, which is also indicated in the decision of the Constitutional Court of Georgia 2/4/ 665,683 of July 26, 2018, which states: - "from the grammatical interpretation of the norm, it is obvious that it includes the possibility of exposing the body of accused/convict both in part and in full, as the norm stipulates the obligation of the accused/convict to 'fully undress' or 'expose the relevant parts of the body.' It is clear that "fully undress" indicates complete nudity“.

In addition, as a result of the visits, it was revealed that the practice of requesting to crouch is still maintained in the institutions, which is not provided by the regulations of the penitentiary institutions. According to the Public Defender, during the full inspection of prisoners, the request of the employee of the institution to crouch is arbitrary, outstrips the goals of the inspection and is a humiliating, degrading treatment.

In the 2020 parliamentary report, the Public Defender of Georgia recommended to the Minister of Justice of Georgia to normatively determine the obligation to observe the principles of individual risk assessment and proportionality during the full body inspection and to prohibit simultaneous exposure of different parts of the body during full exposure. Unfortunately, the recommendation was not implemented.

### **2.3.3. Risk factors causing the ill-treatment**

#### **2.3.3.1. Overcrowding of penitentiary establishments**

During the reporting period preventive visits revealed that, as in previous years, the imbalance caused by the large number of prisoners and the small number of staff<sup>75</sup> in the penitentiary institutions prevents the creation of a safe, secure and orderly environment in the institutions. The problem of overcrowding is still present in both semi-open and closed penitentiaries.

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<sup>72</sup> See. №1637 Constitutional lawsuit of the Public Defender of Georgia of July 27, 2021. Available at: <<https://www.constcourt.ge/ka/judicial-acts?legal=12023>>. [Last viewed: 06.01.2022].

<sup>73</sup> The Council of Europe, European Committee for the Prevention of Torture, report on the visit to the Czech Republic (1-10 April 2014, para. 85), is available at: <<https://bit.ly/35cCmvq>> [Last viewed: 10.12.21].

<sup>74</sup> According to the regulations of penitentiary institutions, during a full personal examination, the accused / convict is obliged, after the indication of the authorized person, to completely undress or expose the relevant parts of the body.

<sup>75</sup> Legal regime and security department staff.

According to a published study, as of September 2021, there were 9,387 prisoners in Georgia, which means that there were 252 prisoners per 100,000 population.<sup>76</sup> According to this data, like in previous years, Georgia is still in the third place in Europe.

In its 2020 parliamentary report, the ombudsman noted that the situation with large-scale semi-open-type penitentiaries was generally unfavorable in terms of maintaining order and security. It should be noted that during the visit to the semi-open facilities in 2021, the situation was no different from last year. The lack of staff in these facilities is clearly noticeable and the representatives of the administration noted that in 2021 many employees left the penitentiary system.

In 2021, the situation has not changed in №2 and №8 penitentiaries where defendants and convicts are again housed together. International standards<sup>77</sup> and requirement of the Imprisonment Code to separate defendants from convicts are still violated.<sup>78</sup> Due to the overcrowding of the institutions, during the placement of prisoners in the cells, the personal characteristics, habits, behaviors, risks of the prisoner are still left out of focus. As a result, prisoners of different categories and worldviews have to live in the same cell, which often leads to disagreements between prisoners in closed space..

The position of the Public Defender is unchanged that both in terms of security and order and because of the risks of infection control, large penitentiary institutions should be transformed into institutions with small and balanced infrastructure as envisaged in the Penitentiary and Crime Prevention Systems Development Strategy and Action Plan 2019-2020. In addition, the Public Defender specifically points out that in order to solve the problem of overcrowding, in addition to increasing the number of staff in the penitentiary system, it is important to reduce the number of prisoners, including the use of early release mechanisms, non-custodial sentences and non-custodial pre-trial measures..

In the 2020 Parliamentary Report, the Public Defender also addressed recommendations to the Minister of Justice of Georgia to include in the plan for overcoming the problem of overcrowding in penitentiary institutions an increase in the number of regime staff working in the wings of residential buildings so that there is at least one employee in charge of maintaining order and security for 15 prisoners; also, to ensure the separation of the accused from the convicts, at least by placing them in separate cells in №2 and №8 establishments; in addition, to take into account linguistic, religious and cultural peculiarities during the placement of prisoners. It should be noted with regret that neither of these recommendations have been implemented.

### **2.3.3.2. Informal ruling of penitentiary institutions**

In terms of protection of prisoners from violence, informal ruling of penitentiary institutions remains a serious challenge. In the face of severe shortages of qualified staff in penitentiaries, administrations delegate powers to informal leaders (so-called ‘watchers’) and through them establish informal ruling of penitentiary institutions, with the aim of maintaining illusory order in institutions, silencing prisoners and banning them to speak out against problems.

As in previous years, in 2021, during the inspection of penitentiary institutions, a Special Preventive Group again received information about privileged prisoners in semi-open penitentiary institutions.

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<sup>76</sup> See the World Prison Brief and Institute for Crime and Justice Policy Research, 13th Edition. 2021. Available <<https://bit.ly/3qZeHar>> [Last viewed: 10.12.21].

<sup>77</sup> According to the UN Standard Minimum Rules for the Treatment of Prisoners, adopted by the UN General Assembly Resolution 70/175 (Nelson Mandela Rules), defendants and convicts should be placed separately (Rule №11 (b)).

<sup>78</sup> Part 2 of Article 9 of the Imprisonment Code.

According to the information received, there are still convicts close to the administration in the institutions, who have some influence on other prisoners and, if necessary, the administration uses them to "resolve relations" with prisoners (in case of hunger, complaints, other forms of dissatisfaction or conflict situations). Privileged inmates, unlike other inmates, move freely within the facility, control inmates, enter cells, and physically assault unruly inmates. In addition, it turned out that, as in previous years, the so-called "watchers" are still collecting "shared money for thieves", the so-called "obshiak".<sup>79</sup> With the help of prisoners enrolled in the logistic service, they control the amounts accrued on the cards of other prisoners and demand payment of "membership".<sup>80</sup>

It is noteworthy that the mobilization of certain groups of prisoners and the expulsion of convicts talking about problematic issues was characteristic during monitoring visits in recent years. As for the visits in 2021, the activity of certain groups of convicts to obstruct the relationship of convicts with members of the Special Preventive Group was less noticeable. According to the Special Preventive Group, this may be related to the *ad hoc* visit of the European Committee against Torture in May 2021, which paid a special visit to Georgia to investigate the situation in the semi-open institutions, against the background of verbal attacks on ombudsmen and interfering in the execution of its mandate. After the visit of the European Committee against Torture, the Minister of Justice publicly stated that the representatives of the Public Defender's Office would not face any obstacles in their work. In our estimation, it was this statement that had an impact on preventing obstruction during preventive visits. **This proves once again that in previous years, aggression by a certain group of convicts and obstruction to the activities of a Special Preventive Group was not a uniform attitude of prisoners, but was directly or indirectly encouraged by penitentiary administrations using influential prisoners.**

It is noteworthy that the European Committee for the Prevention of Torture also points out in a report published in 2019 on the delegation of powers to informal leaders. The European Committee for the Prevention of Torture calls on the Georgian authorities to instruct the staff and management of №15 penitentiary institutions to monitor closely and take all necessary measures to prevent and combat violence and intimidation among prisoners. These measures should include ongoing monitoring of prisoners' behavior (including the identification of alleged perpetrators and victims), appropriate documentation and reporting of confirmed and reported cases of intimidation/violence among prisoners, and the investigation of all cases.<sup>81</sup>

Informal ruling is characterized by physical and severe psychological violence among prisoners. Psychological violence is mainly manifested in extortion, humiliation, exclusion and other actions. As a result, a certain number of prisoners in a privileged position engage in informal ruling through

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<sup>79</sup> Some authors believe that so called "shared money of thieves" (the same as "obshiak") is a combination of material goods, donations, which is collected and managed by an informal ruler. The collected property is used to help the families of criminal authorities and other prisoners, to legalize and develop criminal businesses, and for other purposes. See. M. Shalikashvili, G. Mikanadze, M. Z. Khasia, *Penitentiary Law*. Tbilisi 2014. p. 449-453.

<sup>80</sup> So, for example, when a convict is placed in a semi-open institution, before he is transferred to a residential building, the so-called "watcher" hosts with coffee/tea, chocolate and cigarettes. After moving to a residential building, this convict is told that from now on he must also contribute to help the newly arrived, poor convicts in the same way as he was helped. Thus, the informal rulers try their best to convince the newly-brought convicts in the necessity to participate in the collection of "shared" and in "good intentions". The "membership" is paid by the convicts by handing over coffee and cigarettes to the "watchers". After that, the prisoners are forced to buy cigarettes not in the store, but from the "watcher". Their relatives transfer the corresponding amount to the bank accounts controlled by the "watchers" or to the specially opened account of a bookmaker. See details. National Preventive Mechanism 2019 Report, p. 55. Available at: <<https://bit.ly/3IH10TD>> [Last viewed: 06.01.2022].

<sup>81</sup> Report on the European Committee for the Prevention of Torture's visit to Georgia on 10-21 September 2018 (CPT / Inf (2019) 16), para. 53, available in English at the following address: <<https://rm.coe.int/1680945eca>> [Last viewed: 10.12.2021].

repressive methods, which in many cases lead to violence among prisoners and manifests itself in punitive measures against prisoners who do not obey the rules of informal governance. Under these rules, writing a complaint is unacceptable and the complainant will be punished accordingly. Due to the fear of repression, prisoners are forced to follow informal rules, failure to do so results in prisoner being expelled from the society; any relationship with him becomes unacceptable for other prisoners, which leads to the loss of his dignity, status and respect. Because of all this, instead of writing complaints about problems, they turn to influential, privileged prisoners, and in case of disagreement, do not provide information to the administration about the conflict.

Under the influence of informal ruling of semi-open type penitentiary institutions, the number of appeals and pleas received from these institutions to the Public Defender decreases from year to year. While about half of prisoners serve their sentences in semi-open facilities (№14, №15 and №17), in 2021, out of 1641 applications only received from prisoners, only 62 were sent by convicts of these three facilities. It should be noted that the 2021 data are not substantially different from the 2020 data.<sup>82</sup> In addition, the information provided by the Ministry of Justice on the facts of alleged violence between prisoners in penitentiary institutions is noteworthy, according to which, from January 1 to December 31, 2021, information was received on 509 cases of confrontation between prisoners. Only 2 reports were sent from №14 institution, 2 reports - from №15 institution and 1 - from №17 institution.<sup>83</sup>

In recent years, the ombudsman has noted in a number of parliamentary reports that in the face of the problem of proper management of penitentiary institutions, the scale of informal governance was slowly increasing, which was a significant risk factor for violence against prisoners and called for a timely response. The position of the Public Defender is unchanged on the need to respond to the protection of the rights and security of prisoners, to prevent possible torture and other cruel, inhuman or degrading treatment or punishment, to exclude the use of violent and repressive methods.<sup>84</sup>

In the 2020 Parliamentary Report, the Public Defender recommended to the Minister of Justice of Georgia to develop a strategy on fight against criminal subculture in penitentiary institutions in order to combat criminal subculture and informal ruling and submit the prepared document to the Office of the Public Defender of Georgia for opinions. It is unfortunate that the Ministry of Justice of Georgia and the Special Penitentiary Service did not confirm the practice of informal ruling of penitentiary institutions and did not accept the recommendation.

The ombudsman believes that the Georgian government should take immediate action to change the model of managing the criminal subculture in prisons, and that the Georgian parliament, using parliamentary oversight mechanisms, should study the illegal model of managing semi-open institutions so that all prisoners have the opportunity to appeal to the relevant institutions or organizations about their problems and violations, without fear of retaliation.

#### **2.3.4. Deficiencies in detecting and documenting ill-treatment**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obliges States to ensure a timely and impartial investigation into allegations of torture and ill-

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<sup>82</sup> In 2020, a total of 1370 appeals were received from penitentiary institutions, out of which a total of 56 appeals were received from №14, №15 and №17 penitentiary institutions.

<sup>83</sup> Letters of the General Inspection of the Ministry of Justice of Georgia 13 16190 of December 13, 2021 and №317 of January 12, 2022.

<sup>84</sup> 2019 Report of the National Preventive Mechanism. P. 55-58. Available at: <<https://bit.ly/3Iz7yDA>> [Last viewed: 10.12.2021].

treatment.<sup>85</sup> To this end, the state is obliged to introduce an effective mechanism for detecting cases of violence, so that the facts of serious human rights violations do not go unpunished.<sup>86</sup>

An important role in detecting cases of violence in the penitentiary system should have been played by the doctors of the institution, who should make every effort to record injuries on the bodies of prisoners in accordance with the "Istanbul Protocol".<sup>87</sup> The mechanism for documenting cases of violence in penitentiary institutions is regulated by Order №663 of the Minister of Justice of Georgia,<sup>88</sup> according to which, in case the prisoner informs the doctor about torture and other cruel, inhuman or degrading treatment or if the doctor himself suspects it, with the consent of the prisoner, the injuries on his body must be recorded in a special form approved by this order, this should be followed by taking photos of the injuries and a documented report on the fact should be sent to the State Inspector's Office.

In the opinion of the Special Preventive Group, as in previous years, the flawed practice of detecting and documenting alleged acts of violence is mainly due to the requirement of prisoner's consent to a medical examination, the influence of the criminal subculture, the practice of meeting doctors with prisoners in a non-confidential environment, low degree of independence of medical staff and trust of prisoners towards them.

According to the information received from the Special Penitentiary Service, in 2021, doctors of penitentiary institutions registered only 35 cases in accordance with the above rule. As in previous years, in 2021 there is a tendency for doctors of penitentiary institutions, in accordance with the rule approved by the Order №663 of the Minister of Justice of Georgia of November 30, 2020, document injuries only in cases when accused of alleged torture and other cruel, inhuman or degrading treatment Indicates an employee of the Ministry of Internal Affairs as a perpetrator. It is noteworthy that, like in 2020, doctors in penitentiary institutions, did not document any case in 2021, where the alleged perpetrator would be an employee of a penitentiary institution.<sup>89</sup>

The indicated mechanism is not fully used by the doctors of the institutions in all the cases when the detainee states upon entering the institution that s/he was injured during the arrest and/or under the control of the police. In particular, in 2021, 31 defendants placed in penitentiary institutions indicated that they had received the injury after arrest, while 23 defendants stated that the injury had been received at the time of their arrest.<sup>90</sup> In these cases, whether or not the accused complained about the violence committed by the police, the very fact that the injury was received during or after the arrest was sufficient grounds for a strong suspicion that violence had taken place against the accused. Thus, in the 54 cases mentioned, there were all preconditions for bodily injuries to be documented in accordance

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<sup>85</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 12.

<sup>86</sup> See Judgment of the European Court of Human Rights on the case of Keenan v. United Kingdom Appl. No. 27229/95, para. 122. Available at: <<https://hudoc.echr.coe.int/fre?i=001-59365>> [Last viewed: 15.12.2021].

<sup>87</sup> Guide to Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Istanbul Protocol / UN, 2004. Available in Georgian: <<https://bit.ly/3apCg2K>>, [Last viewed: 15.12.2021].

<sup>88</sup> Order № 663 of the Minister of Justice of Georgia of November 30, 2020, approving the rules for registration of injuries of accused/convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions.

<sup>89</sup> Letters № 309513/01 of 01 of December 21, 2021 and №15420/01 of January 18, 2022 of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia.

<sup>90</sup> Letters №3646/01 of January 6, 2022 and №15421/01 of January 18, 2022 of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia.



with a special rule and for a notification to be sent to the State Inspector's Office.<sup>91</sup> In contrast, only 35 cases of bodily injuries were documented in accordance with the special rule mentioned above.

Regarding the confidential meeting of prisoners and medical staff, it should be noted that the presence of an employee of the facility for medical examination of prisoners is allowed only in exceptional cases. Nevertheless, according to the common practice in prisons and detention facilities, the prisoner's meeting with the doctor is mostly attended by an employee of the legal regime and/or security department of the institution, who becomes aware of the content of the conversation between the doctor and the prisoner.<sup>92</sup> It should be noted that in semi-open facilities, a meeting between a doctor and a prisoner may even be attended by another prisoner. In such circumstances, a prisoner is more likely to refrain from providing sensitive information to medical staff. In addition, the degree of independence of doctors is problematic, and to some extent, their informal relations with the administration of the institution, which casts doubt on their impartiality in detecting alleged ill-treatment of prisoners. Therefore, the degree of trust on the part of prisoners in the medical staff is low.<sup>93</sup> The Public Defender believes that the Ministry of Justice should take appropriate steps to ensure proper independence of doctors. Integration of Penitentiary Health in the Civil Health Sector is Important in the context of doctors' independence.<sup>94</sup>

It is true that a step forward was the change made in 2020, which allowed the doctor, after obtaining informed consent for a medical examination, to send a notification to the state inspector, even in cases where the prisoner does not speak of violence and the doctor still suspects it. Nevertheless, it remains a problem to identify and document the facts of alleged ill-treatment in the event that a prisoner refuses a medical examination. In particular, according to the rule approved by the Order №663 of the Minister of Justice of Georgia of November 30, 2020, before the medical examination, the doctor must obtain the informed consent of the prisoner, which must be confirmed by his signature. According to the same rule, in the absence of the patient's consent, the examination should not be conducted according to this rule. Consequently, if the doctor fails to obtain the informed consent of the prisoner, s/he is not entitled to fill out a special injury registration form. Consequently, a doctor may not send a notice to the State Inspector's Service without a medical examination, regardless of whether there is any damage and whether the doctor suspects any ill-treatment, as this rule provides for sending a notice to the State Inspector only if the special injury registration form is completed. In case of refusal of the prisoner to undergo a medical examination, the doctor shall make an appropriate entry in the specially designated note box and shall draw up a relevant external examination certificate, which shall be attached to the patient's medical card. It should be noted that in such cases, the mentioned rule does not stipulate the obligation to send a notification to the state inspector.

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<sup>91</sup> Order № 663 of the Minister of Justice of Georgia of November 30, 2020, approving the rules for registration of injuries of accused/convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions.

<sup>92</sup> According to a 2021 prisoner health survey, one-third of respondents indicate the presence of anyone other than medical staff in a room while providing medical care to a prisoner.

<sup>93</sup> According to a 2021 prisoner health survey, one-third of inmates in a semi-open facility and about half of inmates in a closed facility do not trust medical staff.

<sup>94</sup> The importance of this issue is also indicated by the European Committee for the Prevention of Torture in its reports on visits to Georgia in 2014 and 2018, which states that it is necessary to integrate prison health system into the public health system, which also ensures the increase of professional independence of doctors.

See Report of the European Committee for the Prevention of Torture on a visit to Georgia in 2014, para. 105. Available at the following address: <<https://bit.ly/3tYBpkX>> [Last viewed: 18.01.2022].

See also, the report of the European Committee for the Prevention of Torture on the visit to Georgia in 2018, para. 93. Available at: <<https://rm.coe.int/1680945eca>> [Last viewed: 18.01.2022].

The European Committee for the Prevention of Torture in the report on the visit to Georgia in 2018 also speaks about the obligation to detect alleged cases of violence by doctors and notify the investigative body. The European Committee for the Prevention of Torture has called on the Georgian authorities to amend the existing regulations. In particular, when a doctor suspects a possible torture or ill-treatment of a prisoner, by filling in body examination graphs and photographing, the physician should document the injury and refer it to the investigating authority, regardless of whether the alleged victim agrees to the documenting and notification.<sup>95</sup>

Under the above regulation, there may be cases which are not detected, documented and notified, where a prisoner does not consent to a medical examination upon receipt of a prisoner or on his or her removal from the facility, although he or she may have been ill-treated. It is noteworthy that such cases are most noteworthy, as the prisoner was under the effective control of law enforcement/penitentiary staff and in the event of ill-treatment, due to fear of retaliation or distrust of medical staff, may refrain from medical examination.

The Public Defender believes that in the event that a prisoner refuses to undergo a medical examination upon admission or withdrawal from the facility, but there are the visible injuries to the body or because of the psycho-emotional state the doctor suspects violence, s/he should describe the visible injuries and send a report to the State Inspector Service, and if there is no damage to the area not covered by the clothes and no other factors make the doctor suspect violence, s/he should make every effort to consent to the medical examination and no later than 24 hours offer the prisoner again to undergo a medical examination.

According to the European Committee for the Prevention of Torture, the axiom is that as soon as a person is admitted to a facility s/he should be interviewed and physically examined by a health care professional as soon as possible. The Committee considers that the person should be examined/inspected at the facility no later than 24 hours after his/her arrival. The same procedure should be repeated when the person transferred to the police station for questioning returns to the facility; unfortunately, similar relocation practices still exist in some countries visited by the European Committee for the Prevention of Torture, which carries the greatest risk of ill-treatment.<sup>96</sup>

Monitoring visits during the reporting period also found that in recent practice, in some cases where a prisoner in the facility indicates that s/he has received an everyday injury, the institutions do not send notifications to the General Inspectorate of the Ministry of Justice. According to the representatives of the administration of penitentiary institutions, according to the instructions received from the special penitentiary service, in case the injury on the body of the prisoner is not related to the alleged violence, in order to save human and technical resources, notification is not sent to the General Inspection. In contrast, visits to penitentiary facilities have shown that detainees' bodily injuries have been documented as everyday injuries, although analysis of the nature, location, and source of these injuries raises reasonable doubts as to whether the injuries may have been caused by violence.<sup>97</sup> It should be

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<sup>95</sup> The Report about Visit of the European Committee for the Prevention of Torture to Georgia on September 10-21, 2018 (CPT / Inf (2019) 16), para. 80, available in English at: <<https://rm.coe.int/1680945eca>> [Last viewed: 06.01.2022].

<sup>96</sup> European Committee for the Prevention of Torture (CPT), Documenting and Reporting Medical Evidence of Ill-Treatment, Excerpt from Joint Report 23, para. 73. [CPT / Inf (2013) 29].

<sup>97</sup> Thus, for example: A convict in a penitentiary institution №17 had an excoriation on his nose and forehead, which, according to him, he received as a result of falling when coming out of the toilet; a convict in the same facility had swelling of his right eyebrow, which, according to him, he received as a result of a collision at the door while leaving the toilet; a convict in the same facility had hemorrhage in the upper eyelid of his left eye and swelling he received during a football match as a result of hitting a ball; A prisoner in a penitentiary institution №8 had a hemorrhage in the area of the right eye socket, excoriation on the left temple, multiple excoriations in the area of the left side and spine, which, according to him, he

noted that in such cases, the doctor did not assess whether the injury was related to the alleged violence. In addition, the administration of the institutions could not explain in the specific cases mentioned above how and by what measures the alleged violence against the prisoner was ruled out. It is noteworthy that, in the face of the strong influence of the criminal subculture in penitentiary institutions, inmates who are victims of violence often do not talk to medical staff about the real causes of the injury in order to avoid the expected retribution. With this in mind, the Public Defender believes that medical staff should be more careful in treating the prisoner, in all cases of documenting the injury, to assess the compatibility of the injury with the information provided by the prisoner about its origin and whether there is a suspicion of possible violence. In case of suspicion of violence, the doctor should send a report to the investigating authority.

## 2.4. Epidemiological conditions

During the visits of the Special Preventive Group, disinfection-barriers, disinfection corridor and disinfectant liquids were placed at the entrances of penitentiary institutions. Upon entering the facility, thermoscreening is carried out and the entrants are provided with personal protective equipment (coats, headgear, gloves, face shields, hats and gloves).

On the positive side, most of the medical staff at the facility have been vaccinated,<sup>98</sup> in addition, a PCR test is performed once a week, and then once every 72 hours - a rapid test for antigen. It is also noteworthy that the process of vaccination of prisoners was actively carried out during the visits<sup>99</sup> and PCR testing - once every 2 weeks.

Despite the use of PCR testing and quarantine facilities, there are still cases of coronavirus infection in institutions.<sup>100</sup> It should be noted that due to the overcrowding of institutions, prisoners are placed together in quarantine spaces (several prisoners in one cell).<sup>101</sup> If one inmate is confirmed to have coronavirus, obviously the risk of transfer of the virus increases.<sup>102</sup> In such a case, the period of stay of other prisoners in the quarantine area also increases.

During a monitoring visit to №17 facility, a special preventive team found that 16 convicts transported from №8 facility by one vehicle were placed together in a quarantine area. After one of the convicts was confirmed positive with the virus on the 6th day of his stay in the quarantine area, the remaining individuals underwent a rapid test daily, after which 2 more convicts were confirmed to have the virus. Only then were the convicts transferred to different cells, where 3-4 people were placed together.

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received when he fell out of bed; A prisoner in the same facility had scratches and swelling on his left eye and scratches on his left forearm, which he explained he had received as a result of falling to the floor and hitting his head; at the same facility, a prisoner had a subcutaneous hematoma on his head and redness on his right elbow, which he explained he had received as a result of falling down a ladder.

<sup>98</sup> According to the website of the Special Penitentiary Service, as of September 21, 2021, 92% of the staff of the institutions was vaccinated and 77% - revaccinated. See link: <<https://bit.ly/3dPXtVx>> [Last viewed: 14.12.2021]. According to information provided by the Special Penitentiary Service in the Interagency Coordination Format, as of February 3, 2022, 94% of staff had already been vaccinated and 86% had been revaccinated. With the so-called booster dose were vaccinated 180 employees.

<sup>99</sup> According to the website of the Special Penitentiary Service, as of September 21, 2021, 80% of convicts had been vaccinated and 65% had been revaccinated. See link <<https://bit.ly/3dPXtVx>> [Last viewed: 14.12.2021]. According to the information provided by the Special Penitentiary Service in the interagency coordination format, as of February 3, 2022, 86% of prisoners were vaccinated and 81% were revaccinated. 2823 prisoners were vaccinated with booster dose.

<sup>100</sup> For example, as of August 30, 2021, there were 105 prisoners infected with the corona virus in the penitentiary system. See link <<https://bit.ly/30o4Wb9>> [Last viewed: 14.12.2021].

<sup>101</sup> In №8 facility, the newly admitted prisoner is first placed in an internal classification cell with other prisoners, and a few days later, also with other prisoners, transferred to a quarantine facility.

<sup>102</sup> A space was arranged at Academician B. Naneishvili National Center for Mental Health to accommodate prisoners infected with COVID-19.

According to the assessment of the Special Preventive Group, in this case the wrong tactics of preventing the spread of the virus were clearly revealed, which led to the convicts being infected with the virus. In particular, it is unclear why the convicts were placed together in a quarantine area. Obviously, if these convicts had not been placed together, the virus would not have spread like this.

As in 2020, prisoners would be handed over the face masks only upon leaving the facility and/or during meetings with people entering the premises. Prisoners did not have face masks when moving around the facility. This is a particular problem in semi-open facilities where convicts have day-to-day contact with each other.

To avoid the negative consequences of the spread of COVID-19 in penitentiaries, it is important to identify the groups of inmates who are most at risk of the virus. According to the World Health Organization and national protocols, the elderly (over 60 years old) and people with chronic diseases such as chronic lung and heart disease, diabetes, and immunocompromised individuals are at high risk for complications of COVID-19 infection.<sup>103</sup> The UN Subcommittee on Prevention of Torture called on the Member States at the outset of the pandemic to pay special attention to the above-mentioned persons and to place them in conditions which would not endanger their health.<sup>104</sup> This recommendation has been repeated by the Public Defender several times in the reports published in 2020. Unfortunately, no persons vulnerable to COVID-19 have been identified in penitentiaries and, consequently, no emergency monitoring of the health status of these individuals is underway.<sup>105</sup>

In the conditions when the special penitentiary service in the institutions fails to provide proper care for the elderly and persons at high risk of diseases against the virus, the issue of active application of the release mechanisms towards them is on the agenda. The updated recommendations of the UN Subcommittee on Prevention of Torture, published in the context of COVID-19, highlight the importance of reducing the prison population, where one of the top priorities should be to reduce the prison population at the expense of high-risk prisoners.<sup>106</sup> Therefore, it is important that conditional early release be applied to the above group of persons as a matter of priority. In addition, the Georgian Criminal Procedure Code provides for other possibilities of leaving prisons due to old age and health conditions. In particular, according to Article 283 of the Criminal Procedure Code, the sentence can be postponed if the convict is seriously ill.<sup>107</sup> Also, Article 284 of the Criminal Procedure Code provides for the possibility of releasing an elderly person<sup>108</sup> or a convict whose health condition is incompatible with serving the sentence, or maintaining vital signs is complicated and the prognosis for lethality is high. It is noteworthy that according to the data published on the website of the National Statistics Office of Georgia, as of October 2021, none of the convicts were released due to the elderly age under

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<sup>103</sup> Suspicious case management of SARS-CoV-2 (COVID-19) infection in primary care, state standard for clinical condition management. Available: <<http://www.gfma.ge/documents/COVID19-Protocol-F.pdf>> [Last viewed: 13.12.2021]. See also the public information available on the World Health Organization website <<https://bit.ly/3r8mt1T>> [Last viewed: 13.12.2021].

<sup>104</sup> Recommendations of the UN Subcommittee on Prevention of Torture (SPT) on the Coronavirus Pandemic to States Parties and National Preventive Mechanisms (adopted March 25, 2020), subparagraphs 9 (a) and (m). An unofficial translation is available at: Link <<https://bit.ly/3p0womA>>

<sup>105</sup> It is true that institutions maintain a list of patients in need of more attention, which generally includes patients with serious illnesses, although this list is not specifically designed to identify the elderly and those with coronary heart disease.

<sup>106</sup> Follow-up advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic, para: 9 (v), available at: <<https://undocs.org/CAT/OP/12>> [Last viewed: 13.12.2021].

<sup>107</sup> Criminal Procedure Code of Georgia, Article 283, Part 1 (b).

<sup>108</sup> According to Article 284, Part 3 of the Criminal Procedure Code of Georgia, "the court may release a person that has attained an elderly age during his/her service of sentence (women – from 65 years of age, men – from 70 years of age) from further serving the sentence if life imprisonment is not imposed on him/her as a sentence and he/she has served at least half of the sentence".

Article 284, and 12 convicts were released due to illness. As for the postponement of serving the sentence, 7 convicts were released for this purpose. Finally, taking into account the health and age of the accused when applying restraining measures may have a significant impact on reduction of the prison population, if the judge takes into account the person's vulnerability to the virus and applies the detention measure only in cases of extreme necessity.

As for informing about the measures to prevent the spread of Covid-19, unfortunately, the prisoners did not receive any information about Covid-19 and the measures to prevent the spread of the infection during their stay in the facility. There was no information poster about Covid-19 in the residential buildings. The information material posted in the administrative buildings was, in some cases, outdated. It is important that prisoners are provided with personal protective equipment and informed about infection control issues.

In order to meet the requirements of infection control, it is important to ensure a reliable sanitary-hygienic environment in the facilities. The practice of cleaning cells and other spaces in penitentiary institutions has not changed. Disinfection works are carried out in the institutions once a month. The cells are arranged by the prisoners themselves, and the common areas - by convicts employed in the logistics sector. The degree of observance of sanitary-hygienic norms in the institution should be increased, and for that, all convicts should be provided with the necessary means of personal hygiene at the expense of the state.<sup>109</sup> In addition, the problem of multiple-person cells is still relevant,<sup>110</sup> where keeping physical distance is impossible<sup>111</sup> as well as proper protection of sanitary conditions. To prevent infection, it is necessary to facilitate the protection of physical distance and to limit as much as possible the concentration of convicts in one space.<sup>112</sup> It is also important that face masks, in accordance with the relevant rules, are used by convicts with symptoms of respiratory diseases.

Although cases of COVID-19 have been identified in institutions, no action plan (guideline) has been developed to prevent and manage COVID-19. The Public Defender indicated the importance of an action plan in his 2020 parliamentary report, which would outline the functions and responsibilities of both medical and non-medical staff and a plan on how to prevent and manage COVID-19.

## **2.5. Penitentiary healthcare**

In 2021, the problem of access to medical services, the number of medical staff, remains a problem<sup>113</sup> as well as qualification, proper production of medical documentation, protection of medical confidentiality,<sup>114</sup> timely medical referral, situation in terms of psychiatric health and preventive healthcare.

### *Number and availability of medical staff*

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<sup>109</sup> Recommendations of the Subcommittee on Torture Prevention to the Coronavirus Pandemic for States Parties and National Preventive Mechanisms (adopted March 25, 2020), Subparagraph 9 (j).

<sup>110</sup> In the facility №17 large, multi-person cells still remain.

<sup>111</sup> Most of the convicts are not provided with 4 sq.m. living area. According to the second part of Article 15 of the Law of Georgia "Imprisonment Code", the living space for 1 convict in the medical institution of accused/convicts and in the penitentiary institution should not be Less than 4 sq.m..

<sup>112</sup> Preparedness, prevention and control of COVID-19 in prisons and other places of detention (Interim guidance), WHO, February 2020, p. 11. See. Link <<https://bit.ly/3Blq3cj>> [Last viewed: 14.02.2022].

<sup>113</sup> The European Committee for the Prevention of Torture (CPT), in a report on a visit to Greece in 2007, indicated that no more than 300 prisoners should be allowed per doctor and 50 per nurse. In Georgia, the ratio of prisoners to nurses in large penitentiaries is high and, consequently, it is necessary to add secondary medical staff.

<sup>114</sup> During the visits, the prisoners again talked about the problem of the non-medical staff attending the meeting with the doctor.

For timely medical care, it is important that institutions provide access to primary health care. After the study conducted in 2016-2017, the number of prisoners who received first aid in half an hour or faster has increased.<sup>115</sup> A study conducted in 2021 showed that the number of prisoners with a waiting period of half an hour or less has decreased since March 2021.<sup>116</sup> This issue, like in previous years, is very problematic in closed type institutions, because in addition to the great demand, the prisoner is taken by the employee of the institution to a doctor,<sup>117</sup> which increases the waiting time. As for the semi-open institutions, here the prisoners go to the doctor themselves, but they have to wait because of the queues. The problem is exacerbated by the reduction in the number of medical staff. As a result of the reorganization<sup>118</sup> carried out in 2019-2020 and the introduction of special conditions<sup>119</sup>, the number of medical staff was reduced. Reducing medical staff and vacant positions<sup>120</sup> affect the delivery of timely and adequate medical care.

Timely referral to specialists is important for receiving timely and adequate medical care. It is noteworthy that from March 2021, visits of specialists to the institutions were resumed. According to the survey, if by March 2021, before the cessation of specialist visits, specialist consultation was available to 60.3% of prisoners within a few days of making appointment, after the resumption of consultations, from March 2021, the number of such prisoners was reduced to 48.9%. The number of patients waiting two months or more for specialist consultation has doubled and their number has increased from 3.9% to 8.1%. Here, it should be noted that as a result of checking the relevant documentation, it was found that there are cases when the patient has to wait 1 month or more to receive a consultation. It is important to make sure that the visits to specialists are regular and that the waiting time for patients does not exceed 2 weeks. When talking about specialists, it is important to mention the issue of gynecologist services in №5 facility. The facility is staffed by a gynecologist who is male and female inmates are not allowed to choose a specialist of the same sex. Because of this, some of the prisoners refused to receive this service.<sup>121</sup> It is important that the services of a female gynecologist are provided in №5 facility and that patients choose for themselves the sex of the specialist they will consult.<sup>122</sup>

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<sup>115</sup> Nearly half (48%) of prisoners surveyed indicated that they received this type of assistance within half an hour or less from their request; "The Impact of Prison Conditions on Prisoners' Health" p. 110, see the link <<https://bit.ly/3s3OmZv>> [Last viewed: 14.12.2021].

<sup>116</sup> It should also be noted that the waiting period for this type of medical service increased at the expense of closed type institutions, the number of inmates receiving first aid in half an hour or less reduced from 89.7% to 75.8% and the number of inmates receiving first aid in 6 hours or more raised to 6.1%. The time spent receiving care at the medical facilities of a semi-open penitentiary facility was virtually unchanged during the COVID-19 pandemic.

<sup>117</sup> The lack of staff in the institution and the busy work schedule affect the timely delivery of the patient to the doctor. In addition to taking them to the doctor, the staff of the institution take the prisoners for a walk, to the bathroom, attends the distribution of food, etc.

<sup>118</sup> Following the reorganization of the medical department in 2019-2020, 113 medical workers were dismissed from penitentiary institutions.

<sup>119</sup> In 2020, due to regulations related to the Covid-19 pandemic, medical staff in penitentiary institutions were banned from working part-time in the civil sector, leading to a reduction in the number of physicians in the system and forcing the remaining nurses to perform additional duties.

<sup>120</sup> There were vacancies in the institutions at the time of the visit for the following positions: № 3 vacancies for family doctor in the institution; № 1 vacancy for a doctor on duty, 1 - for a daytime doctor and 1 - for a daytime nurse in 5 institutions; in № 8 institution there were vacancies for 2 family doctors and 1 psychiatrist; in №14 institution there were vacancies for 3 family doctors and 1 daytime nurse vacancy; In №17 facility there were 2 vacancies for daytime doctor and 1 vacancy for daytime nurse.

<sup>121</sup> The study showed that if the problem of access to gynecological services before the COVID-19 pandemic ("not accessible" and "more inaccessible than accessible") was indicated by 9% of women prisoners, during the Covid-19 pandemic (March 2020 to 2021) their number increased to 13.9%, and after March 2021 - reached 16.5%.

<sup>122</sup> According to Bangkok rules, if a female prisoner requests to be examined or treated by a female doctor or nurse, she should, if possible, be assigned a female doctor or nurse, except in situations where urgent medical intervention is necessary.

From March 2021, the implementation of planned outpatient and inpatient medical referrals in civilian medical institutions was resumed. The monitoring revealed that due to the overload caused by the suspension of the electronic referral with the electronic database, the deadlines of the medical referral were violated.<sup>123</sup> This is especially problematic for prisoners in institutions in eastern Georgia. Also noteworthy are the cases of delayed urgent transfer, which, in some cases, took 1 month or more. In addition, there have been cases where patients have been waiting for a medical referral for not only a few months but for more than a year.<sup>124</sup> One of the obstacles to the implementation of planned outpatient and inpatient medical referrals in medical institutions of the civil sector is the problem of escorting. According to the information received, due to the increased number of accused/convicted persons to be taken to medical institutions and hospitalized, as well as due to Covid regulations, the escort service does not have sufficient human resources to carry out the transfers.<sup>125</sup> As of March 9, 2022, 1927 defendants/convicts were awaiting referral to the Civil Sector Clinic.<sup>126</sup>

In parallel with the systemic shortcomings of the health care system in the penitentiary system, the Public Defender's Office has studied a number of cases where the fact of delayed or inadequate medical care for specific prisoners has been confirmed. Over the years, appeals from the penitentiary system have been about delayed or substandard medical care. The situation has not changed in 2021 either and a significant part of the prisoners' appeals are still focused on health issues. For example, in 2020, 386 appeals submitted to the Public Defender's Office, and in 2021 - 408 appeals were related to prisoners' health issues.

#### Confidentiality and production of medical documentation

The patient who comes to the doctor often faces the problem of confidentiality, because the employee of the institution is either in the doctor's room or stands at the door and observes the process, and can listen to the conversation. This problem is especially critical in special risk institutions. It should be noted that the primary health care rooms of №6 and №3 facilities have an electronic surveillance system, therefore, the process can be observed in this way.

Comprehensive production of medical documentation remains a problem,<sup>127</sup> which is important in terms of uninterrupted medical services. Inconsistency of medical records and lack of information on treatment outcomes make it difficult to assess treatment adequacy. The overloaded work schedule of the medical staff also affected the production of medical records. Medical records for the most part did

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United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Article 10.

<sup>123</sup> Order approved by the Order №381 of the Minister of Justice of Georgia of February 15, 2019 on approving the standards of medical care in the penitentiary institution, additional standards of medical care for people with special needs, the package of preventive services in the penitentiary institution and the list of basic medicines in the penitentiary system. "The waiting period of the accused/convict for planned services, based on medical needs, is determined a reasonable period, which should not exceed 4 months for planned inpatient services and 1 month for planned outpatient services."

<sup>124</sup> For example, regarding the convicted A.O., the Special Penitentiary Service informed the Public Defender's Office that on the basis of the spine-related complaints, on 19 May and 9 July 2021, a neurologist examined him and gave him a recommendation to perform a computed tomography of the spine. The patient was registered in the medical referral program and his serial number was 1149 at the end of September 2021. 1503rd was convicted A.P. as of June 9, 2021, whose registration in the referral electronic program took place on May 21, 2021. Similar was the case of the accused D.P., who was diagnosed on May 26, 2021 with headache, neuroticism, and was recommended an ultrasonography examination of the thyroid gland, as well as a computed tomographic examination of the brain. The request was registered in the electronic referral program on May 28, 2021 and as of June 10 its serial number was - 1546.

<sup>125</sup> Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia, March 1, 2022 №57826/01.

<sup>126</sup> Letter №65029/01 of March 9, 2022 of the Special Penitentiary Department of the Ministry of Justice of Georgia.

<sup>127</sup> Deficiencies were found in the production of the cards, namely, the cards do not contain medical notes and where they are, do not indicate the prescriptions, diagnoses and treatment results.

not contain the doctors records of the patient's state of health and services provided in recent months. Because of the gaps in the outpatient medical records, it is difficult to objectively assess how an inmate's health status has changed over the years. The Public Defender's 2020 Parliamentary Report emphasizes the importance of introducing an electronic information system that largely eliminates the problems associated with the production of medical records and ensures the collection, active exchange and access to reliable and complete medical information for the examination, treatment and further analysis of patients, although no changes have been made in this regard.

It should be noted that civilian inpatient and outpatient medical facilities are required to provide information on the health status of all identified patients and medical services provided through the Electronic Health Records (EHR) system.<sup>128</sup> Because patients receive outpatient care in an inpatient setting at the penitentiary institutions, it is important that their health information is entered into an electronic record system (EHR) to help systematize the information.

### Mental health

Managing mental health problems remains a significant challenge for the penitentiary health care system. In order for a patient to receive adequate psychiatric care, it is important to refer him or her to a psychiatrist in a timely manner, which remains a problem. Mental health screening is still done only once, at the initial placement, with a tool integrated in the medical card.<sup>129</sup> A one-time completion of this questionnaire is insufficient, as deprivation of liberty for the individual is in itself a massive psycho-trauma that may contribute to the detection or decompensation of mental health problems. Early diagnosis and preventive approach, which is relevant in disease management and prevention, are of particular importance in the mental health care of prisoners in the penitentiary system. Therefore, it is important to develop and implement a screening tool that will be used not only to place a prisoner in a facility but also to assess the patient periodically while in the facility.

During the stay in the institution, the prisoner is referred to a psychiatrist by a family doctor, a doctor on duty and, in rare cases, a psychologist. Family doctors do not have the tools to objectively assess the mental health status of prisoners and only refer them to a psychiatrist if they have severe, clearly visible symptoms. In the reports of the National Preventive Mechanism<sup>130</sup> special mention is made of the need for family doctors to introduce the tool needed to objectively assess the mental health of prisoners.

Psychiatric care in institutions is not in line with the modern biopsychosocial approach and principles of evidence-based health care. Restricted to psychiatrist consultation only and with no multidisciplinary work, it is important that the psychologist and social worker be involved in the psychiatric assessment process and management, and this requires expanding communication between the psychiatrist and the institution's social service. The Public Defender addressed a recommendation to the Minister of Justice,<sup>131</sup> with the purpose to provide a normative level of basics of psychiatric care outlining the functions and responsibilities of each member of the multidisciplinary team in detail, although the recommendation has not been implemented.

Although some prisoners with mental health problems receive inpatient psychiatric care, the majority of inmates with mental health problems remain in penitentiaries. Inmates who received psychiatric care in a psychiatric hospital return to penitentiaries after overcoming the aggravation period and stabilizing

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<sup>128</sup> Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of January 3, 2019 "On Determining the Functioning and Procedure of the Electronic Health Record System (EHR)".

<sup>129</sup> The tool includes questions about psychiatric history, suicide, stress, addiction to psychoactive substances, traumatic experiences, and the need to consult a psychiatrist or other specialist.

<sup>130</sup> Annual Report of National Preventive Mechanism 2020. See. Link <<https://bit.ly/3dFrMOq>> [Last viewed: 10.12.2021].

<sup>131</sup> Annual Report of National Preventive Mechanism 2020. See. Link <<https://bit.ly/3dFrMOq>> [Last viewed: 10.12.2021].



their condition, where there are no support services and a supportive environment, thus increasing the risk of aggravating mental health problems again. It should also be noted that the issue of timely transfer to a psychiatric hospital is also problematic, which is related to the timely conduct of the examination. For example, in one of the institutions, the convict had returned from the National Center for Mental Health for 2 months, but still needed inpatient psychiatric care. The convict was placed separately and awaiting a psychiatric examination.

Psychiatric crisis management skills and verbal methods of de-escalation are not possessed by staff and medical personnel of penitentiary institutions. In the event of a crisis in a semi-open facility, the patient is urgently transferred to the psychiatric ward of the №18 facility. As for closed institutions, the practice of placing patients with mental health problems in the de-escalation room is still actively used here.<sup>132</sup> According to the Public Defender, prolonged placement in a de-escalation room without psychiatric assistance is inhuman and degrading treatment and this practice should be eliminated immediately.

In the establishments, in the absence of a psychosocial component, psychiatric care is limited to medical treatment only. Examination of medical records has shown that often benzodiazepine drugs are prescribed for a long time. Their prolonged intake causes addiction and is characterized by side effects. It is also important to mention forcible use of Tisercin and Cordiamine injections with an anxious patient. In accordance with the Law of Georgia on Patients' Rights, the precondition for the provision of medical services is the consent of the patient.<sup>133</sup> Medical intervention against the will of the patient is also prohibited by the Law of Georgia on Mental Health.<sup>134</sup> Therefore, it is illegal to make a prisoner undergo compulsory medical intervention in this situation. In addition, forcing medication to control a patient's behavior is interpreted as a chemical restraint.<sup>135</sup> Chemical restraint, without proper legal basis<sup>136</sup> and guarantees, poses a real risk of inhuman and degrading treatment.<sup>137</sup>

## **2.6. Contact with the outside world**

Prisoners should as often as possible be given the opportunity to make contact with the outside world, including sending letters, making phone calls, meeting family members. Any restrictions in this regard must be necessary, least restrictive and as short-term as possible.<sup>138</sup>

During the year, special conditions were still in effect in the penitentiary system, although they were gradually being alleviated. Prisoners have been given the opportunity of short appointments since

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<sup>132</sup> For example, in №8 facility, one of the prisoners returning from a psychiatric hospital was placed in a de-escalation room several times. One of the inmates in the facility №9, who had mental health problems, was placed in a de-escalation room several times.

<sup>133</sup> Law of Georgia on Patient Rights. Article 22, paragraph 1.

<sup>134</sup> Law of Georgia on Mental Health. Article 15, paragraph 2.

<sup>135</sup> The European Committee for the Prevention of Torture's Means of restraint in psychiatric establishments for adults is available at: <<https://rm.coe.int/16807001c3>> [last viewed 13.1. 2021].

<sup>136</sup> Article 16 of the Law of Georgia on Mental Health does not consider chemical restraint as a permitted method.

<sup>137</sup> In the practice of the European Court of Human Rights, when patient restraint is used as an extreme remedy, sufficient evidence must be shown that the requirements of extreme necessity and equity have been met and all other reasonable alternatives have failed to meet the risk of self-harm or harm to others. It should also be shown that the coercive measure did not last longer than the period that was strictly necessary to achieve the goal. Patients against whom a restriction measure has been applied should be subject to strict supervision and each use of the restrictive measure should be properly documented. Otherwise, the practice of restriction violates Article 3 of the European Convention. See CASE OF AGGERHOLM v. DENMARK Application no. 45439/18, para 79-116. Available at: <<https://hudoc.echr.coe.int/eng?i=001-204602>> [Last viewed: 14.12.2021].

<sup>138</sup> European Prison Rules 24.1.

February 1, 2021,<sup>139</sup> long visits have been resumed since September 29, 2021.<sup>140</sup> Family dates remain limited to this day. Despite the gradual easing, prisoners continue to indicate that overall, their **contact with the outside world, under the influence of the pandemic, has worsened** in 2021 as well. A 2021 Health and Health Care Survey of Prisoners found that for 20 percent of the 515 inmates surveyed terms of short appointments were still deteriorating. The study also showed that 6% of prisoners could no longer feel support from the families due to the pandemic. It is noteworthy that 12 percent of the interviewed prisoners do not have an opportunity to contact a family member at all. Inability to contact a family member is caused equally by high tariffs, living away from family, and limitations due to investigative interests.

Prisoners in various institutions reported that for more than a year a family member had not visited them and were only using telephone communication. Prisoners refer to various factors as the reason, the most common of which are the problem of public transport and the inconvenience caused by the glass barrier. In addition to the glass barrier, contact with family members in the penitentiary institution №6 is complicated by the iron net, due to which prisoners and family members can hardly see each other.

With the restrictions on family and long visits were also severely affected female convicts in facility №5. 1 occasion was detected in facility №5 when a female convict was taken to a 2-week quarantine area after her child, who had arrived on a date, went past a glass barrier and hugged mother. In 1 case, a female convict was taken to a quarantine area for touching a clergyman.

COVID-19 Restrictions, including Restrictions on visits, must be well explained to prisoners in advance and be offered alternative ways - remote communication.<sup>141</sup> Against the background of more or less rational restrictions caused by the epidemiological situation, **the compensatory measures of restrictions in 2021 were practically not implemented**. Prisoners say they got a 15-minute free phone talk time just once in 2021, in connection with St. Mary's Day. Apart from this, no other compensatory measures were taken. During a visit to №8 and №6 facilities, it was revealed that not all prisoners were able to enjoy the free telephone time and some did not receive anything on their telephone balance. It is unfortunate that the number of cases of giving additional telephone calls as incentives has decreased in the institutions compared to previous years.<sup>142</sup>

The European Committee for the Prevention of Torture in its 30th General Report calls on member states to pay special attention to ensuring that prisoners in the pandemic can maintain contact with family members. The report reveals that the negative economic consequences caused by the pandemic have affected the economic situation of prisoners' family members and, consequently, the situation of prisoners who are financially dependent on their family members. As a result, prisoners may find it difficult to pay telephone bills and face obstacles in maintaining contact. The European Committee for

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<sup>139</sup> Order №760 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia of January 27, 2021 on the introduction of special conditions in penitentiary institutions Amending the Order №4109 of the Director General of the Special Penitentiary Service of March 5, 2020“.

<sup>140</sup> Order №14581 of the Director General of the Special Penitentiary Service of the Ministry of Justice of Georgia of September 29, 2021 on the introduction of special conditions in penitentiary institutions, amending the order of the Director General of the Special Penitentiary Service № 4109 of March 5, 2020.

<sup>141</sup> European Committee for the Prevention of Torture „Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic“, para. 7. Available at <<https://rm.coe.int/16809cfa4b>>, [Last viewed: 05.11.2021]. See also: WHO Regional Office for Europe „Preparedness, prevention and control of COVID-19 in prisons and other places of detention“, Interim guidance. February 8, 2021. P. 11. Available at: <<https://bit.ly/3FTPVg0>> [Last viewed: 08.11.2021].

<sup>142</sup> For example, in January 2021, when short appointments were suspended, the incentive in the form of additional telephone conversations was used 29 times, and in January 2019 - 45 times.

the Prevention of Torture calls on the Member States to take positive steps to ensure that all prisoners are able to make regular telephone calls and make appointments.<sup>143</sup>

The Public Defender's 2020 report specifically referred to measures to compensate for pandemic restrictions and to offer alternative ways by using modern technology.<sup>144</sup> Unfortunately, neither in 2021 the recommendations of the Public Defender have been taken into account, neither at the normative level nor in practice. The UN Subcommittee on Prevention of Torture regrets in its updated recommendations that Member States have made inadequate use of modern means of communication to compensate for restrictions.<sup>145</sup> The Code on Imprisonment still does not allow for the possibility of replacing long appointments or family appointments with other means of contact. Prisoners in special-risk penitentiaries are still unable to access video conferencing. Video conferencing infrastructure is not available in facilities №2, №10, №12 and №18, where according to the Code on Imprisonment, the use of video conferencing is allowed. The rules of video conferencing have not changed and family members of prisoners have to report to a territorial unit of the Non-custodial Penalties and Probation National Agency.<sup>146</sup>

In closed and special risk facilities, prisoners may not even be able to use their own phone limit and short appointments. Reportedly, there are frequent cases when staff is unable to take out prisoners from the cell. As a solution, they use so-called "Paika", which means the use of unused talk time at once, at the end of the month, although there are cases when this also fails. The Special Preventive Group again received reports of unauthorized use of a prisoner's telephone code by other prisoners.<sup>147</sup>

During a visit to №8 facility, a special preventive team observed a conversation between the facility staff and the accused, during which the prisoner asked the staff member to allow him to use his 4th appointment, as for several months he had only 3 appointments per month. The Public Defender calls on the Penitentiary Service to investigate the existing problems in terms of telephone calls and appointments and to respond in a timely manner.

It is still problematic to conduct **telephone conversations in a confidential environment**. Prisoners point out that it is virtually impossible to have a confidential telephone conversation in the facilities, either an employee or another prisoner is listening. The infrastructure of the facilities is arranged in such a way that the telephone is either in a duty room or in the booth from which the sound is heard.

**Restriction of contact with the outside world in the form of a disciplinary sanction** still remains a problem in penitentiary institutions in 2021. International standards consider it inadmissible to restrict a prisoner's contact with the outside world as a disciplinary sanction.<sup>148</sup> The inadmissibility of the practice is also indicated in the report of the European Committee for the Prevention of Torture

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<sup>143</sup> 30th General Report of the European Committee for the Prevention of Torture. Para. 81. Available: <<https://rm.coe.int/1680a25e6b>>, [Last viewed: 08.11.2021]. The same report positively assesses the actions of states that, in the face of the economic hardship caused by the pandemic, have granted incentives to prisoners's family members to use transport so that they can visit penitentiary institutions.

<sup>144</sup> See National Preventive Mechanism 2020 Report. P. 71-76. Available: <<https://bit.ly/35aU8iD>>, [Last viewed: 05.11.2021].

<sup>145</sup> See Status of implementation of recommendations made during the COVID-19 pandemic to member states and National Preventive Mechanisms by the UN Subcommittee on Prevention of Torture. Para. 13 (e), available <<https://undocs.org/CAT/OP/12>> [Last viewed: 09.12.2021].

<sup>146</sup> Part 3 of Article 171 of the Imprisonment Code and Order №55 of the Minister of Corrections of Georgia of April 5, 2011 "On Approval of the Rules for the Use of Video Appointments with Convicts".

<sup>147</sup> Prisoners have also expressed concern about this problem in previous years.

<sup>148</sup> Nelson Mandela Rules 43.3.

following its visit to Georgia in 2018.<sup>149</sup> In 2021, a total of 673 restrictions on the right to telephone communication, correspondence and short-term appointments were used, of which 629 times the right to telephone conversation was restricted.<sup>150</sup> In this respect, compared to last year, the situation has not improved,<sup>151</sup> no steps have been taken to eliminate this practice, the context of the pandemic is still not considered, when the main means for prisoners to maintain contact with family members is by telephone. In addition to restricting contact with the outside world as a disciplinary measure, inmates are subject to these restrictions when using security measures such as de-escalation rooms and solitary confinement.

The problem is even more acute in high-risk penitentiaries, where convicts already have limited access to the outside world.<sup>152</sup> The Special Preventive Group received information that prisoners in №3 and №6 penitentiaries were subject to disciplinary sanctions of restricting the right to telephone conversations, and in most cases the duration of the restriction was 2 months.<sup>153</sup> Practice has also been documented and it has been found that by 2021 a number of inmates have been restricted to telephone conversations twice or more. In addition, in some cases, the interval between restrictions was several days and prisoners had virtually 4 months restricted from family contact. Although the requirement of the law not to restrict simultaneously all means of communication was not formally violated,<sup>154</sup> even if only the right to telephone conversations were restricted, prisoners might still find themselves in complete and prolonged isolation from the outside world. This is due to the fact that prisoners rarely have the opportunity to be visited<sup>155</sup> and the problem of reaching the recipient of the correspondence remains unresolved. In particular, the prisoners talked about the missing letters, blaming both the penitentiary institution and the Georgian Post.<sup>156</sup>

It should be noted that in order to improve the prisoners' contact with the outside world, the Public Defender filed several lawsuits with the Constitutional Court in 2021, claiming the inconsistency of the norms of the Imprisonment Code and the regulations of penitentiary institutions with the Constitution

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<sup>149</sup> Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT / Inf (2019) 16), para. 100, Visit of September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [Last viewed: 03.11.21]. See also the report of the UN Subcommittee on Prevention of Torture following its visit to Switzerland on 27 January 2019 - 7 February 2019. Para. 94. Available <<https://bit.ly/3pSf44A>> [Last viewed: 03.11.2021].

<sup>150</sup> Criminal statistical data of the National Statistics Office of Georgia for 2021. Available at: <<https://bit.ly/348Bvfd>> [Last viewed: 01.02.2022].

<sup>151</sup> Restrictions on the right to telephone conversations as a disciplinary sanction were used a total of 467 times between January and November 2020.

<sup>152</sup> According to Article 663 of the Imprisonment Code, a convict in a special-risk penitentiary institution has the right to have 1 short appointment per month, 2 telephone conversations per month for no more than 15 minutes and 1 long appointment per year. The Imprisonment Code also prohibits the use of vide conferencing in the Special Risk Detention Facility (Article 171 of the Imprisonment Code).

<sup>153</sup> So, for example, as of September 2, 2021, a 2-month telephone conversation restriction was applied in 41 cases in №6 penitentiary institutions.

<sup>154</sup> Article 82, part 5 of the Imprisonment Code prohibits the simultaneous restriction of telephone conversations, personal correspondence and short appointments in the form of disciplinary sanctions.

<sup>155</sup> Added to this is the fact that prisoners may have been serving their sentences in a penitentiary facility away from their family home. For example, the families of 17 convicts in facility №3 in Batumi live in eastern Georgia. Of these, 10 inmates were restricted from using the telephone at least once during the year.

<sup>156</sup> In 2021, the Office of the Public Defender reviewed a number of statements in which prisoners indicated violations of their right to personal correspondence. In several cases, based on an appeal by the Public Defender, the Monitoring Department of the Special Penitentiary Service confirmed the violation. For example, it was found that in №6 facility a social worker did not register or send 2 letters sent by a particular prisoner. In one case, an employee of №8 did not fully provide the lawyer with the documents provided by the accused. For more information, see the 2021 Report on the Activities of the Public Defender's Department of Criminal Justice. P. 108. Available: <https://www.ombudsman.ge/res/docs/2022040420075286303.pdf>, [Last viewed: 11.04.2022].

of Georgia, such as the blanket ban on the use of video visits for convicts in a special risk facility,<sup>157</sup> prolonged and imperative restriction of video dating for the accused,<sup>158</sup> as well as restricting contact with the outside world for the prisoner in the form of a disciplinary sanction<sup>159</sup> and restriction of short visits for a defendant sentenced to detention on the basis of a decision of a prosecutor or investigator.<sup>160</sup>

## 2.7. Complaint mechanisms

An effective inspection and complaint procedure is a fundamental guarantee of protection against ill-treatment in prisons.<sup>161</sup> Prisoners should have the opportunity to file a complaint, both within and outside the system of the penitentiary institution, including the possibility of contacting the relevant authorities in confidence.<sup>162</sup> Monitoring in 2021 again revealed that the realization of the right of prisoners to appeal, in addition to the criminal subculture, is hindered by the administrations of penitentiary institutions.

A step forward is the decision of the Constitutional Court of Georgia of July 5, 2021, where the court upheld the Public Defender's claim and found that the provisions of the Imprisonment Code, which visually restricted the right of the defendant/convict to connect to the hotline of the Public Defender during disciplinary action and solitary confinement.<sup>163</sup> Nevertheless, **in penitentiary institutions, prisoners face numerous obstacles in terms of contacting the Public Defender and inspection bodies.** It is noteworthy that during 2021, out of 1937 appeals received by the Public Defender's Office (October data) about prisoners in penitentiary institutions, a phone call from the detainee's family member or third party was received in 297 cases, indicating that the prisoner could not contact the Public Defender directly. In addition, according to the information available to the Public Defender, prisoners in closed institutions face obstacles in contacting the inspection bodies; in particular, there are likely cases when a prisoner's phone card is blocked in a way that it cannot call the hotline numbers of the inspection bodies and the Public Defender and prisoners are unable to contact. Representatives of the Public Defender also checked in the facility №3 that it was not possible to call the hotline from the card of a particular prisoner. According to the information received, in №6 facility, in case of contact with the Public Defender, the prisoners are ready for the expected repressions and discomfort. As the means of repression restriction of contact or sudden enter into a cell and conducting a search are mainly used, which is likely to serve as a demonstration of force by staff and intimidation of a prisoner. Prisoners often face threats and intimidation over appeals and phone calls to the ombudsman.<sup>164</sup>

As for written complaints, under the influence of the criminal subculture, convicts in semi-open institutions still refrain from sending complaints. They note that the complaint is unacceptable and the problems should be resolved on the spot. In №17 Establishment they noted that if a watcher hears that someone is going to write a complaint, they will go to the building and explain that the complaint is unacceptable. Another prisoner says he has had health problems for a long time but can not tell the

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<sup>157</sup> Constitutional lawsuit №1602 of the Public Defender of Georgia of July 22, 2021. available at: <<https://constcourt.ge/ka/judicial-acts?legal=11336>> [Last viewed: 13.02.2022].

<sup>158</sup> Constitutional lawsuit №1603 of the Public Defender of Georgia of May 20, 2021, available at: <<https://constcourt.ge/ka/judicial-acts?legal=11338>> [Last viewed: 13.02.2022].

<sup>159</sup> Constitutional lawsuit №1633 of the Public Defender of Georgia of July 22, 2021, available at: <<https://constcourt.ge/ka/judicial-acts?legal=11961>> [Last viewed: 13.02.2022].

<sup>160</sup> Constitutional lawsuit №1632 of the Public Defender of Georgia of July 22 22, 2021, available at: <<https://constcourt.ge/ka/judicial-acts?legal=11960>> [Last viewed: 13.02.2022].

<sup>161</sup> Excerpt from the 27th General Report of the European Committee for the Prevention of Torture. Section: 1/8 | 19/04/2018. Available at the following address: <<https://rm.coe.int/16807bc668>> [Last viewed: 03.01.2022].

<sup>162</sup> European Committee for the Prevention of Torture, Standards, para. 54, p. 2.

<sup>163</sup> Decision №1/3/1441 of the First Panel of the Constitutional Court of Georgia of July 5, 2021, available at: <<https://bit.ly/3fVTxUd>> [Last viewed: 03.11.2021].

<sup>164</sup> See Chapter on Staff Violence Against Prisoners.

director because he is afraid of repressions. Complaint boxes, through surveillance cameras, still allow the identity of the complainant to be identified.<sup>165</sup> In addition, receiving envelopes of confidential complaints depends on the employee of the institution. Requesting a confidential envelope from an employee, in itself, implies that the prisoner intends to write a complaint. While the content of the grievance will remain unknown to the institution, even the fact that the complaint itself was written may pose a problem for the prisoner and therefore prevent him from requesting and sending a confidential grievance envelope.

**In closed and special risk facilities, complaints and letters are lost and some prisoners do not have the means to write a complaint.** A special preventive team learned from the inmates that only complaints that were not related to the facility would be sent. In one of the institutions, the prisoner stated that the complaints were being shredded/blocked, and among them one of the managers of the institution tore his complaint, which was to be sent to the Public Defender.<sup>166</sup> Prisoners say that if they want to reassess or maintain the risk, they should refrain from writing complaints and calling the ombudsman's office, as they may be transferred from a semi-open facility to a closed facility or from a closed risk facility to a special risk facility.

Monitoring conducted in 2021 reveals that prisoners face many obstacles in terms of contact with the outside world, which has been exacerbated by the pandemic. No steps have been taken to mitigate the impact of the pandemic and no compensatory measures have been taken to contact the outside world. Restrictions on contact with the outside world in the form of disciplinary sanctions further aggravate the situation of prisoners. Non-confidential telephone conversations, censorship of complaints and fear of repression prevent prisoners from having a voice in the outside world, which is the most important guarantee of protection from ill-treatment.<sup>167</sup>

## **2.8. Conditions of Imprisonment**

### **2.8.1. Living Conditions**

Against the background of the COVID-19 pandemic, the improvement of living conditions in penitentiary institutions is becoming even more important. In 2021, some steps were taken in penitentiary institutions to improve the physical environment and sanitary-hygienic condition<sup>168</sup>, However, as in previous years, the living conditions of prisoners have not changed substantially this time either.

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<sup>165</sup> During 2021, the function of social worker on residential buildings is again carried out by the security officer of the institution, which is another obstacle to sending complaints confidentially.

<sup>166</sup> Also, one inmate stated that he was not allowed to put a letter in the complaint box while walking. In №6, one inmate stated that he had sent a letter to the inspector, because of which they restricting contact. Then they lost the confidential envelope to be sent to the Public Defender.

<sup>167</sup> European Committee for the Prevention of Torture, Standards, para. 54. Available at: <<https://rm.coe.int/16806ce96b>>, [Last viewed: 05.03.2021].

<sup>168</sup> On December 3, 2021, by the letter №290832 / 01 from the Special Penitentiary Service of the Ministry of Justice of Georgia, we were informed that: new sports fields have been arranged in №5, №14, №15 and №17 penitentiary institutions; repairs were carried out in cells of №2, №5 and №10 penitentiaries; bathrooms were repaired in № 2 penitentiary institutions; toilets in cells were renovated in № 8 penitentiary institution; shower rooms were renovated in №15 penitentiary institution.

In 2021, there was still the problem of overcrowding in both semi-open and closed-type large penitentiaries such as №15<sup>169</sup> and №8<sup>170</sup> penitentiary institutions. Unfortunately, the so-called barrack type dormitories have not been abolished in №17 penitentiary institution, where it is impossible to observe sanitary-hygienic conditions, and most of the convicts are not provided with 4 sq.m. personal living space, which in itself is a challenge from an epidemiological point of view.<sup>171</sup>

During the reporting period, the sanitary-hygienic conditions<sup>172</sup>, ventilation<sup>173</sup>, lighting in the cells<sup>174</sup> and provision for all convicts minimum area of 4 sq.m. determined by Article 15 of the Imprisonment Code<sup>175</sup> were still problematic in the penitentiary institutions. Also, the proposal given in several reports of the Public Defender regarding the definition of 4 sq.m. as the minimum living space of the accused is still unfulfilled.

Reconstruction-rehabilitation works of the penitentiary institution located in Laituri, Ozurgeti district, started in July 2020, the completion of which is planned for the summer of 2022.<sup>176</sup> According to the summary report of the Special Penitentiary Service in 2020, Laituri Mixed Risk Penitentiary Institution will be the first prison in Georgia, which with its infrastructural capabilities will fully serve the purpose of re-socialization-rehabilitation. According to the same report, the implementation of infrastructure projects is planned in the future - it is planned to build several new, small (600-700 convicts) closed type penitentiary facilities in accordance with modern European standards, which will create appropriate conditions for achieving the goal of re-socialization and rehabilitation.

We believe that it is necessary to take measures to establish such small and balanced penitentiary institutions based on the principle of normalization<sup>177</sup>, which will provide the necessary environment for the rehabilitation and resocialization of prisoners. In addition, it is important that the Public Defender

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<sup>169</sup> Limit for accommodation of prisoners in №15 penitentiary institution is 1,388; the number of prisoners exceeded the established limit for each month of 2021, in particular, the monthly number of prisoners in №15 penitentiary institution was as follows: January - 1 840, February - 1 802, March - 1 829, April - 1 769, May - 1 822, June - 1 831, July - 1 958, August - 1 954, September - 1 911, October - 1 874, November - 1 885, December - 1 841. Information is available at the following address: <[https://www.geostat.ge/media/42960/danarti\\_dekemberi\\_2021.pdf](https://www.geostat.ge/media/42960/danarti_dekemberi_2021.pdf)> [Last viewed: 14.02.2022]. **Error! Hyperlink reference not valid.**

<sup>170</sup> Limit for placement of prisoners in № 8 penitentiary institution is 2 426; The number of prisoners exceeded the established limit for each month of 2021, in particular, the monthly number of prisoners in №8 penitentiary institution was as follows: January - 2 613, February - 2 710, March - 2 706, April - 2 788, May - 2 821, June - 2 843, July - 2 723, August - 2 727, September - 2 725, October - 2 728, November - 2 733, December - 2 658; Information is available at the following address: <[https://www.geostat.ge/media/42960/danarti\\_dekemberi\\_2021.pdf](https://www.geostat.ge/media/42960/danarti_dekemberi_2021.pdf)> [Last viewed: 14.02.2022].

<sup>171</sup> Due to the large number of convicts and the inability to properly ventilate, the air is saturated with tobacco smoke; in such conditions it is difficult to maintain sanitary-hygienic conditions and the risk of spreading infectious diseases is high.

<sup>172</sup> The sanitary-hygienic condition in №8 and №17 penitentiaries, where cockroaches are spread, is not satisfactory. The cells of the internal classification of №8 institution are partially covered with soil, humidity is observed in the cells. Humidity is observed in the so-called safe and solitary cells and in the corridor due to water supply malfunctions in №8 facility.

<sup>173</sup> In residential parts and so-called safe cells of №8 and №6 facilities artificial ventilation is not sufficient. In solitary confinement cells and internal classification cells of the same facility as well as in residential cells in №17 facility, artificial ventilation is not available at all and it is also not sufficient in №2 facility residential, internal classification, solitary confinement cells and showers. The windows can not be opened in the de-escalation rooms of №2, №3, №6, №8, therefore, natural ventilation is not available for prisoners.

<sup>174</sup> In the residential cells of №3 institution, as well as in the cells of the internal classification of institutions №2 and №8, the so-called safe and solitary cells, natural light is not enough.

<sup>175</sup> №2, №8, №14, №15 and №17 institutions.

<sup>176</sup> Summary Report on the Activities of the Special Penitentiary Service 2020, p. 5 <<https://bit.ly/3IE9fjk>> [Last viewed: 09.12.2021].

<sup>177</sup> In accordance with the principle of normalization, life in prison should be as close as possible to the positive aspects of life in society, European Prison Rules, Part One, Principle 5.

be given the opportunity to study the concept of small institutions prepared by the Ministry and to present the views.

### **2.8.2. Daily schedule and rehabilitation activities**

The existence of a satisfactory program for various activities in the institution (employment, education, sports, etc.) is crucial for the well-being of persons deprived of their liberty. This applies to all types of institutions where defendants/convicts are present. The European Committee for the Prevention of Torture considers that it is essential that prisoners in detention facilities be able to spend a substantial part of the day (8 hours or more) outside a cell and devote this time to a variety of useful activities. In addition, the existing regime in the institutions should be benevolent.<sup>178</sup>

The purpose of treating prisoners in the penitentiary system is to correct and socially rehabilitate them.<sup>179</sup> Rehabilitation-re-socialization of accused/convicts has been a challenge in the penitentiary system for years.<sup>180</sup> Against the background of the epidemic caused by the new coronavirus in Georgia, the measures of resocialization-rehabilitation in the penitentiary system have been further restricted and the current difficult situation has worsened.<sup>181</sup> In its 2020 report, the Public Defender recommended that social workers and psychologists in penitentiaries to adhere to the rules of infection control as much as possible, with the help/support of the relevant services of the institution to ensure new and diverse rehabilitation activities in all penitentiaries. The Public Defender also demanded an increase in the capacity of convicts to be involved in rehabilitation activities. The recommendation was partially implemented.

From the summer of 2021, social workers and psychologists have been allowed in all penitentiaries, which is welcome. In 2021, compared to 2020, there was also a tendency for a slight improvement in the situation in terms of resocialization-rehabilitation. In terms of rehabilitation-resocialization, the situation was still difficult in special risk institutions.<sup>182</sup> Prisoners in closed and special-risk prisons could only not participate in useful and purposeful activities, but were still only allowed to walk for less than an hour.

According to the information provided by the Center for Vocational Training and Retraining of Convicts<sup>183</sup>, in 2021, various vocational education, language, computer training programs and various activities were held in penitentiary institutions.

Georgian, English and Russian language courses were held in №2 penitentiary institution.<sup>184</sup> English language course was held in №3 institution.<sup>185</sup> Various rehabilitation activities were held in №5 penitentiary institution.<sup>186</sup> IT training, English language and vocational orientation courses (for prisoners with life imprisonment) have been introduced in №6 penitentiary institution.<sup>187</sup> Agrarian education courses were held in №8 establishment: beekeeping, fight against desertification,

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<sup>178</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2nd General Report, CPT / Inf (92) 3, Strasbourg, Council of Europe, 1992, paragraph 47.

<sup>179</sup> International Covenant on Civil and Political Rights, Article 10.

<sup>180</sup> See the annual reports of the National Preventive Mechanism, which are available at the following address:

<<https://www.ombudsman.ge/geo/tšliuri-angarishebi>> [Last viewed: 11.11.21]

<sup>181</sup> The 2020 report of the National Preventive Mechanism is available at the following address:

<<https://www.ombudsman.ge/res/docs/202111112020776878.pdf>> [Last viewed: 11.11.21].

<sup>182</sup> Monthly statistics of the National Statistics Office of Georgia for 2021.

<sup>183</sup> Reply № 01/566 03 received on December 3, 2021 on the letter № 03-4/10631 sent on November 8, 2021.

<sup>184</sup> 11 adult and 6 juvenile convicts participated, with 563 convicts in №2 facility at the end of October.

<sup>185</sup> 4 convicts participated, 3 convicts were in №3 facility at the end of October.

<sup>186</sup> For detailed information, see the following chapter: Legal Status of Female Prisoners.

<sup>187</sup> 11 convicts participated; №6 facility had 166 convicts at the end of October.



winemaking, viticulture, plant protection, wheat care and hazelnut care. Also, a professional orientation course (for prisoners with life imprisonment) and a professional course "Small Business Maker" were conducted.<sup>188</sup> 10 convicts participated in the employment program - digitalization. 9 convicts were involved in the agricultural project (employment program); Teleskola (Georgian language course) - all convicts of the institution have access to the channel.

English, Georgian, Russian and German language courses were held in №11 penitentiary institution. As well as courses in general skills, wooden toy making techniques and graphic design.<sup>189</sup> A public meeting was also held with a psychologist, which was attended by 20 convicts.

Graphic design and driving license theoretical course was held in №14 penitentiary institution. Professional course "Small Business Maker" and Georgian language course.<sup>190</sup> Also, an online meeting was held at the Georgian National Museum with the participation of 15 convicts.

Courses in computer graphics, English language, professional orientation (for for prisoners with life imprisonment) and small business making were held in №15 penitentiary institution.<sup>191</sup> The following courses were held in №16 penitentiary institution: German language course; Computer-information literacy; Driving theoretical course; Professional course "Accounting"; English language course; Professional course "Small Business Maker";<sup>192</sup> Also, an online meeting was held at the Telavi Historical Museum with the participation of 50 convicts.

The Public Defender, recommended using alternative opportunities in special conditions in all penitentiary institutions for rehabilitation activities. The recommendation was partially implemented. The Public Defender welcomes the adaptation and remote implementation of some activities by the Center for Vocational Training and Retraining of Convicts in the light of pandemic-induced restrictions. Nevertheless, it should be noted that the measures taken in terms of rehabilitation-resocialization in institutions are still fragmentary and are not implemented in all penitentiary institutions. In addition, the number of prisoners involved in these activities is low. Under Nelson Mandela's rules, the purpose of imprisonment, or the imposition of any similar measure, is ultimately to protect society from crime and reduce recidivism. This goal can only be achieved if the period spent in the penitentiary institution, as far as possible, ensures the reintegration of these persons into society after their release, so that they can live a law-abiding life and ensure their own living.<sup>193</sup> To this end, the institution and other competent authorities shall provide education, vocational training and employment, as well as other available appropriate educational, moral, spiritual, social and health-related and sports assistance. It is essential that all such programs, activities and services be provided to the prisoner according to his or her individual needs.<sup>194</sup>

According to official information received,<sup>195</sup> in 2021, 235 individual sentence plans were developed in penitentiary institutions, which is significantly higher than the data of previous years.<sup>196</sup> However,

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<sup>188</sup> 56 convicts participated; №8 facility had 1,262 convicts at the end of October.

<sup>189</sup> 92 convicts participated; №11 facility had 23 convicts at the end of October.

<sup>190</sup> 44 convicts participated; №14 facility had 2,142 convicts at the end of October.

<sup>191</sup> 18 convicts participated; №15 facility had 1,874 convicts at the end of October.

<sup>192</sup> 137 convicts participated; №16 facility had 3,163 convicts at the end of October.

<sup>193</sup> Nelson Mandela Rules, Rule 4.1.

<sup>194</sup> Nelson Mandela Rules, Rule 4.2.

<sup>195</sup> Special Penitentiary Service Response №276853/0118 November 18, 2021.

№2 penitentiary institution - 10, №3 penitentiary institution - 1, №5 penitentiary institution - 44, №6 penitentiary institution - 10, №8 penitentiary institution - 40, №10 penitentiary institution - 9, №11 penitentiary institution - 38, №15 penitentiary institution - 5, №16 penitentiary institution - 65, №17 penitentiary institution - 12.

<sup>196</sup> In 2020, 85 individual sentence plans were implemented in penitentiary institutions, and in 2019 - 84.

the figure is still extremely low, accounting for only 3.2% of the total number of accused and convicts.<sup>197</sup> For the successful implementation of the measures provided for in the penitentiary system, it is important that, as far as possible, each prisoner be treated as an individual. If all prisoners take part in similar activities, it will neither be effective nor will it produce results. Some may not be literate, while others may have taught others before entering the facility; some came to the facility from the street, while family and work might be waiting outside for others. Therefore, when planning rehabilitation activities, it is necessary to take into account the origin of the prisoners and individual circumstances.<sup>198</sup> Rehabilitation programs are effective when they are based on a thorough assessment of the convicts and their conditions. Such an assessment should be made as soon as possible when the convict is placed in a penitentiary institution and should form the basis of a comprehensive and individually tailored intervention plan for the convict. Effective intervention is based on program implementation methods and properly trained staff with the necessary skills and knowledge to plan and implement the intervention.<sup>199</sup>

As a result of the monitoring carried out by the Special Preventive Group, it was found that the measures taken in terms of rehabilitation and resocialization in the institutions are fragmentary in nature and are not adapted to the individual needs of the convicts. In particular, once a convict is placed in a facility, a comprehensive and individualized plan is not developed. Rehabilitation activities carried out are identical for all prisoners, and the planning of rehabilitation activities does not take into account the areas of interest of prisoners, incentive are often not used to ensure greater involvement in various activities.

According to information received from the Special Penitentiary Service<sup>200</sup>, all juvenile offenders are involved in the individual sentence planning process, in which a convict undergoes a multidisciplinary approach to biopsychosocial assessment, develop an individual sentence plan based on specific needs, and involve the juvenile in targeted interventions. A “Juvenile Defendant Assessment Form and Individual Plan” has been developed, which includes the assessment of a juvenile defendant and the development of a short-term plan tailored to individual needs. This form is being piloted at this stage. The Public Defender welcomes the process of piloting an individual sentence plan for juvenile offenders, which will be closely monitored and evaluated during subsequent monitoring visits.

The Committee for the Prevention of Torture specifically notes that all prisoners, without exception (including those in solitary confinement as a punishment), should be given the opportunity to take a walk in the fresh air and exercise daily. In addition, adequate space should be provided for the infrastructure for fresh air walking and exercise, and shelter should be provided whenever possible in bad weather.<sup>201</sup>

The Public Defender, recommended that prisoners in closed and special-risk facilities be allowed to stay in the fresh air for more than 1 hour. In addition, the Public Defender demanded that inmates in №2 and №8 facilities be allowed to exercise their right to walk at the time specified in the daily schedule. These recommendations have not been implemented. Prisoners in closed and special-risk detention facilities, as in previous years, are not allowed to walk for more than 1 hour. Given the possibility of

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<sup>197</sup> At the end of October 2021, there were a total of 7,317 convicts in 13 penitentiary institutions, information is available at the following address: <<https://bit.ly/3r1dIXm>> [Last viewed: 10.12.21]

<sup>198</sup> A. Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff*, 2nd Edition, London, International Center for Prison Studies, 2009, p. 89.

<sup>199</sup> United Nations Office on Drugs and Crime, *Introductory Guide*, p. 32.

<sup>200</sup> Special Penitentiary Service Answer №266974 / 01, November 8, 2021.

<sup>201</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2nd General Report, CPT / Inf (92) 3, Strasbourg, Council of Europe, 1992, paragraph 48.

only one hour of walking during the day, №2 and №8 establishments also have a problem with walking at the time provided in the daily schedule. Most of the prisoners do not want to walk. The reason for this is mainly that 6:00-7:00 am is too early for a walk, and neither is the walking area arranged with proper equipment. In facility №8, walking areas are arranged on the roof of the building. According to the prisoners, it is not interesting for them to spend time there, because nothing can be seen from the space except the sky, nor is it a means of contact with nature. Therefore, it is necessary to create appropriate conditions for fresh air and exercise in penitentiary institutions, to arrange yards with exercise equipment, as well as to increase the duration of daily fresh air in closed and special risk detention facilities.

Sufficient numbers and adequately qualified staff remain a significant challenge in the penitentiary system. For years, the Public Defender has been advising on balancing the number of social workers and psychologists in penitentiaries by increasing the number of social workers and psychologists. Unfortunately, the recommendation was not implemented. The shortage of social workers and psychologists was evident during the monitoring visits, which was not denied by the staff of the penitentiary institutions. The Public Defender also required the training of social workers who do not have a bachelor's, master's/equal to master's, or doctoral degree in social work. According to the information received<sup>202</sup>, this year, 19 social workers (case administrators) have passed the social work certification program, which is positively assessed by the Public Defender and hopefully this process will continue actively.

Involvement of prisoners in rehabilitation activities is also hampered by factors such as criminal subculture and lack of motivation among prisoners. The reason for refusing to engage in rehabilitation activities due to informal rules is because of influence of other inmates, as it is unacceptable for a certain group of prisoners to participate in such activities. Therefore, it is important to identify such convicts, assess their risks and needs, and work with them individually. During interviews with a Special Preventive Group, prisoners were concerned that their involvement in various activities was not encouraged. The Public Defender considers it important that the staff of social departments work actively to encourage prisoners so that they have the motivation to engage in various activities. The best motivator for prisoners would be to offer activities that have a direct impact on reducing the remaining sentence or changing the type of sentence.

The Public Defender, recommended the introduction of a mechanism that would have a direct impact on reducing the remaining sentence or changing the type of sentence in order to motivate prisoners to engage in various rehabilitation activities. Unfortunately, this recommendation has not been implemented. According to the information received<sup>203</sup>, Work has begun on developing a mechanism that will increase the motivation for involving convicts in various rehabilitation programs and has the effect of reducing the remaining sentence or changing the type of sentence. It is particularly important that such a mechanism be actively used against convicts enrolled in the logistic service in order, on the one hand, to appreciate their efforts and labor and, on the other hand, to create a strong motivation for convicts who, for various reasons, including the criminal subculture, are struggling to join the service. The Public Defender hopes that the Special Penitentiary Service will take active steps to implement this recommendation.

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<sup>202</sup> Special Penitentiary Service Answer №266974 / 01, November 8, 2021.

<sup>203</sup> Answer №266974 / 01 from Special Penitentiary Service, November 8, 2021.

## 2.9. Vulnerable persons

### 2.9.1. Legal status of female prisoners in №5 penitentiary institution<sup>204</sup>

№5 Penitentiary Facility (Women's Special Institution) is a semi-open and closed type imprisonment facility for women, where female defendants and convicts, including female juveniles, are held.<sup>205</sup> Accommodation limit for accused and convicts is 867 accused/convicts.<sup>206</sup> In September 2021, the number of defendants/convicts was 320.<sup>207</sup>

#### Conditions of imprisonment

Various repairs have been carried out in the facility № 5 recently. Staff dining rooms were renovated, repair work was carried out in the cells; lunchroom was arranged for staff; a kindergarten was arranged near the residence of mothers and children; exercise equipment was also installed; new sports fields were arranged with artificial cover; according to the recommendation of the Public Defender, appropriate infrastructure was provided to ensure family visits; the Public Defender welcomes the opening of a beauty salon for prisoners living in the building "A", which was also a recommendation of the Public Defender.<sup>208</sup>

The Public Defender welcomes the work done in №5 Penitentiary Institution and hopes that this process will continue more intensively. It is important to gradually upgrade the entire infrastructure. The existence of an adapted cell for people with disabilities in the facility should be noted positively, however, in conditions where the entire infrastructure of the facility is not adapted, it is difficult to move from the adapted cell to the facility yard or other area independently.

Despite the steps taken to implement a number of recommendations of the Public Defender, it is unfortunate that most of the recommendations issued in terms of the physical environment have not been implemented.<sup>209</sup> Despite recommendation of the Public Defender, unlike in the C and D blocks, the building A still does not have computers, which is important for prisoners to be able to enjoy a variety of educational, cognitive or entertainment programs in their building. No repairs were carried out in the wards adjacent to the medical unit. The postoperative ward is also not adapted for postoperative patients.

It should be noted that the number of telephones in №5 facility has increased, but the telephone sets installed on the outer walls of the yards of residential buildings have not been placed in the cabins, which would have made it possible to use the telephone even in bad weather. In addition, in the closed part of the facility, telephones are not located away from the administration room, thus not ensuring the confidentiality of the conversation.

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<sup>204</sup> The monitoring visit to the penitentiary institution №5 took place from September 6 to 10, 2021.

<sup>205</sup> Order №116 of the Minister of Corrections and Probation of Georgia of August 27, 2015, approving the statute of №5 penitentiary institution of the Ministry of Corrections and Probation of Georgia.

<sup>206</sup> Order №106 of the Minister of Corrections and Probation of Georgia of 27 August 2015 on penitentiary institutions of the Ministry of Corrections and Probation of Georgia.

<sup>207</sup> National Statistics Office of Georgia, Unified Criminal Report, September 2021, available at: <<https://bit.ly/3IEG7rR>> [Last viewed: 12.11.21].

<sup>208</sup> Public Defender of Georgia, National Preventive Mechanism, Monitoring Report on Penitentiary Institution №5, available at: <<https://bit.ly/3IyCCn1>> [Last viewed: 03.01.22].

<sup>209</sup> The Public Defender of Georgia, National Preventive Mechanism, Report on Monitoring of №5 Penitentiary Institution (April 26-27, 2016, January 26-31, 2017), is available at the following address: <<https://bit.ly/3G0bqM7>> [Last viewed: 12.11.21].

### Rehabilitation-Resocialization

According to Bangkok rules, women prisoners should have access to balanced and comprehensive programs that address gender-appropriate needs.<sup>210</sup> Rehabilitation-resocialization has improved over the years in Penitentiary №5 compared to other institutions, although the pandemic has reduced rehabilitation activities in №5 facility as well.<sup>211</sup> According to the LEPL Center for Vocational Training and Retraining of Convicts<sup>212</sup>, in 2021, the following activities were carried out in №5 penitentiary institutions for the rehabilitation-resocialization of convicts: Georgian language course - 19 convicts participated; training course "Entrepreneurship" - 8 convicts; wool processing master class - 19 convicts participated; training course "Communication" - 12 convicts; Turkish language course - 21 convicts participated; Graphic design - 16 convicts participated; vocational course "Small Business Maker" - 7 convicts; vocational course "Accounting" - 9 convicts; English language course - 5 convicts participated; German language course - 5 convicts participated; professional orientation (for prisoners convicted to life imprisonment) - 2 convicts; exhibition-sale of convicts' works - 32 convicts participated; flower greenhouse - 6 convicts participated (employment program); online meeting with N. Berdzenishvili Kutaisi State Historical Museum - 15 convicts participated. According to the information provided by the staff of the . №5 penitentiary institution, a fitness instructor and yoga course was also conducted in №5 women's facility.

The Public Defender welcomes the activities carried out for re-socialization of prisoners and reintegration into society in the Women's Penitentiary Institution №5, but considers that the activities and the number of accused/convicts involved are insufficient. It should also be noted that during the monitoring visit, some of the convicts were not informed about the ongoing rehabilitation activities in the facility.

It should be noted that prior to the pandemic, in №5 penitentiary institution piloting of individual sentence planning had begun, which was suspended in 2020 and, as it became known during the monitoring visit, resumed in 2021. 44 individual sentence plans were developed,<sup>213</sup> which is still low as it accounts for only 16.2% of the total number of convicts.<sup>214</sup> The Public Defender hopes that in accordance with the new rule,<sup>215</sup> more convicts in the process of individual sentence planning will be involved in №5 penitentiary institution, at least in 2022.

### Contact with the outside world

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<sup>210</sup> Bangkok Rules, Rule 43 (1).

<sup>211</sup> The Public Defender of Georgia, National Preventive Mechanism, Report on Monitoring of №5 Penitentiary Institutions (April 26-27, 2016, January 26-31, 2017), is available at the following address: <<https://www.ombudsman.ge/res/docs/2019040510101031353.pdf>> [Last viewed: 12.11.21].

<sup>212</sup> Response №01/566 03 of 3 December, 2021 to the letter № 03-4/1063 sent on November 8, 2021.

<sup>213</sup> Reply №276853/0118 of Special Penitentiary Service November 18, 2021. №2 penitentiary establishment - 10, №3 penitentiary establishment - 1, №5 penitentiary establishment - 44, №6 penitentiary establishment - 10, №8 penitentiary establishment - 40, №10 penitentiary establishment - 9, №11 penitentiary establishment - 38, №15 penitentiary establishment - 5, №16 penitentiary establishment - 65, №17 penitentiary establishment - 12.

<sup>214</sup> As of September 2021, 272 convicts were placed in №5 Penitentiary Establishment, p. 58, information is available at the following address: <<https://bit.ly/3r1e0xq>> [Last viewed: 25.11.21].

<sup>215</sup> On March 12, 2020, Order №502 of the Minister of Justice of Georgia approved the rules for risk and need assessment for the re-socialization and rehabilitation of adult convicts and ex-prisoners, as well as preparation, implementation and monitoring of an individual plan (case management rule).; The purpose of the rule is to manage the multifaceted risks of adult convicts and ex-prisoners in the Ministry system, to promote re-socialization and rehabilitation using a multidisciplinary approach and involving the convict/ex-prisoner, as well as to implement risk and needs assessment procedures ensuring uniform practice of specialists involved in the preparation, implementation and monitoring (case management) of the individual plan (Article 2).

The monitoring revealed that in the case of female convicts, the issue of communication with underaged children beyond the glass barrier was a problem. Often, it was difficult to ensure that the child did not reach the mother and establish direct contact beyond the glass barrier, which resulted in long-term quarantine, forcing female prisoners to refuse to meet their young children altogether, which was a difficult emotional challenge for them.

#### Conditions of mothers and children

At the time of the visit to the facility, one mother and one minor child were placed in the maternity and child ward. The living conditions and hygienic condition of the mother and child are satisfactory. According to the mother, the child is provided with planned medical services, necessary food and hygiene items. The Public Defender negatively assesses the fact that the mother is not involved in rehabilitation activities. In particular, because the institution is unable to provide care, the mother cannot leave the child and cannot engage in rehabilitation activities.

#### Access to medical services

According to a sociological survey conducted in 2021<sup>216</sup> the rate of coverage of female prisoners by prophylactic examinations is also low. Prior to the Covid 19 pandemic, screening tests such as Pap tests and mammograms, were not performed on even half of the female population (40.0% and 43.3%, respectively). The low rate (35.1%) of a simple procedure such as breast self-examination can be explained by the lack of information of female prisoners. Of particular concern is the declining trend in prophylactic medical studies among women during the Covid 19 pandemic. From March 2020 to March 2021, Pap test, mammography and breast self-examination were performed on 15.4%, 16.9% and 27.8% of the female respondents, respectively. This trend continues after March 2021 (after the reduction of pandemic-related restrictions).

The situation with regard to gynecological services for female prisoners is worrying. If the problem of access to gynecological services before the Covid-19 pandemic ("not accessible" and "more inaccessible than accessible") was indicated by 9.0% of women prisoners, during the Covid-19 pandemic (March 2020 to March 2021) their number increased to 13.9%, and after March 2021 reached 16.5%.

According to Bangkok rules, if a female prisoner requests to be examined or treated by a female doctor or nurse, she should, if possible, be assigned a female doctor or nurse, except in situations where urgent medical intervention is necessary. If a male practitioner conducts an examination against the wishes of a female prisoner, she must be accompanied by a female staff member.<sup>217</sup>

The penitentiary institution №5 is staffed by a single gynecologist who is male and it does not allow female prisoners to choose a specialist of the same sex, which is why, in some cases, they refuse to receive services. Therefore, it is important that the services of a female gynecologist are provided in №5 facility and that patients choose for themselves specialist of which sex they will consult.

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<sup>216</sup> Report on Impact of Covid 19 on Health and Other Rights of Prisoners and Staff of Penitentiary System, p.124, Available in Georgian at: <https://www.ombudsman.ge/res/docs/2022052012055638041.pdf> [Last viewed: 21.05.2022].

<sup>217</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Art. 10.

## 2.9.2. Remand prisoners

Even if it is necessary to restrict contact, the prisoner should still be given a minimal opportunity to give voice to the outside world.<sup>218</sup> From January 1 to September 30, 2021, according to the prosecutor's order, 222 defendants were restricted from contact with the outside world.<sup>219</sup> There are a number of shortcomings in this direction. First, the prosecution uses template reasoning to restrict the defendant's telephone conversation, even though Article 79 -2 of the Detention Code requires the investigator or prosecutor to make a reasoned decision. The second problem is related to the restriction of short-term appointments for the accused. In particular, the obligation to substantiate the restriction of a short visit for the accused based on the decision of the prosecutor/investigator is not provided by law at all.<sup>220</sup> The Public Defender filed a constitutional lawsuit in 2021 regarding the incompatibility of this issue with the Constitution.<sup>221</sup> In addition, telephone conversations and short appointments are usually restricted simultaneously. In view of all the above, the prosecution arbitrarily and unjustifiably uses the powers provided for in Articles 77 and 79 of the Imprisonment Code to restrict the accused's contact with the outside world in the interests of the investigation. The prisoners themselves spoke about the ambiguity of the restriction and noted that they feel completely isolated and depressed, especially in pandemic conditions, when they are overly concerned about the health of their loved ones. The Public Defender considers that in the interests of the investigation, the restriction of the prisoner's right of contact with the outside world should be possible only on the basis of a court decision.

In case of restriction of contact with the outside world, the accused does not have the opportunity to contact a lawyer, as the lawyer is not listed in the list of exceptional list of persons whom the accused can contact during the period of restriction of the right to telephone conversation.<sup>222</sup> As a result, the accused depends on when the lawyer will come, on his own initiative, to meet with him. The situation is complicated when case is led by a public lawyer, as overloaded lawyers rarely manage to visit the accused. It should also be noted that by order of the investigator/prosecutor, the restriction of the right to telephone conversation for the accused may be extended for the entire period of the person being accused - up to 9 months, until the sentencing. The fact that the restriction of the right of the accused to telephone conversation also applies to the lawyer, according to the Public Defender, violates the right of the accused to self-defence. The Public Defender proposed to the Parliament of Georgia to amend the Imprisonment Code so that the accused could call lawyers without hindrance even during the restriction of the right to telephone conversations.<sup>223</sup>

Here, in terms of contact with the outside world of the accused the legislative change made in November 2020 is significant. In particular, Part 2<sup>1</sup> of Article 79 of the Imprisonment Code entered into force on November 19, 2021, according to which the restriction of the right to telephone conversations for the accused by the investigator or prosecutor does not apply on calls to the State Inspector's Office, the Public Defender of Georgia and the General Inspectorate of the Ministry of Justice. The change is related to the constitutional decision made on the constitutional claim of the Public Defender.<sup>224</sup> The Law of Georgia on Amendments to the Code of Imprisonment of November 5, 2021 also stipulates the

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<sup>218</sup> European Prison Rules 24.2.

<sup>219</sup> Letter №13/72427 of November 30, 2021 of the General Prosecutor's Office of Georgia.

<sup>220</sup> Imprisonment Code, Art. 77.

<sup>221</sup> Constitutional lawsuit №1632 - Public Defender of Georgia v. Parliament of Georgia. Available: <<https://bit.ly/3qYi0OS>> [Last viewed: 04.01.2021].

<sup>222</sup> Article 79 - 21 f the Imprisonment Code.

<sup>223</sup> The proposal of the Public Defender of Georgia of February 18, 2022 to the Parliament of Georgia to amend the Imprisonment Code of Georgia. Available: <https://bit.ly/3JGCMt8>, [Last viewed: 21.02.2022].

<sup>224</sup> Decision of the Constitutional Court of Georgia №1/3/1441 of July 5, 2021, Public Defender of Georgia v. Parliament of Georgia, II-32, available at: <<https://bit.ly/3tZcrSu>>, [last viewed: 03.01.2021].

obligation of the Minister of Justice to determine the terms and conditions of the use by the convict/accused of hotline telephone numbers of the State Inspector's Office, the Public Defender of Georgia and the Ministry of Justice of Georgia, but it is not yet available.

Defendants who have no restrictions on the contact with the outside world receive a phone card 10-15 days after being admitted to the facility, unable to contact their family before then, unable to purchase items at the store and dependent on the mercy of other inmates. Numerous defendants stated that it was practically impossible to call during the quarantine period. Defendants have to go through a quarantine period under increased stress, so it is important that the Penitentiary Service takes all measures to ensure that the cards are prepared in a timely manner.

Defendants are again placed in mixed cells with convicts after the quarantine period. The Public Defender considers that such practices create security problems, as the examination of the documents revealed a number of cases of physical and verbal confrontation between the accused and the convict.

Most of the court hearings, even in 2021, were held remotely. Prisoners are dissatisfied with the establishment of this practice because, in their view, they are not exercising their right to defence properly. Some of the defendants said that they got vaccinated against COVID-19 for the purpose of being taken to the courtroom, although they had to remotely participate in court hearings prior to the monitoring visit. The Public Defender also spoke last year about the technical shortcomings of remote court hearings.<sup>225</sup> Members of a special preventive team at the penitentiary institution №8 themselves witnessed a number of cases where defendants came out of the investigation rooms and asked for technical assistance because either the link to the hearing was disconnected or the voice was not heard. The Office of the Public Defender requested information from the Special Division of Escorts and Special Measures of the Special Penitentiary Service on the basis of the appeals of specific defendants, which revealed that the defendants were refused escorts in the courtroom due to insufficient human resources.<sup>226</sup> According to the information provided, the escort process is hampered by COVID regulations, an increasing number of people to be transferred and a lack of human resources. In addition to the adequate realization of the right to defence of the accused, physical appearance in the courtroom is also a mechanism for revealing facts of torture and ill-treatment. It is highly unlikely that a judge behind the screen will notice bodily harm to the accused, suspect torture, degrading and/or inhuman treatment of the accused, and apply Article 191<sup>1</sup> of the Code of Criminal Procedure to the investigating authority for appropriate response.

### **2.9.3. Foreign nationals and stateless persons**

The state is obliged to take positive measures to meet the specific needs of foreign prisoners.<sup>227</sup> For years, the Public Defender has been focusing on the legal status of foreign and foreign-speaking prisoners in penitentiary institutions in the reports of the National Preventive Mechanism. In this regard, there are challenges such as complicated communication with the staff of the institution, including medical staff, which ultimately affects the accessibility of services in the institution. Contact with family members and the outside world is also complicated, and prisoners are still subjected to discriminatory conditions.

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<sup>225</sup> See the's report on the monitoring of criminal hearings conducted remotely by the Public Defender, available at <<https://bit.ly/3p8Z6Rx>>, [Last viewed: 09.12.2021].

<sup>226</sup> Letter №57826/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, March 1, 2022.

<sup>227</sup> European prison rules. Rule 37.1.



On the positive side, during visits in 2021, **less foreign prisoners had issues of cell placement problems**. Most noted that their wishes were taken into account when they were placed in the cell, and that most of the prisoners who were in the cell spoke their language. Considering the wishes of foreign prisoners when they are placed in a cell is important not only to avoid conflicts, but also to ensure that the prisoner does not have to change the cell often and overcome the period of stress and adaptation caused by the changes.<sup>228</sup> Nevertheless, physical and verbal confrontations between Georgian prisoners and foreign prisoners have not yet been resolved.

Problems caused by language barriers prevent foreign prisoners from making full use of the services available in institutions. Do not have information about their rights, have difficulty communicating with staff, psychologists, social workers and medical staff. Prisoners say staff does not speak a foreign language at all. Are not involved in the scarce rehabilitation programs that are being implemented in institutions. Georgian language courses are not offered at all in some institutions.<sup>229</sup> Some foreign prisoners did not even know that 15 minutes of free talk time was on their balance. Foreign prisoners do not know how to contact the Public Defender and what the procedures for appealing are. They can not explain to doctors what the problem is, which has a negative impact on both the protection of their right to health and the detection of facts of possible ill-treatment.

Foreign prisoners still talk about the fact that they have to serve in discriminatory conditions compared to Georgian prisoners. A discriminatory approach is also noticeable when receiving medical care. According to the information received, foreign prisoners are provided with medical services later than Georgian prisoners. For example, one inmate reported having severe back pain. He asked for a doctor and an analgesic, but he saw the doctor only a week later and needed the consultation of a Georgian prisoner to receive services.<sup>230</sup> A discriminatory approach is also evident in the delivery of household and hygiene items. Many foreigners state that they have not been provided with hygiene items at all and their request is ignored. In the institutions where the accused and the convicts have 2 days a week for showering, Georgian prisoners are allowed to take extra shower in exceptional cases, and for foreign prisoners, these exceptions are not allowed. The ombudsman's recommendation to take cultural and ethnic needs into account when preparing food is not being implemented.

The difficulty of connecting with families abroad remains an unresolved problem. There are still 2 days a week to call abroad and if the day of the phone call does not coincide with the day of the international call, the prisoner will not be able to contact the family members abroad at all. Call rates are high and one-time free talk due to pandemic does not apply to international calls. Sending written correspondence in some countries is also associated with unreasonably high costs.

The situation is especially hard for those foreigners who have no contact with family members in their own country, have no financial resources to even call, not to mention buying essential hygiene items, seasonal clothing or other products that are not provided in a penitentiary but are important to a particular prisoner. One of the accused foreigners did not even know whether his family had learned of his arrest. It is true that the Special Penitentiary Service provides consular missions with information

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<sup>228</sup> Decision of the European Court of Human Rights in the case of *Khider v. France*, app no. 56054/12, para. 111. In this judgment, the Court took into account the circumstances that the frequent change of environment caused fear in the prisoner and forced him to adapt, which was associated with additional stress.

<sup>229</sup> Georgian language courses were not offered in №3, №6, №8, №10, №15 and №17 institutions in 2021. Also, in №18 facility. Letter № 01/566of the LEPL Vocational Training and Retraining of Convicts of the Ministry of Justice of Georgia, December 3, 2021.

<sup>230</sup> In one of the facilities, the inmate stated that he had diabetes and needed urgent hospitalization, though for several weeks, they did not pay attention.

on the placement of their country's citizens in institutions, but not all states have a consulate in Georgia and can not provide appropriate assistance.

As for the foreign prisoners, whose family members regularly transfer money, in semi-open institutions they systematically have to make "gifts" to Georgian prisoners. Foreign prisoners, for fear of repression, are unable to refuse Georgian prisoners' requests and are forced to buy the products they are asked to provide. This indicates that foreign prisoners do not feel safe and are still under strong influence of Georgian prisoners.

#### **2.9.4. Convicts sentenced to life imprisonment**

Deprivation of liberty without the hope of regaining liberty is incompatible with human dignity and is contrary to Article 3 of the European Convention on Human Rights.<sup>231</sup> Georgian legislation provides for persons with life imprisonment the revision of the sentence,<sup>232</sup> amnesty<sup>233</sup> and pardon<sup>234</sup> by the President.

One of the prerequisites for reviewing the sentences of persons sentenced to life imprisonment and pardoning them by the President is serving minimum of 20 years of imprisonment.<sup>235</sup> Last year, the Public Defender also indicated that the Georgian Parliament and the President of Georgia should share the approach of the European Committee for the Prevention of Torture and reduce the 20-year sentence by several years.<sup>236</sup> It is noteworthy that until 2019, a 15-year serving of a sentence for was set as a prerequisite for pardoning the President of Georgia a person sentenced to life imprisonment. It should be noted that the existing criminal policy in the country is not aimed at the use of non-custodial measures; the system of parole also has shortcomings. Accordingly, in these circumstances, the Public Defender considers it important that the term of pardon of persons with life imprisonment be set at 15 years again.

For those sentenced to life imprisonment, with the hope of returning to society, it is extremely important to develop a release plan, which should be developed as soon as the verdict is issued and subsequently reviewed regularly.<sup>237</sup> An individual plan helps the prisoner to set an objective, which motivates them to succeed. On March 12, 2020, by order of the Minister of Justice, the rules for risk and needs assessment and individual plan (case management) were approved. Since 2021 successful completion of the training program for release from prison and a summary report prepared on its basis is one of the necessary conditions for making a decision on the revision of the sentence.<sup>238</sup> On the positive side, in 2021, the introduction of a program for the preparation and release of a person sentenced to life imprisonment in penitentiary institutions began. According to the Special Penitentiary Service, a total of 43 convicts are involved in the program, of which 2 convicts of penitentiary institution №5, 9 of penitentiary institution №6, 27 of penitentiary institution №8, 1 of penitentiary institution №10, 4 of

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<sup>231</sup> *Vinter and others v. the United Kingdom*, available at: <<https://bit.ly/3nTum91>> [Last viewed: 12.11.21].

<sup>232</sup> Criminal Code, Article 721, Section 7 of Article 73.

<sup>233</sup> Criminal Code, Article 77.

<sup>234</sup> Criminal Code, Article 78.

<sup>235</sup> Part 1 of Article 721 of the Criminal Code and Order №556 of the President of Georgia of November 26, 2019 approving the rules of pardon.

<sup>236</sup> Council of Europe Committee for Prevention of Torture (CPT), Status of Persons Imprisoned for Life, excerpt from the 25th General Report [CPT/Inf (2016) 10], April 2016, available at: <<https://rm.coe.int/16809534f2>> [Last viewed: 12.11.21].

<sup>237</sup> European Prison Rules, Rule 103.8.

<sup>238</sup> Criminal Code of Georgia, Article 721-1; Article 73-7.

penitentiary institution №15.<sup>239</sup> As for individual plans, from January 20 to date, 37 individual sentence plans for life-sentenced convicts have been developed.<sup>240</sup>

A Special Preventive Group examined the progress of the program for the preparation and release of a person sentenced to life imprisonment in №8 penitentiary institution. By the time of the visit,<sup>241</sup> out of 44 persons sentenced to life imprisonment in the institution, 27 convicts were involved in the program. The program includes a convict who has actually served at least 12 years of imprisonment and gives written consent to participate in the program.<sup>242</sup> As it turns out, 5 more people had served more than 12 years in prison, however, some refused to join the program, while others stopped because they did not like it. It is important that the Special Penitentiary Service investigates each refusal, identifies the reasons for the refusal, corrects as much as possible, and encourages inclusion in the program as much as possible.

It should be noted that in 2021, 2 social workers were employed to implement the program in facility №8, although the number of psychologists did not increase. It is the psychologists of №8 and №18 institutions who lead 5 courses,<sup>243</sup> which is offered under the program and is conducted in groups or individually. Given that there is already a shortage of psychologists in №8, given the number of prisoners, it would be better for courses to be led by specially assigned psychologists and specialists for convicts sentenced to life imprisonment. In addition, it turns out that there are scarce infrastructural resources for the courses - the courses are held in a small room where only 6 people can be accommodated and no other activities are possible.

With the prospect of release, it is extremely important to establish a regime tailored to the individual needs of those sentenced to life imprisonment, which is not implemented. Under Article 64 (1) of the Imprisonment Code, a person sentenced to life imprisonment usually serves his sentence in a closed facility where, under Article 12 of the Imprisonment Code, convicts are housed in special cells and have no contact with prisoners other than inmates of the same cell (if any).<sup>244</sup> On the example of the institution №8, it can be said that persons deprived of life imprisonment are mostly alone in cells. Even convicts who are involved in the release program are able to communicate with each other only during the course, once or twice a week for an hour, which can not be considered a proper opportunity for human interaction. Most prisoners with life imprisonment are given only 1 hour of fresh air with no recreational facilities.<sup>245</sup> In №5 penitentiary institution, where 2 women sentenced to life imprisonment are placed, there were no rehabilitation programs available in 2021.

Prolonged confinement, less access to family and friends, and unpreparedness for release significantly impairs the ability of prisoners sentenced for life to reintegrate into society. It is important that prisoners

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<sup>239</sup> Letter №276853/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, November 18, 2021.

<sup>240</sup> *Ibid.*

<sup>241</sup> The visit took place on November 15, 2021.

<sup>242</sup> Order №682 of the Minister of Justice of Georgia of February 9, 2021 on the approval of the program for the preparation for release of a person sentenced to life imprisonment, Article 4.

<sup>243</sup> The courses offered are: art therapy, development of positive thinking skills, anger management, development of useful skills and development of cognitive and social skills.

<sup>244</sup> The exception is the few prisoners who were transferred to semi-open facilities in 2020. In pandemic conditions, rehabilitation activities are also extremely limited.

<sup>245</sup> The European Court of Human Rights, in the case of Babar Ahmed and other v. the United Kingdom ((Applications nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09), established criteria for establishing compliance of the Conditions prisoners sentenced for Life with Article 3 of the Convention: possibility of interaction with other prisoners and Inadmissibility of isolation for an indefinite time, duration of fresh air and recreational opportunities. Paragraphs 205-213 and 218-224. Available: <<https://bit.ly/3G0c24n>> [Last viewed: 12.11.2021].

sentenced for life are given more short and long appointments, which will help maintain a strong bond with family members and rehabilitate them.<sup>246</sup>

In terms of rehabilitation, the right to education can play an important role for persons sentenced to life imprisonment. Many inmates have expressed with the Special Preventive Group concern that the Imprisonment Code restricts their right to higher academic education because of their high risk.<sup>247</sup> One prisoner sentenced for life appealed to the Public Defender, stating that s/he had been taken from a penitentiary facility for taking the Unified National Examinations; s/he had successfully passed the exams and had even been admitted to a university, although his/her student status was subject to the above restrictions under the Imprisonment Code. Restricting the right to education is a systemic challenge, although it can be of particular importance for prisoners sentenced for life who already have limited rehabilitation and socialization opportunities. According to the European Court of Human Rights, it is true that the state has no obligation to establish special higher education institutions for prisoners, but it should give prisoners the opportunity to receive education in public institutions. In order for this right to be restricted, there must be a legitimate aim, which may also be related to limited financial capabilities.<sup>248</sup> In the conditions of the pandemic, the process of getting education remotely has become even more refined and accessible, therefore, the Public Defender believes that distance education should be widely integrated in the penitentiary system as well.<sup>249</sup>

## **Recommendations**

### *Prolonged isolation of prisoners as ill-treatment*

#### **Recommendation to the Minister of Justice of Georgia:**

- By amending the regulations of penitentiary institutions in 2021, determine the maximum period of isolation of prisoners, as well as the obligation to revise the measure of separation 14 days after the application of this measure and thereafter, at the same time interval.

### *Placing prisoners in de-escalation rooms and solitary (safe) cells as ill-treatment*

#### **Recommendations to the Minister of Justice of Georgia:**

- Amend the regulations of penitentiary institutions and state that placing a prisoner in a de-escalation room and solitary (safe) cell can only be taken as a last resort and justify why de-escalation room and solitary confinement were considered as a measure with no alternative. Further, the regulations should state that before using the de-escalation room and the solitary (safe) cell, the staff of the institution should use other, relatively less restrictive means, such as direct supervision by the staff and electronic surveillance.

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<sup>246</sup> Visit in Georgia of the European Committee for the Prevention of Torture, (2015) Available at: <<https://www.coe.int/en/web/cpt/home>> [Last viewed: 12.11.2021]

<sup>247</sup> Pursuant to Article 14 -2 (c) of the Imprisonment Code, the right to receive education at the first and second levels of academic higher education (bachelor's, master's) is enjoyed only in a penitentiary facility of preparation for release and a low-risk penitentiary facility.

<sup>248</sup> Decision of the European Court of Human Rights in the case of Velio Valev v. Bulgaria (Application no. 16032/07), para. 30. Available: <<http://hudoc.echr.coe.int/eng?i=001-144131>> [Last viewed: 13.11.2021].

<sup>249</sup> The European Court of Human Rights has found a violation of Article 2 of Protocol No. 1 to the Convention in the case of Mehmet Reşit Arslan et Orhan Bingöl c. Turquie ((Requêtes nos 47121/06, 13988/07 et 34750/07). Plaintiffs who were sentenced to life imprisonment and who were admitted to higher education institutions by examination were not allowed to study via computer and the Internet. Paragraphs 69-72. Available: <<http://hudoc.echr.coe.int/eng?i=001-193741>> [Last viewed: 13.11.2021].

- Provide joint, multidisciplinary work of psychologist, psychiatrist, social worker, doctor and other services of the institution to reduce/eliminate risks during placement in de-escalation room and solitary confinement (safe) cell
- Create a safe environment in de-escalation rooms and solitary (safe) cells, including soft-walls and floors
- The maximum period of placement in a de-escalation room should be set at 24 hours, and if after 24 hours the grounds for placement in a de-escalation room or solitary (safe) cell are not eliminated, the prisoner should be immediately transferred to the psychiatric ward of a №18 medical institution or other civilian psychiatric institution.
- Monitoring Department of Special Penitentiary Service should through systematic inspection:
  - Ensure the study of the practice of prolonged placement in de-escalation rooms and solitary (safe) cells of prisoners with mental health problems in penitentiary institutions, use of handcuffs and non-delivery of psychiatric care as well as relevant response to prevent ill-treatment of prisoners
  - Ensure the study of the practice of placing prisoners in de-escalation rooms and solitary (safe) cells as a form of punishment without legal grounds and to act accordingly in order to prevent ill-treatment of prisoners.

*Practice of full body search of prisoners as ill-treatment*

**Recommendation to the Minister of Justice of Georgia:**

- Amend the regulations of penitentiary institutions to prohibit the requirement to expose different parts of a prisoner's body at the same time during a full search.
- The Monitoring Department of the Special Penitentiary Service, by conducting a systemic inspection, should detect and eliminate the practice of requesting so-called bending of accused/convict during the full inspection.

*Overcrowding of penitentiary institutions*

**Recommendation to the Minister of Justice of Georgia:**

- Include in the plan on the dealing with the problem of overcrowding in penitentiary institutions a commitment to increase the number of regime staff working in the wings of inmates' housing units so that at least one staff member responsible for maintaining order and security comes to 15 inmates.

*Informal ruling of penitentiary institutions*

**Recommendation to the Minister of Justice of Georgia:**

- To overcome the criminal subculture and informal ruling established in penitentiary institutions, develop a strategy to tackle the criminal subculture and submit a prepared document to the Office of the Public Defender of Georgia to present its views.

*Deficiencies in detecting and documenting ill-treatment*

**Recommendation to the Minister of Justice of Georgia:**

- Determine in the relevant normative act the obligation of the doctors of the penitentiary institution in all cases of injury to the body of a prisoner in the penitentiary institution, to assess the compatibility of the injury with the information provided by the prisoner and to indicate in writing if there was a suspicion of possible violence; also, to determine the obligation in the above-mentioned cases to send a notification to the investigative body in case of suspicion of violence, according to the investigative subordination.
- Conduct training on documentation and photographing of injuries for all those doctors of penitentiary institutions who document the injury resulting from possible torture and other cruel, inhuman or degrading treatment in the penitentiary institutions in accordance with the rule of registration of injuries of accused/convicts approved by the Order №633 of the Minister of Justice of Georgia.
- Amend the rule approved by the Order №633 of November 30, 2020 of the Minister of Justice of Georgia and to define the obligation of the doctor that in cases when the accused/convict does not consent to the medical examination upon admission/return to or removal from the penitentiary institution, however, if taking into account the visible injuries on the body and/or the psycho-emotional state, the doctor suspects violence, s/he must describe the visible injuries and send a report to the State Inspector's Office
- Amend the rule approved by the Order №633 of the Minister of Justice of Georgia of November 30, 2020 and to define the obligation of the doctor that in cases when the accused/convict does not consent to the medical examination upon admission/return to or removal from the penitentiary institution and there are no visible signs of injury, in order to obtain consent for the medical examination, no later than 24 hours, offer the prisoner again to undergo a medical examination.

**Recommendation to the Minister of Justice and the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Develop a plan for full integration of penitentiary healthcare into the system of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia through mutual cooperation.

*Epidemiological conditions*

**To the Minister of Justice of Georgia:**

- In cooperation with the National Center for Disease Control and Public Health assess the risk of infection spreading within the facilities and the needs for elimination these risks; also develop a COVID-19 prevention and control plan in penitentiary establishments
- Ensure the identification of convicts of special risk from an epidemiological point of view in order to place them in safe conditions and, if possible, release them from penitentiary facilities
- In order to facilitate the postponement of the execution of the sentence of a convict with a serious illness, the Special Penitentiary Service should use the powers provided by the Criminal Procedure Code and refer to the court with motion.<sup>250</sup>

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<sup>250</sup> Part 3 of Article 283 of the Code of Criminal Procedure.

- In order to facilitate the release of a convict due to illness or old age, the Special Penitentiary Service should use the powers provided by the Criminal Procedure Code and refer to the court with motion.<sup>251</sup>
- The local councils of the state sub-agency operating in the field of governance of the Ministry of Justice of Georgia, State Penitentiary Service, should give priority to the cases of convicts with health problems and elderly prisoners and take into account their vulnerability to the virus.
- All prisoners should be provided with the necessary personal hygiene items at the expense of the state and their use should be effectively supervised.
- Ensure that in the facilities convicts with symptoms of respiratory disease use face masks.
- Examine the practice of placing prisoners in quarantine spaces and take all measures to prevent the placement in the same space of prisoners who did not have contact with each other prior to the placement, also, do not allow large numbers of prisoners to be placed together to prevent the spread of the virus.

### Penitentiary healthcare

#### **To the Minister of Justice of Georgia:**

- Amend the regulations of penitentiary institutions and stipulate that in case of the presence of a third party during the meeting of a prisoner with the medical staff, the reason for the attendance be substantiated in writing.
- Fill the vacancies in the medical unit as soon as possible.
- Ensure that the number of nurses in institutions is at least doubled.
- To ensure the timely implementation of the planned medical referral observing all measures of infection control taking into account the epidemiological situation in the country,
- To provide professional training and teaching for the medical staff of the institutions within the framework of continuous medical education
- To ensure the introduction of an electronic information system in the penitentiary system and the inclusion of health information in the electronic records system (EHR), which will facilitate the systematization of this information.
- To develop and introduce a tool for periodic mental health screening of prisoners in penitentiary institutions
- To train penitentiary staff in psychiatric crisis management
- Due to the peculiarities of penitentiary institutions, determine at the normative level the composition of the psychiatric multidisciplinary team, the functions of each team member and the procedure for organizing and delivering psychiatric care
- A multidisciplinary team to assess the needs of patients with mental health problems who do not require inpatient treatment; based on the identified needs, develop an individual biopsychosocial assistance plan and provide appropriate assistance.

### Contact with the outside world

#### **Proposal to the Parliament of Georgia:**

- To amend Article 17 parts 11 and 12 of the Imprisonment Code to make it possible to replace a short visit with a video appointment.

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<sup>251</sup> Part 5 of Article 284 of the Code of Criminal Procedure

- To amend Article 17<sup>2</sup> 9 of the Imprisonment Code to make it possible to replace long visits with telephone calls, short appointments and video appointments.
- To amend Article 17<sup>3</sup> of the Imprisonment Code to make it possible to replace family visits with telephone calls, short visits and video appointments.
- To amend the Imprisonment Code and increase the number of visits and telephone calls for prisoners in special risk facilities and closed facilities.
- To amend the Imprisonment Code and allow prisoners placed in special risk facilities to use video appointments.
- Amend the Imprisonment Code and remove restriction of contact with the outside world as a disciplinary sanction, unless such contact is related to a crime.

**To the Minister of Justice of Georgia:**

- To make changes to the current rules of video meetings in 2022 so that a prisoner's family member no longer has to visit to a territorial unit of the National Crime Prevention and Probation Agency and to start working on a secure application that simplifies video calling.
- To equip in 2022, №2, №3, №6, №10, №12 and №18 penitentiary institutions with the necessary infrastructure for video visits.
- In 2022, during the period of special conditions related to the pandemic, take additional measures to compensate for the restriction of contact of prisoners with the outside world.
- The Special Penitentiary Service to investigate the problems related to the full use of the right to a telephone call by the accused/convict and to provide the Public Defender with information on the measures taken.
- During the application of security measures, to ensure that prisoners are kept in contact with the outside world and make appropriate changes to the regulations of the institutions
- To take all measures to ensure that upon receipt/delivery of the open letter by a social worker, two identical documents are drawn up, which should be stamped and in the presence of the prisoner include the following information: a) Name and surname of the author of the letter; b) Name and surname of the social worker receiving the letter; c) date of submission of the letter; d) the addressee of the letter; e) number of pages. Both papers must be signed by the prisoner and the social worker, one completed paper must be handed over to the prisoner and the other one left to the social worker
- Telephone booths (with sound insulation) to be arranged in all penitentiary institutions, which provide a confidential environment for telephone conversations. To this end, develop a time plan for infrastructure works, which describes in detail in which institution what specific work will be carried out in 2022
- The Monitoring Department of the Special Penitentiary Service to reveal the facts of violation of the right of correspondence of prisoners in penitentiary institutions through a systemic inspection, maintain statistics of detected violations and ensure proper punishment of those responsible for the violation.

Complaint mechanism

**To the Minister of Justice of Georgia:**

- To ensure the possibility of sending complaints to penitentiary institutions confidentially, place confidential complaint envelopes in such a way that the receipt of the envelope is not dependent on the employee of the institution and it is impossible to identify the prisoner receiving the



envelope. In addition, all prisoners should have free access to material and technical means (sheet, pen and envelope) and be allowed to have a certain number of envelopes in the cell.

- To place complaint boxes in such a way that they do not fall into the area of video surveillance and the anonymity of the sender of the complaint is protected
- The General Inspection of the Ministry of Justice to detect and investigate cases of violations of the rule of sending complaints, alleged facts of repression against prisoners due to complaints in №3, №6 and №8 penitentiary institutions, through systematic inspections and ensure appropriate punishment of those responsible.

### Living conditions

#### **Proposal to the Parliament of Georgia:**

- To determine in 2022 by the Imprisonment Code the obligation to provide the accused with a minimum living space of 4 sq.m.

#### **Recommendations to the Minister of Justice:**

- The Office of the Public Defender to be given the opportunity to get acquainted with the concept of small institutions prepared by the Ministry and to present their opinions
- To abolish barrack type residences in №17 facility
- In penitentiary institutions, each prisoner to be provided with 4 sq.m. living space
- To inspect and respond to gaps related to the physical environment in the monitoring reports of penitentiary institutions by the National Preventive Mechanism.

### Daily schedule and rehabilitation activities

#### **To the Minister of Justice of Georgia:**

- To ensure the introduction of new and diverse rehabilitation activities in all penitentiary institutions, with maximum adherence to the rules of infection control, using alternative opportunities for activities. Increase opportunities for the involvement of convicts in rehabilitation activities
- To allow prisoners in closed and high-risk facilities to stay in the fresh air for more than 1 hour
- To allow prisoners in №2 and №8 facilities to exercise their right to walk as prescribed by the schedule of the day
- To increase the number of social workers and psychologists in penitentiaries for harmonizing the number of social workers and psychologists with the number of prisoners
- To continue training social workers who do not have a bachelor's, master's/equivalent to master's or doctoral degree in social work
- To motivate prisoners to engage in various rehabilitation activities, start working on the introduction of a mechanism that will have a direct impact on reducing the remaining sentence or changing the type of sentence.

### The legal status of female prisoners

#### **Recommendation to the Minister of Justice:**

- To take all measures for placing computers in the block 'A' of the facility №5 as it is in the blocks „C“ and „D“ so that the prisoners have access to computers
- To ensure the confidentiality of the conversation and to ensure the use of the telephone in bad weather, telephone sets fixed on the outer walls of the courtyards of residential buildings should be placed in cabins; telephones in the closed part of the facility should be located away from the administration rooms
- Repair works to be carried out in the wards located next to the showers of the medical unit
- The postoperative ward to be adapted for postoperative patients
- To provide access to caregivers for people placed in the maternal unit so that mothers can temporarily leave the child with a caregiver and participate in rehabilitation activities
- To provide the services of a female gynecologist in №5 facility so that patients can choose between specialists of different sex.

#### The remand prisoners

##### **Proposal to the Parliament of Georgia:**

- To amend the Articles 77 and 79 of the Imprisonment Code and, in the interests of the investigation, restrict the accused's contact with the outside world only by a court decision.
- Amend Article 79 part 2<sup>1</sup> of the Imprisonment Code to stipulate that the restriction of the right to telephone conversation for the accused does not apply to the phone number used by the accused to contact a lawyer.

##### **Recommendation to the Minister of Justice:**

- To ensure in 2021, the separation of the accused from convicts in №2 and №8 facilities, at least in separate cells
- The Special Penitentiary Service to take all measures to prepare the phone card of the accused in the shortest possible time.

#### Foreign nationals and stateless persons

##### **Proposal to the Parliament of Georgia:**

- To amend the Imprisonment Code and allow convicts whose family members are unable to enjoy short and long visits due to living abroad to make a video appointment.

##### **To the Minister of Justice of Georgia:**

- Provide the services of an interpreter for all foreign language prisoners, if necessary; among others, to provide information about the services and regulations in the institutions in a language they understand
- To abolish the days set for international calls and make international calls available every day, with the frequency and duration prescribed by law
- To take all measures to enable foreign prisoners, stateless persons, as well as Georgian citizens whose families live outside the country, to make international calls at a reduced and more affordable price

- To take all measures to ensure that foreign prisoners, stateless persons, as well as Georgian citizens whose families live abroad, are provided with free talking time each month during a pandemic for international calls
- During the period of special conditions related to the pandemic, to ensure the introduction of distance learning Georgian language courses in all institutions for prisoners who do not speak the state language
- To take into account linguistic, religious and cultural characteristics when placing prisoners in cells; also take into account the needs of representatives of different religious denominations when preparing food.

#### Convicts sentenced to life imprisonment

##### **Proposal to the Parliament of Georgia:**

- To amend the Imprisonment Code and increase the number of short and long visits for prisoners sentenced to life imprisonment
- To amend the Criminal Code and the Criminal Procedure Code and reduce by several years the time limit for applying to a court for early release of a convict.
- To amend the relevant articles of the Imprisonment Code and grant all convicts with the right to higher education.

##### **Recommendation to the President of Georgia:**

- To amend the Presidential Decree №556 of November 26, 2019 on the approval of the rules of pardon and reduce by several years the time limit of applying the pardon for persons sentenced to the life imprisonment.

### **3. System of the Ministry of Internal Affairs**

#### **3.1. Monitoring methodology**

This report was prepared in 2021 on the basis of monitoring of Temporary Detention Isolators and police facilities. Against the background of the coronavirus epidemic in Georgia, in 2021 the National Preventive Mechanism had to carry out monitoring visits under extraordinary conditions. Monitoring visits were conducted in accordance with the rules for conducting a safe monitoring visit during a pandemic.

The assessments presented in this report are based on an analysis of relevant national legislation and international legal acts, as well as the voluminous information obtained by the Special Preventive Group. The working methodology of the Special Preventive Group prescribes obtaining information from a variety of sources: interviews with the detainees,<sup>252</sup> the staff of the isolators<sup>253</sup> and doctors<sup>254</sup>; analysis of information obtained through a pre-designed questionnaire using a statistical program (SPSS)<sup>255</sup>; statistical information provided by the Administration of the Ministry of Internal Affairs of Georgia and Temporary Detention Isolator; statistical information provided by the Administration and Temporary Detention Isolator of the Ministry of Internal Affairs of Georgia; face-to-face interviews

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<sup>252</sup> Interviews were conducted with 20 detainees.

<sup>253</sup> Interviews were conducted with 13 employees of the Temporary Detention Isolator.

<sup>254</sup> Interviews were conducted with 8 doctors employed in the temporary placement isolator.

<sup>255</sup> 495 questionnaires were processed.

with lawyers, as well as an online questionnaire completed by lawyers;<sup>256</sup> information provided by non-governmental organizations; the data available in the Office of the Public Defender; information published officially by the Ministry of Internal Affairs; documents produced in the facilities, including medical information. The monitoring also included studying the situation and work process in police facilities and temporary detention isolators.

During 2021, the Special Preventive Group, as part of the monitoring, visited 35 police departments and divisions, as well as 19 Temporary Detention Isolators. Monitoring visits were carried out in Kakheti, Imereti, Kvemo Kartli, the Autonomous Republic of Adjara, Guria and Tbilisi.

The facts and circumstances presented in the report are presented in full compliance with the principle of confidentiality. The documents obtained within the monitoring, as well as the reports of the members of the monitoring group are kept at the Office of the Public Defender of Georgia.

### **3.2. Status of Implementation of Recommendations**

In the report of the National Preventive Mechanism of 2020, in order to prevent ill-treatment in the system of the Ministry of Internal Affairs, the Public Defender of Georgia addressed 24 recommendations to the Minister of Internal Affairs of Georgia, 1 recommendation - to the State Inspector's Service, and 1 proposal - to the Parliament of Georgia. The previous proposal made to the Parliament of Georgia was not fulfilled.

In a proposal to **the Parliament of Georgia**, the Public Defender demanded that, like the Code of Criminal Procedure, the Code of Administrative Offenses clearly define the role of a judge in preventing torture and ill-treatment, which was not fulfilled.

In the recommendation to **the State Inspector's Service**, which was not implemented, the Public Defender requested that the face-to-face meetings of the Service's investigators be provided as much as possible with the detainees in the temporary detention facilities.

Out of 23 recommendations addressed at **the Ministry of Internal Affairs of Georgia**, 2 recommendations were implemented, 3 recommendations were partially implemented, and the remaining 18 recommendations are unimplemented. It should be noted that compared to 2020<sup>257</sup>, the number of implemented and partially implemented recommendations has increased in 2021, although the number of unfulfilled recommendations is still high.

From the **implemented recommendations**, both were related to epidemiological measures.<sup>258</sup>

From the **partially implemented recommendations**, 1 concerned documenting the request on notifying a lawyer or family member while being in police custody and after being placed in the facility, for which a special protocol should be drawn up detailing when the detainee requested contact with the family or lawyer and whether communication took place.<sup>259</sup> 1 referred to the training of doctors employed in temporary detention facilities on the instructions for photographing injuries on the bodies

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<sup>256</sup> The Public Defender's Office had fruitful communication with the Georgian Bar Association. In particular, with the technical assistance of the Georgian Bar Association, a special online survey questionnaire was sent to the Bar Association members to complete. The Public Defender of Georgia thanks the Georgian Bar Association for its cooperation.

<sup>257</sup> In 2020, none of the recommendations were implemented, and 3 recommendations were partially implemented.

<sup>258</sup> According to the recommendation, testing the detainees on COVID-19, as well as periodic thermal-screening is ensured.

<sup>259</sup> In March 2021, a protocol production has began on person placed in a temporary detention facility requesting a lawyer to contact/meet him/her, although such protocols are not produced during the period of police control.

of persons placed in isolators and the procedure for storing photographs taken<sup>260</sup>, and 1 recommendation requested to improve the situation with regard to the physical environment in Temporary Detention Isolators.<sup>261</sup>

Of the **unimplemented recommendations**, 2 were related to identifying alleged facts of ill-treatment;<sup>262</sup> 1 recommendation related to the process of informing about the rights of detainees<sup>263</sup>; 7 recommendations related to the production of audio-video recordings;<sup>264</sup> 4 recommendations related to the production of documentation;<sup>265</sup> 1 recommendation was to open a medical unit in the isolators<sup>266</sup>; 1 recommendation - to eliminate the practice of storing medical cards compiled by ambulance doctors with penitentiary staff, and 2 recommendations - to manage the withdrawal syndrome.

Creating a human rights-based police system without taking into consideration the international standards is unimaginable. Despite the positive steps taken by the Ministry in various directions, the citizens under police control are still not provided with sufficient guarantees of protection from torture and ill-treatment. It is unfortunate that most of the systemic recommendations issued to the Ministry of Internal Affairs over the years are still unimplemented.

### 3.3. Ill-treatment

During monitoring visits to temporary detention facilities and penitentiary institutions, the Special Preventive Group/Special Preventive Group received information on alleged facts of disproportionate, excessive use of force by police during detention and ill-treatment after detention.<sup>267</sup> For instance:

- According to the detainee, he tried to escape during the arrest when he hit the wall and injured his upper limb. He told police straight after his arrest that he allegedly had a joint injury and asked them to call an ambulance, but police officers refused to do it. According to him, one of the lead policemen involved in his arrest at that time sworn at him and, using force, quickly pulled his injured upper limb, causing severe pain to the detainee. The detainee said he was then handcuffed tightly and taken to one of the police departments, where he remained for about 1 hour. According to him, during this period, he suffered severe pain in the injured limb and repeatedly asked the police to call the medical aid team; however, the police officers called the ambulance only 1 hour later and took him to the medical facility. The detainee also stated that during his stay at the police station he requested to use the toilet and drink water, however the police officers neither gave him water nor allowed him to use the toilet.<sup>268</sup>
- According to the detainee, he was riding a moped in the street when the police stopped him and asked him where he had taken a piece of non-ferrous metal, which was placed on the moped.

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<sup>260</sup> Trainings were conducted in the first half of 2021, however the trainings planned in the second half could not be conducted due to the deteriorating epidemiological situation.

<sup>261</sup> The Ministry has been carrying out the relevant repair works in stages through 2021, although significant challenges remain in this direction.

<sup>262</sup> See subsection: Detection of Alleged Cases of Ill-Treatment.

<sup>263</sup> See subsection: Definition of Rights.

<sup>264</sup> See subsection: Audio-Video Recordings.

<sup>265</sup> See subsection: Documentation at Police Stations.

<sup>266</sup> The Public Defender demanded an increase in the number of isolators in which the medical unit operates. Unfortunately, in 2021 the number of isolators where there is a medical unit and a doctor on duty on a regular basis is reduced. In particular, as of 2021, the medical unit operated in 21 isolators, while this number was 23 in 2020 and was increasing compared to previous years.

<sup>267</sup> As a result of the inspection, the special prevention group received 4 reports from 21 respondents about the alleged fact of torture and other ill-treatment by the police.

<sup>268</sup> According to the detainee, he provided information to the State Inspector's Service regarding the above facts.

The detainee said he replied to the police officers that it was his item and did not steal it, after which police officers started swearing at him and threatening to physically assault him. According to him, the police took him to one of the departments, where the police officers were demanding him to confess to stealing, swearing at him during all night and threatening to beat and rape him.<sup>269</sup>

- According to the detainee, he was at his home when police officers arrived and asked him to open the door. According to him, as soon as the door was opened, the police officers threw him on the ground without any explanation and put handcuffs behind his back. According to the detainee, he was semi-naked when he was arrested and was not allowed to wear clothes after the arrest. He was then put in a car and taken to one of the police stations, where he was held outside the building for some time before entering, where he was cold. According to the detainee, during and after the arrest, he did not resist the police and despite that, while in the police car, he had his hands tightly tied behind his back and was in pain. According to him, after the arrest, the police officers treated him rudely, aggressively and forced him to tilt his head while sitting in the car.
- According to the detainee, Marneuli police officers arrested him near his house. According to him, after the arrest, in the police car and then in the building of Marneuli Regional Division for about 5 hours he was sworn at and requested to testify against someone else, otherwise he was threatened with drug planting and long-term detention in a penitentiary institution.<sup>270</sup>

When assessing the current state in relation to violence against detainees by the staff of the Ministry of Internal Affairs, in addition to the alleged cases of violence described above, in the appeals/complaints submitted to the Public Defender's Office in 2021 indicate that there was physical and psychological violence by the police. for example:

- According to the applicant, on the night of 18 October 2021, he and his relatives were at their home when armed men dressed in civilian clothes arrived, who had neither any recognizable sign that they were police officers nor introduced themselves. According to the applicant, upon entering, these individuals began verbally abusing and detaining persons in the home using force. The applicant explains that the persons in the house were sworn at during the arrest, spat in the face, beaten on their bodies with hands, feet and demanded to from them to confess to the crime. The applicant alleges that violence against them continued in the police car and in the police building, resulting in detainees receiving bodily injuries to the forehead, back and lower limbs. According to one of the detainees, he could not breathe due to the beating and became sick. According to the applicant, the incident was reported to the doctor of the Temporary Detention Isolator, who sent a notification to the State Inspector's Service.<sup>271</sup>
- According to the applicant, after his arrest, he spat in the face of a police officer, for which he was hit in the head with a service weapon and verbally abused. According to him, he was taken

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<sup>269</sup> According to the detainee, a representative of the State Inspector spoke to him remotely in the temporary detention isolator, to whom he provided detailed information about the incident.

<sup>270</sup> Speaking to a member of the special prevention group, the detainee refused from a legal action from the Public Defender.

<sup>271</sup> In connection with this fact, the information and materials obtained by the Public Defender's Office were sent to the State Inspector's Service by letter №15-4/10012 of October 22, 2021 for further action.

to the police building, where in one of the rooms the police officers stripped his upper body and hit him on the head with their hands and a book.<sup>272</sup>

- According to the applicant, after his arrest, two patrol police officers beat him in the toilet of the police building. According to him, he was not allowed to use the toilet and was forced to urinate in his pants. According to the applicant, as a result of the beating, he had injuries on his body, which, during his placement in the temporary detention isolator, the doctor described in the relevant documents.<sup>273</sup>
- According to the applicant, he was detained by patrol police officers on the road near Gori. He said that after his arrest, while in the police car, he repeatedly asked the police officers to allow him to use the toilet, but his request was not granted. So, later, he was forced to urinate into his pants, in the yard of a police building, in front of about 20 people, causing him to be humiliated and disgraced.<sup>274</sup>

It is noteworthy that according to the information received during the reporting period, the above cases of physical and psychological violence against detainees were allegedly committed by the employees of Poti City Division, Rustavi District Division, Marneuli District Division, Gldani-Nadzaladevi Central Division, Vake-Saburtalo Division of the Ministry of Internal Affairs of Georgia as well as officers from the Patrol Police Department and the Special Operations Department. As for the methods of violence, from physical violence committed by the police officers in 2021, like in 2019 and 2020, the most obvious methods are tight handcuffing and beating by the hands and feet. In contrast to previous years, in 2021, in 2 cases, detainees indicated a restriction on the use of the toilet, which forced them to urinate in their pants. In addition, in 1 case, the person indicated that after his arrest, police officers spat in his face, and in 1 case, the person stated that he had been threatened with rape.

In addition to interviewing detainees and analyzing appeals/complaints received by the Public Defender's Office, during monitoring visits to temporary detention facilities, members of the Special Preventive Group inspect the personal files of all detainees placed in the facility from January 1 of the reporting year until the date of the visit and record all cases where, given the circumstances of the detention, the location, quantity and nature of the injuries to the body, the group suspects the alleged ill-treatment of the detainee.

With this method, in 2021, the Special Preventive Group detected 495 suspicious cases.<sup>275</sup> These cases include both administrative and criminal cases. According to the data, out of these 495 cases, in 129 (26%) cases, the persons who received injuries during and/or after the arrest were detained under the

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<sup>272</sup> According to the letter SIS 5 21 00025295 of State Inspector's Service received on 16 October, 2021 an investigation is underway in the Eastern Division of the Investigation Department of the State Inspector's Service on the criminal case №199041021002, on the facts of violent abuse of official authority by certain employees of the Ministry of Internal Affairs as a crime under Article 333, Part 3, Subparagraph "b" of the Criminal Code of Georgia.

<sup>273</sup> According to the information received by the letter SIS 8 22 00000320 of the State Inspector's Service of January 6, 2022 the Eastern Division of the Investigation Department of the State Inspector's Service is investigating a criminal case №199231221002, on the fact of alleged inhuman and degrading treatment of the detainee as a crime under Article 144<sup>3</sup>, Part 2, Subparagraphs "a", "b", "e" and "g" of the Criminal Code of Georgia.

<sup>274</sup> According to the information received by the letter SIS 8 21 00026008 of State Inspector's Service received on 23 October, 2021 the Eastern Division of the Investigation Department of the State Inspector's Service is investigating a criminal case №199270221001, on the fact of alleged degrading or inhuman treatment against a detainee by an officer or an equivalent person, by a group, using official position committed by certain employees of the Patrol Police Department of the Ministry of Internal Affairs, as a crime under Article 144<sup>3</sup>, Part 2, Subparagraphs "a", "b", "e" and "g" of the Criminal Code of Georgia.

<sup>275</sup> The inspection was carried out in the territorial police bodies and temporary placement isolators in the regions of Tbilisi, Kakheti, Imereti, Adjara, Guria and Kvemo Kartli.

administrative law.<sup>276</sup> As for the dynamics by years, in 2016 detainees under administrative law received bodily injuries during and/or after arrest in 12.8% of suspicious cases studied by the Special Preventive Group, in 2017 the figure was 26.4%, in 2018 - 26.8%, in 2019 - 31.8% and in 2020 it was 34.4%, while the statistics of 2021 (26%) indicated decrease compared to 2019 and 2020 and approached the figure of 2017-2018 (26.4% - 26.8%).

It should be noted that the official statistics of the Ministry of Internal Affairs for 2021 on the injuries of the persons placed in temporary detention isolators are slightly reduced compared to previous years.<sup>277</sup> In 2021, 13434 persons were placed in temporary placement isolators, of which 9359 persons had injuries. Of these, 133 persons had received injuries after arrest, which accounted for 1.4% of the total number of injured persons. As for previous years, in 2020 this figure was 1.7%,<sup>278</sup> in 2019 - 1.5%<sup>279</sup> in 2018 - 1.4%<sup>280</sup>.

In 2021, 512 persons placed in temporary detention facilities were injured during and/or after arrest,<sup>281</sup> which accounts for 5.5% of persons placed with injuries. According to statistics, in 2020 this figure was 5.9% (521 cases), in 2019 - 6.3% (656 cases), and in 2018 - 5.6% (467 cases).

In addition, in 2021, 380 persons in temporary detention facilities had complaints against the police, including 334 persons - about physical abuse, accounting for 2.8% and 2.5% of the total number of detainees, respectively. In 2020, this figure was 2.8% (341 cases) and 2.4% (290 cases), in 2019 - 2.8% (429 cases) and 2.3% (343 cases) and in 2018 - 2.3% (303 cases) and 2% (256 cases).

As part of the inspection, a special preventive team also analyzed data on persons admitted to penitentiary institutions with bodily injuries. According to the Special Penitentiary Service, in 2021, a total of 476 persons were admitted to penitentiary institutions with injuries, of which 23 persons (4.8%) were injured during the arrest and 31 persons (6.5%) - after the arrest. It is noteworthy that compared to 2020, in 2021 the share of those who received injuries during and after arrest decreased slightly.<sup>282</sup>

In 288 (58.2%) of the cases inspected during the 2021 monitoring visits, the protocol on the arrest indicated that there had been disobedience/resistance to a police officer and it is likely that in such cases the police would have to use force/coercion, however, the use of force in the detention protocols is indicated only in 53 (18.4%) cases. **Accordingly, in these cases the police officers allegedly used force, although this was not indicated in the arrest protocols.** In addition, out of the cases (53 cases in total) where the use of force was reported, the method of the use of force was indicated in 7 cases, of which only 4 cases were fully described and 3 cases were partially described. These circumstances further confirm the improper filling in of the protocols.

As in previous years, there is a tendency that in about one third of the cases studied and handled by the Special Preventive Group (2021 - 29.1%, 2020 - 26.3%, 2019 - 30.7%, 2018 - 27.6%, 2017 - 30.1%,

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<sup>276</sup> In Tbilisi temporary detention facilities, this figure was 33.8% (in 45 out of 133 cases, an administratively detained person was injured during and/or after detention). As for the other isolators, in 84 out of 362 cases, the administratively detained person was injured during and/or after the arrest, which accounted for 23.2%.

<sup>277</sup> Information is available at the following address: <<https://info.police.ge/page?id=233>> [Last viewed 12.01.2022].

<sup>278</sup> In 2020, 11891 persons were placed in temporary detention isolators, of which 8761 persons were injured. 150 people were injured after their arrest.

<sup>279</sup> In 2019, a total of 15,191 persons were placed in temporary placement isolators, of which 10,348 persons were injured. 155 persons were injured after their arrest.

<sup>280</sup> In 2018, a total of 12995 persons were placed in temporary placement isolators, of which 8320 persons were injured. Of these, 116 persons had received injuries after the arrest.

<sup>281</sup> Of these, 378 persons received injuries at the time of arrest, 89 persons after the arrest, and 45 persons at the time and after the arrest.

<sup>282</sup> In 2020, 7.2% of injured persons were injured during arrest and 6.6% after arrest.



2016 - 31.3%), the detention protocol does not indicate the injuries described in the medical records of the isolators. In 145 of the 495 cases handled in 2020, the injuries described in the isolator were not indicated in the detention protocol. Clearly, there is a strong presumption in these cases that the detainee may have been subjected to physical violence under police control.<sup>283</sup>

In fairness it should be noted that the discrepancy between the records may be in part due to the established general practice of checking injuries. In particular, the examination of injuries by police officers is superficial and does not involve a full examination of the body as is done in isolators. In addition, in the event of an administrative arrest, the discrepancy between the records may be in part due to shortcomings in the description of bodily injuries by police officers. In particular, the protocol of administrative detention does not at all contain a column, where the police officer should indicate the injuries on the body of the detainee, which contributes to the formation of heterogeneous practices - some police officers describe injuries in the administrative detention protocols in the note box, while others - do not.

In connection with the above-mentioned problem, in recent years, the Public Defender addressed a recommendation to the Minister of Internal Affairs of Georgia, to amend the relevant normative act and add columns in the protocol of administrative detention for the following information: time of drawing up the protocol; a description of the injuries on the body of the detainee; under what circumstances the arrest took place; whether there was resistance; whether the measure of coercion was applied and in what form.<sup>284</sup> It is unfortunate that the Ministry of Internal Affairs did not accept this recommendation.

It is noteworthy that out of the 145 cases mentioned above (when the injuries described in the isolator were not indicated in the protocol of detention), 119 persons (82%) were detained administratively and the remaining 26 (18%) were criminally detained.<sup>285</sup> It is noteworthy that there is a special box in the form of the arrest protocol of the accused, which should indicate the physical condition of the detainee (bodily injuries) at the time of arrest. Although in these 26 cases the injury to the detainee's body was described in the documentation produced in the temporary detention isolator, the relevant box in the detention protocol indicated that the detainee had no injuries. Consequently, in the indicated 26 cases, it is unlikely that the author of the protocol missed out a description of the injuries and there is a strong presumption that the person was subjected to ill-treatment before being placed in detention isolator.

The Special Preventive Group pays special attention to the cases when a detainee brought to a temporary detention isolator has an injury to the face. In 2021, out of 495 suspicious cases, in 18 cases, the detainee had injuries to the face, and the arrest protocol indicated that the **detainee was not injured**.<sup>286</sup> In addition, in other 23 cases where the detainee had facial injuries, there was **no record of injury** in the detention protocol.<sup>287</sup> Clearly, if a detainee had facial injuries at the time of arrest, police officers must have noticed this and describe it in the arrest protocol.

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<sup>283</sup> In the case of *Salman v. Turkey*, the European Court of Human Rights clarified that when the disputed cases belong, in whole or in part, to the exclusive domain of the relevant authorities, as in the case of persons deprived of their liberty, there are strong suspicions regarding the injuries and, of course, the burden of proof rests with the relevant authorities to provide a convincing explanation for what happened. Decision of the European Court of Human Rights of 27 June 2000 on the case *Salman v. Turkey*, N21986/93), para. 100.

<sup>284</sup> See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, p. 94, available at the following address: <<https://www.ombudsman.ge/res/docs/2021040110573948397.pdf>>, [last viewed on 12.01.2022].

<sup>285</sup> In 2020, out of 122 such cases, 101 (82.8%) persons were administratively detained and 21 (17.2%) were criminally detained.

<sup>286</sup> In 11 of these 18 cases, the person was detained administratively, and in 7 cases - criminally.

<sup>287</sup> In 22 of these 23 cases, the person was detained administratively and in 1 case - criminally.

**In view of all the above, the Public Defender considers that the situation in terms of police treatment of detainees has not changed significantly in 2021 compared to previous years and since 2017, there has been a deteriorating trend in the treatment of administratively detained persons, although compared to 2019 and 2020, in 2021 the number of cases of bodily harm during and after arrest received by persons arrested under administrative rules has decreased. In addition, data processed by a Special Preventive Group and the results of a survey of detainees show that abuse of force by the police during detention, physical and psychological violence after arrest, as well as incomplete documentation of bodily injuries and use of force remain a challenge. Thus, the Public Defender and the Special Preventive Group consider it particularly important to establish strict control over the activities of police officers and increase their accountability. It is essential that police officers receive a clear message from senior officials that human rights violations will not go unpunished.**

### **3.4. Legal safeguards from torture and ill-treatment**

This chapter provides information on the guarantees of protection against torture and ill-treatment in the system of the Ministry of Internal Affairs as of 2021.

#### **3.4.1. Information about rights**

It is important that the detainee is informed in writing of his or her rights at the time of arrest, verbally, and at the earliest opportunity.<sup>288</sup> Under criminal procedure law,<sup>289</sup> the detaining officer shall explain to the detainee in a comprehensible manner his/her procedural rights and the grounds for his detention. Interviews with detainees conducted by the Special Preventive Group again show that in most cases, detainees during the arrest or before the interrogation are either not provided with any definition of rights at all, or are only partially provided with such information.

In the vast majority of police stations and temporary detention isolators visited by the Special Preventive Group in 2021, large posters containing information on procedural rights were placed at the entrances, however, in addition to informing through posters, which the detainee may not even be able to read, it is important to provide him/her with information about his/her rights in a timely manner, orally and in an understandable language. In order to facilitate the realization of this right, the Public Defender had issued a recommendation in the previous years to explain the rights to the detainee through audio-video recordings in a pilot mode, but the Ministry of Internal Affairs did not accept the recommendation.<sup>290</sup> The position of the Public Defender remains unchanged on the importance of ensuring the definition of rights by police officers upon arrest with a guarantee such as audio and/or video recording.

It should be noted on a positive note that a list of procedural rights is available in temporary detention facilities in different languages.<sup>291</sup> The Special Preventive Group also found written documents on the rights and responsibilities of the detainee during his detention in the cells of the detainees.

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<sup>288</sup> 28th General Report of the European Committee for the Prevention of Torture, 2019, para. 66, Available in English: <<https://rm.coe.int/16809420e3>> [Last viewed: 28.12.2021].

<sup>289</sup> Criminal Procedure Code of Georgia, Article: 38 (2) and Article 174 (1).

<sup>290</sup> According to the letter MIA42103429972 of the Ministry of Internal Affairs of Georgia dated December 29, 2021, the Ministry of Internal Affairs has developed a recommendation only on drawing up an arrest protocol. According to the information provided the recommendation to draw up an arrest protocol sets out the standards for the definition of rights for the detainee, their significance and the possible consequences of the violation. The Public Defender considers that the obligation to specify the definition of rights in the detention protocol alone does not properly ensure the realization of this right in practice.

<sup>291</sup> In Georgian, Russian, English, Azerbaijani, Armenian, German, French, Arabic and Turkish.

### 3.4.2. Access to a lawyer and informing the family

#### Access to a lawyer

To prevent ill-treatment of a detainee by the police, the most important guarantee is the timely access to a lawyer, as it is in the first hours of detention that the person is in the most vulnerable position.<sup>292</sup> According to data processed by the Special Preventive Group using a statistical program, in 2021, the rate of involvement of a lawyer in the case during the first 24 hours has significantly deteriorated. In particular, in 2021, the lawyer involvement rate in the first 24 hours was 17.4%, in 2020 it was 45%, and in the first 48 hours the lawyer involvement rate increased from 29% to 37.6%.<sup>293</sup> None of the detainees interviewed by the Special Preventive Group in 2021 met with a lawyer at a police station. It is noteworthy that the persons detained under the criminal law directly pointed to the problem of obstruction of communication with the lawyer and neglect of the request of lawyer.<sup>294</sup> The same trend is confirmed by the results of online and face-to-face interviews with lawyers, where they point out that the detainee is first met mostly either in a temporary detention isolator, or even later. Since detainees spend an average of 4 hours under police control - driving in police vehicles, staying in police stations for several hours, the Public Defender believes that for prevention of and protection from ill-treatment, it is important that the request to contact a lawyer be recorded during the period of detainees being under the control of the police - indicating the time and addressee of the request.<sup>295</sup>

The members of the Special Preventive Group saw the completed forms in the temporary detention isolators, where the information about the telephone call being offered to detainees was recorded, the identity of the inspector was indicated, the time of the offer and whether the call was made, which the detainee confirmed by signing, however, the protocols did not specify the time of the detainee's request to contact a lawyer. According to the isolator staff, if the detainee knows the name of the lawyer, they contact the lawyer directly, and if s/he does not know, then they call the investigator and inform him/her that the detainee is asking for a lawyer, about which a protocol is drawn up.

In addition to informing the lawyer in a timely manner, another obstacle to the meeting between the lawyer and the detainee at the police station is the uncertainty of the detainee's whereabouts and the unfavorable, non-confidential environment for conversation with the lawyer at the police station. In 2021, there were still cases when the lawyer could not find out where the detainee was held. During the mass administrative arrests of protesters in Tbilisi and the regions in late 2021, both the lawyers and the detainee's family members were appealing to the Public Defender's Office for help in locating the detainee.<sup>296</sup>

Ensuring a confidential meeting with a detainee at a police station remains a challenge. For example, in the Marneuli District Division, where there is an interview room, according to police officers, the lawyer is not allowed to meet in a separate room for security reasons and arrange the meeting in a common

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<sup>292</sup> The average length of time under police control is 4 hours, and in rare cases there have been cases of longer stays under police control. Namely: 8 hours (10 cases), 9 hours (9 cases), 10 hours (6 cases), 11 hours (8 cases), 12 hours (4 cases), 14 hours (1 case), 15 hours (1 case), 16 hours (2 cases), 21 hours (1 case).

<sup>293</sup> Statistics on the involvement of a lawyer in a criminal case during the first 24 hours by years: 2017 - 15%, 2018 - 11.9%; 2019 - 24.6%; 2020 - 45%.

<sup>294</sup> To ensure protection against this procedural and ill-treatment, the Public Defender has, for years, been recommending that a request to contact a lawyer be documented.

<sup>295</sup> About the production of harmonized and detailed databases, see the report of the UN Subcommittee on Prevention of Torture on the visit to Cyprus in January 25-29, 2016, CAT/ OP/CYP/1, para: 21. Available in English at <<https://bit.ly/3dkjevd>> [Last viewed: 02.02.2022].

<sup>296</sup> For example, on November 10, 2021, the Public Defender's office was contacted by detainees' family members and lawyers throughout the day asking the Public Defender's assistance in locating the detainee. In some cases, the Public Defender's Office was not able to receive information from the Ministry of Internal Affairs in a timely manner.

area where the detainee is visually monitored and a police officer may hear the talk of the detainee.<sup>297</sup> Clearly, in such circumstances, a lawyer will not be able to interview a detainee in confidence, which is a violation of procedural norms<sup>298</sup> and a gross neglect of the guarantee of protection from ill-treatment.<sup>299</sup>

### Informing the family

According to the data processed by the Special Preventive Group, in 2021, within the 3-hour period established by law<sup>300</sup> the family was contacted in 94% of the processed criminal cases. Compared to the previous year, the situation has improved in this regard.<sup>301</sup> In addition, the General Inspection of the Ministry of Internal Affairs should investigate all cases where the family has not been notified within the 3-hour period prescribed by law and determine the reason for the failure to notify or breaching of deadlines for notification and respond accordingly. In an interview with the Special Preventive Group, detainees again noted that this right was restricted during their stay under police control. It should also be noted that the study of statistics on notifying family members is not possible in the case of administratively detained persons, as it depends on the detainee's wish whether to inform relatives about the fact of detention,<sup>302</sup> and the request is nowhere recorded, which is why it is difficult to ascertain whether this right is protected. Nevertheless, as mentioned above, the problem of informing the family also arises in the case of administratively detained persons.

### **3.4.3. Medical examination**

#### Documenting injuries in Temporary Detention Isolators

In order to detect the fact of ill-treatment, it is important for the doctor to establish a connection between the injuries on the detainee's body and the methods of inflicting the injuries indicated by the detainee.<sup>303</sup> Doctors should make an effort to obtain detailed, reliable information in order to determine more accurately the circumstances indicated by the detainee, whether it could have caused injury existing on the person's body.

Clearly, in the isolators where the medical unit operates, more guarantees are created for the detainee, both in terms of protection from ill-treatment and in terms of the provision of adequate medical care. Unfortunately, in 2021, the number of isolators where there is a medical unit and a doctor is regularly on duty, has decreased. In particular, as of 2021, the medical unit operated in 21 isolators, while this number was 23 last year and had increased compared to previous years.<sup>304</sup> Also, the medical staff is constantly on duty in only 10 isolators and there is no progress in terms of recruitment and employment of medical staff. It should be noted with regret that the protocols drawn up by the ambulance doctors still superficially describe the injuries on the bodies of the detainees and generally do not indicate the

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<sup>297</sup> During the visit to the Marneuli District Division, the representatives of the Public Defender also had an interview with the detainee in a common space.

<sup>298</sup> Criminal Procedure Code of Georgia, Article 38, Part 5.

<sup>299</sup> Temporary placement isolators should be noted positively, where investigation rooms have been set aside for a meeting with a lawyer and no claim has been made in this regard in 2021.

<sup>300</sup> Criminal Procedure Code of Georgia, Article 177 Part 1.

<sup>301</sup> The dynamics by years are as follows: in 2017 - 71%, in 2018 - 86.8%, in 2019 - 94.4%, in 2020 - 84%.

<sup>302</sup> Code of Administrative Offenses, Article 245, Part 1, Subparagraph "c".

<sup>303</sup> Manual on to Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), para. 104.

<sup>304</sup> According to the letter MIA42103429972 of the Ministry of Internal Affairs of Georgia dated December 29, 2021, the employment contract was terminated from July 2021 for a doctor employed at the Akhaltsikhe temporary detention isolator.

circumstances of the injuries at all. The Public Defender hopes that the medical unit will operate in all isolators in 2022.<sup>305</sup>

Out of 495 cases examined in 2021, which the Special Preventive Group considered suspicious, in 399 (80.4%) cases, injuries were documented by a temporary placement isolator doctor in accordance with the Istanbul Protocol, in 22 (4.4%) cases - first by an ambulance doctor and then by an isolator doctor in accordance with the Istanbul Protocol, and in 74 (15%) cases, the documentation was only made by the doctor of the ambulance. It is noteworthy that little improvement has been observed in the temporary placement isolator in terms of a thorough description of the circumstances of the injuries by doctors. Nevertheless, in 2021, in more than half of the cases the circumstances of the injury are described incompletely or not described at all.

Description of the circumstances of the injury by the TDI doctor			
Year	The circumstances are described comprehensively	The circumstances are not described comprehensively	The circumstances are not described at all
2021	46.1%	27.9%	21%
2020	42%	35.6%	22,4%
2019	22%	69%	9%

A thorough description of the circumstances of the injury is important when documenting them in accordance with Istanbul Protocol, as it is on this basis that the doctor must determine the compatibility between the injury and the information provided by the detainee. Of particular concern to the Special Preventive Group is the fact that in some cases, the doctor determines the compatibility between the injury and the circumstances of its receipt in such a way that the circumstances of the injury are incompletely or not described at all.<sup>306</sup> In contrast, the doctor has not established compatibility in cases where the circumstances of the injury are described comprehensively.<sup>307</sup>

According to the Istanbul Protocol, one of the most important methods of documenting injuries is photographing the injuries. Unfortunately, doctors in the temporary detention isolators rarely use this opportunity and explain the practice of not taking photos by the refusal of the detainees. Out of 421 cases processed by the Special Preventive Group and documented according to the Istanbul Protocol, photos were taken in 35 (8.3%) cases. The quality of none of the photos seen by the members of the Special Preventive Group was satisfactory, the photos were blurred, inadequate or in too bright conditions. In addition, there is still no uniform rule for the storage of photographs taken in accordance with the Istanbul Protocol in temporary detention facilities. Photos are mostly stored in a folder on the computer desktop. Often they were not titled with first, last name and date. There were cases when doctors could not find the photos, and sometimes they could not even remember if they had been taken at all. Similar challenges were revealed during the monitoring conducted in the past years, therefore, the Public Defender issued a recommendation to conduct trainings to the doctors on photographing the injury and storage rules of the photos. According to the information provided by the Ministry of Internal Affairs, the trainings scheduled for 2021 have been postponed to the first quarter of 2022 due to the epidemiological situation. The Public Defender hopes that by the beginning of 2022, all doctors

<sup>305</sup> According to the letter MIA42103429972 of the Ministry of Internal Affairs of Georgia dated December 29, 2021, it is planned to open a medical unit in all isolators, regardless of the size and load of the isolator.

<sup>306</sup> Out of 136 cases where the circumstances are not fully described, in 42% the doctor has established compatibility, in 6.9% of which the doctor has established compliance so that the circumstances of the injury have not been described at all.

<sup>307</sup> Out of 196 cases where the circumstances of the injury are fully described, in 8.7% (17 cases) no compatibility was established.

employed in the temporary detention isolators will be trained on the rules of photography and storage of photographs.

**As in previous years, there were cases when the detainee suffered injuries but no information was sent to the State Inspector's Office. Out of 495 cases processed in 2021, information were sent to the State Inspector in 441 (89%) cases, in 54 (11%) cases it is not sent. Among them are cases when the detainee has injuries on the face and eye socket and the degree and color of the injuries indicate that the injuries are newly received as a result of the alleged violence.**

#### Meeting in a confidential environment

A meeting between the detainee and the doctor in a confidential environment is crucial to identify suspected cases of ill-treatment. There were also cases in 2021 when detainees reported that during a medical examination, isolator staff stood behind a slightly open door. Doctors point out that for more safety they sometimes ask for presence of an employee. It should be noted that the Istanbul Protocol columns provide a graph for exceptional cases where the doctor should indicate why the presence of third parties has become necessary. Some of the cases observed by the Special Preventive Group were not properly substantiated and it was not shown that the presence of the isolator staff for safety reasons was caused by an immediate risk assessment. For example, in one case, a doctor indicated that an employee had attended an examination because the detainee had a history of mental illness, and in one case, because he had been charged with a serious crime.

Conducting a medical examination in a non-confidential environment pushes the detainee to hide the real origin of the injury because of fear. This has a negative impact on the thorough documentation of injuries and the detection of cases of ill-treatment.

#### Confidentiality of medical records

The medical records of the detainee are personal data, which should not be accessible to non-medical staff of the Ministry of Internal Affairs.<sup>308</sup> The Public Defender has negatively assessed the practice of storing medical cards drawn up by ambulance doctors with isolator staff and, for years, has been recommending that these documents be stored only with isolator doctors. Although the Ministry of Internal Affairs ensured the submission of the original documentation to the ambulance doctors from July 19, 2021, the copies of the documents remain with the isolator staff.<sup>309</sup> Therefore, the recommendation of the Public Defender was not implemented.

The Public Defender would like to pay special attention to the practice of handing over medical documents drawn up in accordance with the Istanbul Protocol to the MIA investigative bodies, which may be used against a person arrested in a specific criminal case. According to the guiding principles of the Istanbul Protocol, doctors should take all measures to ensure that the information disclosed to them does not become detrimental to the detainee and to protect medical records from seizure.<sup>310</sup> As it turns out, the transfer of medical documentation to the investigative body of a particular detainee's case is based on a court ruling and is seized in accordance with Article 119 of the Criminal Procedure Code of Georgia. The Public Defender considers it inadmissible to transfer medical documentation on the basis of a court decision without the consent of the detainee to the investigative body investigating the

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<sup>308</sup> Article 6 of the Law of Georgia on Personal Data Protection. Article 28 of the Law of Georgia on Patients' Rights.

<sup>309</sup> Letter MIA42103429972 of the Ministry of Internal Affairs of Georgia of December 29, 2021.

<sup>310</sup> Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), para: 73, available in English at: <<https://www.ohchr.org/documents/publications/training8rev1en.pdf>> [Last viewed: 10.01.2022].

criminal case of a particular detainee, as the purpose of documenting injuries is to reveal facts of torture and ill-treatment, not to create evidence against the arrested person.

Another well-established practice that is against international standards for the prevention of torture is the taking of a sample from a detainee's body by doctors in a temporary detention facility.<sup>311</sup> In interviews with the Special Preventive Group, doctors note that they are involved in taking blood samples. The practice is also documented. First of all, the practice is against medical ethics, as the role of the doctor should not go beyond the care of the detainee/patient's health and should be aimed only at protecting him/her. According to the norms of professional ethics, the primary duty of a doctor is to act only in the interests of the patient.<sup>312</sup> In addition to violating ethical norms, doctor's involvement in sampling harms the relationship between patient and doctor,<sup>313</sup> leads to a decrease in trust and ultimately has a negative impact on the detection of alleged cases of ill-treatment.

#### **3.4.4. Audio and video recordings**

Electronic recording of the police interaction is one of the guarantees of the prevention of ill-treatment, as well as a significant advantage for the police themselves to protect themselves from false accusations. Records should be protected, kept for a reasonable time and made available to the detainee, his/her lawyer and domestic/international monitoring mechanisms, as well as to investigative bodies.<sup>314</sup>

For years, the Public Defender has been issuing recommendations on video recordings to be regulated by a normative act, such as the obligation to record video with a body camera and in a police car, and to store material for a reasonable period of time, as well as recommendations on fully equipping police facilities with video infrastructure and full coverage of the detainee's movement area.<sup>315</sup>

Unfortunately, in 2021, no changes were made in this regard at the normative level. In particular, patrol inspectors/employees of the Central Criminal Police Department and territorial bodies are not obliged to videotape their interactions with citizens. If the above-mentioned employees carry out video recording, there are no rules and terms of video storage, except for the patrol inspectors.<sup>316</sup> It should be noted with regret that in practice patrol inspectors/employees of the Central Criminal Police Department and territorial bodies rarely use video taping in their interactions with citizens. Most of the detainees interviewed by the Special Preventive Group in 2021 were convinced that no video taping was taking place during their detention, and some did not notice if there was video taping. According to the State Inspector's Service, no recordings were requested in 19 criminal cases pending in the Service on the grounds that no video recordings were made with the body video cameras and the car video recorder

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<sup>311</sup> UN General Assembly resolution 37/194 of 18 December 1982, Principles of Medical Ethics in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3. Available:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx>, [Last viewed: 14.12.2022].

<sup>312</sup> Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), para: 51, available in English at: <https://www.ohchr.org/documents/publications/training8rev1en.pdf> [Last viewed: 10.01.2022].

<sup>313</sup> Report of the European Committee for the Prevention of Torture following a visit to Slovenia in 2006. Para. 99, available: <https://rm.coe.int/1680697db1> [Last viewed: 14.12.2022].

<sup>314</sup> 28th General Report of the European Committee for the Prevention of Torture, 2019, para. 81, available in English: <https://rm.coe.int/16809420e3>, [Last viewed: 11.01.2022]. Report of the UN Subcommittee on Prevention of Torture to the Government of Poland, CAT/OP/POL/ROSP/1, 11.01.2022. Para. 47, available in English: <https://bit.ly/2xXKrn7> [Last viewed: 11.01.2022].

<sup>315</sup> A detailed analysis of the current legislation on video cameras can be found in the 2020 report of the National Preventive Mechanism. P. 131-136. Available: <https://www.ombudsman.ge/res/docs/202111112020776878.pdf> [Last viewed: 11.01.2022].

<sup>316</sup> Order № 1310 of the Minister of Internal Affairs of December 15, 2005 on the Approval of the Instruction on the Rules of Patrolling by the Patrol Police of the Ministry of Internal Affairs of Georgia, Article 12<sup>1</sup>.

and no other video cameras were present at the scene.<sup>317</sup> Nevertheless, the position of the Ministry of Internal Affairs is unchanged and considers that the video recording is at the discretion of the police officer. As for equipping police vehicles with indoor perimeter cameras, according to the Ministry, the budget did not provide funds for this in 2021, in addition, there are risks in terms of protection of personal data of employees.<sup>318</sup>

The Public Defender does not share the argument presented by the Ministry of Internal Affairs, as it is clear that the police officers do not use the body video cameras in practice and the above-mentioned discretion does not guarantee protection from ill-treatment at all. As for the protection of personal data of employees during continuous video surveillance in a police car, the Public Defender notes that the third paragraph of Article 12 of the Law of Georgia on Personal Data Protection allows video surveillance in the workplace, if necessary for the safety of the person. In this case, there is a need for an exception for the safety of the person, as the police car is one of the most common places of ill-treatment of an arrested person.

The European Committee for the Prevention of Torture notes that it is important that any surveys/interviews conducted by police officers be recorded on video and audio equipment. Also, the start and end time of the survey/interview and the names of all persons participating in the recording should be indicated.<sup>319</sup> Interviews with detainees and lawyers in 2021 show that audio-video recording of the detainees' interview process is still not taking place at the police stations.<sup>320</sup>

In addition, not all areas where a detainee may be present are covered by video surveillance in police facilities. The UN Committee against Torture believes that all internal and external perimeters of police facilities where a detainee may be present should be equipped with a video surveillance system. Exceptions to this rule are cases where the detainee's right to privacy or the privacy of a meeting with a lawyer and a doctor may be violated.<sup>321</sup>

The table below shows how the various areas of the facilities visited by the Special Preventive Group in 2021 are covered by the video surveillance system.

	Fully equipped	Partly equipped	Not equipped
Corridors	15	2	13
Stair cells	13	6	11
Workspaces*	15	8	7
Interview rooms	14	0	9

\* *Common working space for detective investigators and/or district inspectors; individual work rooms*

The table below compares the data of the Ministry of Internal Affairs in 3 regions in 2019, 2020 and 2021 in terms of the number of video cameras on the inner and outer perimeter.<sup>322</sup>

<sup>317</sup> Letter SIS 4 21 00033583 of the State Inspector Service of December 30, 2021.

<sup>318</sup> Letter MIA42103429972 of the Ministry of Internal Affairs of Georgia of December 29, 2021.

<sup>319</sup> 28th General Report of the European Committee for the Prevention of Torture, 2019, para. 81, Available in English: <<https://rm.coe.int/16809420e3>> [Last viewed: 12.01.2022].

<sup>320</sup> According to Article 287 of the Criminal Procedure Code of Georgia, video and audio recording is allowed during the investigation.

<sup>321</sup> The final conclusion on the Russian Federation, Committee against Torture, CAT/C/RUS/CO/6, 28.08.2018, available at: <<https://goo.gl/JYvzY2>> [Last viewed: 08.02.2021].

<sup>322</sup> Letter MIA 5 21 03461210 from the Ministry of Internal Affairs of 31 December 2021.



Police departments and divisions	Video cameras on the <u>inner</u> perimeter			Video cameras on the <u>outer</u> perimeter		
	2019	2020	2021	2019	2020	2021
<b>Adjara-Guria</b>						
Police Department of the Autonomous Republic of Adjara	19	19	19	5	5	5
Kobuleti Regional Division	9	9	9	5	5	5
Guria Police Department and Ozurgeti Regional Division of MIA	15	15	15	9	9	9
Lanchkhuti Regional Division	7	7	7	7	7	7
Chokhatauri Regional Division	6	6	6	4	4	4
<b>Imereti, Racha-Lechkhumi and Kvemo Svaneti</b>						
Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department of the Ministry of Internal Affairs	12	12	12	4	4	4
Kutaisi City Division	10	10	10	4	4	3
Tskaltubo Regional Division	10	10	10	5	4	4
Zestaponi Regional Division	8	8	8	8	8	8
Samtredia Regional Division	7	7	7	7	5	5
Baghdati Regional Division	1	1	1	3	3	3
Vani Regional Division	1	1	1	4	4	4
Sachkhere Regional Division	9	9	0	7	7	0
Tkibuli Regional Division	1	1	1	4	5	5
Kharagauli Regional Division	10	10	10	8	8	8
Terjola Regional Division	1	1	1	4	4	4
Ambrolauri Regional Division	8	8	8	2	3	3
Oni Regional Division	6	6	6	4	4	4
Chiatura Regional Division	10	10	10	6	6	6
<b>Kakheti</b>						
Kakheti Police Department	9	8	8	4	4	3
Telavi Regional Division	9	11	10	4	4	4
Akhmeta Regional Division	5	5	5	3	3	3
Kvareli Regional Division	7	7	7	6	6	6
Lagodekhi Regional Division	6	6	6	4	4	4
Gurjaani Regional Division	6	3	12	4	4	15
Dedoplistskaro Regional Division	4	4	4	3	4	4
Sighnaghi Regional Division	3	3	3	3	3	3
Sagarejo Regional Division	5	4	5	5	5	5

Comparing the data, it is clear that the number of video cameras inside and outside the given divisions/police departments does not change from year to year.

In the 35 police facilities visited by the Special Preventive Group, none of the offices of the Head/Deputy Head of the Department/Division were subject to audio-video surveillance, while these offices are actively used for interviewing detainees or other persons in the facility. In interview with the Special Preventive Group, detainees and lawyers stated that in some cases, there were incidents of ill-treatment in these areas. The Public Defender considers that the practice of interviewing detainees and other persons of different status in the above-mentioned rooms should be eliminated. In addition, it is important that the corridors and connecting areas of all police stations be equipped with video cameras in order to capture every movement of the detainee.

Monitoring conducted in 2021 reveals that video cameras, as a guarantee of protection against ill-treatment, are not adequately secured for detainees. Clearly, this has a negative impact on both the

prevention of torture and ill-treatment and the investigation into allegations of ill-treatment<sup>323</sup> and leaves the violation of the *jus cogens* norm without legal response.

### 3.4.5. Record-keeping in police stations

UN Subcommittee on Prevention of Torture calls on member states to produce standardized file documentation/records of detainees.<sup>324</sup> The production of standardized and complete documentation is important to record in detail and chronologically all actions related to the detainee: detention, entry and exit from the facility, examination of the body, request by the detainee to contact a lawyer/doctor/family, the exact time and reasons for the release or transfer of the detainee, accurate information on where the person was at the time of the arrest, etc. The production of file documentation will create a greater guarantee of protection against ill-treatment, as police officers will be required to chronologically insert all the information into the system and will not be able to modify and change it arbitrarily. The introduction of such a mechanism in the age of modern technology should not be associated with major obstacles.<sup>325</sup>

In order to better protect detainees from ill-treatment, as well as to protect the police from false allegations of unlawful detention and/or ill-treatment, it is important to ensure that detention protocols and documentation at the facility are properly produced.

In 2021, no steps have been taken to correct the shortcomings that the Public Defender has been pointing out in the reports for years. The production of documentation from the moment of arrest to transfer to a police station and then to a temporary detention isolator is inconsistent and allows law enforcement to make records post-factum so that the injuries and cases of using force are not recorded synchronously in time.

First of all, it should be noted that the detention protocols, both administrative and criminal, need to be updated. It is also important to train police officers in completing detention protocols properly and to regularly supervise the proper completion of protocols in practice. Upon reviewing the detention protocols, the Special Preventive Group identified the protocols, which did not provide important information such as the time of transfer to the police station, a description of the detainee's bodily injuries (or an indication that no injuries were discovered), and a description of force and means used during the arrest. This is especially noticeable when reviewing administrative detention protocols, where the protocol form itself does not provide graphs describing injuries to the detainee's body and the use of force, which is why some police officers make small entries in the note column. In the administrative detention protocol, the main descriptive part is devoted to the grounds on which the arrest took place and, in exceptional cases, only indicates that "the detainee resisted" or "proportional force was used". Unfortunately, there is no indication of the form of resistance and which coercive measure was used by the police.

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<sup>323</sup> According to the letter SIS 4 21 00033583 of the State Inspector's Service dated December 30, 2021, the State Inspector received incomplete video recordings from the Ministry of Internal Affairs in 47 criminal cases, but failed to receive video recordings in 44 criminal cases. In 61 of these 91 cases, the Ministry clarified that no records were found, in 10 cases no video camera was installed at all, and in 6 cases the camera was not recording.

<sup>324</sup> Follow-up report of the UN Subcommittee on Prevention of Torture on its visit to Cyprus in January 25-29, 2016., CAT/OP/CYP/1, para. 21. Available in English at the following address: <<https://bit.ly/3dkjevjd>> [Last viewed: 12.01.2022].

<sup>325</sup> The European Committee for the Prevention of Torture calls on the Greek government to introduce an electronic system for documentation of detainees in all police stations. Follow-up report of the European Committee for the Prevention of Torture's visit to Greece on 6 July 2020, para. 25, Available: <<https://bit.ly/3jvY6Wd>> [Last viewed: 12.01.2022].

Journals are kept in material form for the registration of persons detained in police stations<sup>326</sup> - books tied with laces, besides the fact that the journal columns do not cover all the important issues,<sup>327</sup> the titles of the columns in the magazines are also problematic and the police officers have not been given proper instruction on how to fill in the columns. Journals are so outdated that they are inconsistent with even the terms established by current legislation. The production of documentation in this way does not provide a complete description of the information about detainee. It is known to the Special Preventive Group that the logs are filled in according to the data indicated in the detention protocol, after the completion of the filling it in the detention facility. This is evidenced by the comparison of the columns in the journals and the records of the detention protocol, where even the word order is identical. It is also noteworthy that in the vast majority of cases investigated by the Special Preventive Group, the time for taking a detainee to a police station is ahead of the time of completion the protocol.

As in previous years, the above-mentioned journals are produced with shortcomings in the territorial bodies of the police. Out of 35 police stations visited by the Special Preventive Group, 11 have significant gaps in filling the journals. In some cases, the date/time of detention of the person cannot be determined, the date/time of removal of the detainee from the division is unclear, the time of detention of the person is preceded by the time of being taken to the temporary detention isolator, and the time of detention – by entry of the person into the division; in some cases, the date and time of the detainee's detention or the time of the detainee's release are not specified. According to the General Inspection of the Ministry of Internal Affairs, in 2021 (including November) 110 cases of incorrect production of registration journals of detainees or temporary transfer logs of detainees were revealed.<sup>328</sup>

In addition to the detainee, a person who was invited to an interview at a police station may be placed under police control. According to Article 21 of the Organic Law of Georgia on the Police, the police have the right to invite a person for an interview at a police station. Legally, visit of a person invited to the police using this procedure, as well as leaving the police, is formally voluntary. No entry or exit documents are prepared to prove that this or that person was indeed present at the police station. In cases of abuse of power, pressure or physical violence against persons invited under this procedure, citizens are not provided with procedural guarantees of protection from ill-treatment. According to the information provided by the lawyers, in 2021 it is frequent to "voluntarily" summon a person to the police station and restrict their movement during this period, which, in our assessment, is *defacto* illegal detention.

It should also be noted that police officers, register in the detainee record book only those invited for interview who were not formally detained upon entering the police station, although it was predetermined that they would be detained upon arrival and interview at the police station. In such cases, the citizens are mostly taken to the police station by the police themselves. This is confirmed by both the lawyers and the records kept in the institutions inspected by the Special Preventive Group. Cases like this are a risky practice in terms of protection from ill-treatment, as prior to formal arrest,

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<sup>326</sup> "Book of registration of persons detained in the bodies of internal affairs" and "Journal of registration of persons transferred to temporary detention isolator".

<sup>327</sup> Book of registration of persons detained in the bodies of internal affairs" has the following columns: Name/Surname/Father's Name/Year and Place of Birth; Workplace; Date and time of entry/exit of the detainee; the results of the detainee examination; Date and time of arrest; Reason and place of arrest; Detaining person; Article of the Criminal Code; Case number; the date and time of placement of the detainee in the temporary detention facility is recorded in the "Journal of registration of persons transferred to temporary detention isolator".

<sup>328</sup> Letter MIA 8 21 03377505 from the General Inspection of the Ministry of Internal Affairs of 22 December 2021.

the detainee does not have access to legal guarantees, even though before detention they were de facto and unlawfully deprived of liberty.<sup>329</sup>

The Public Defender believes that any person who is at the police, regardless of his or her status, should enjoy procedural guarantees of protection.<sup>330</sup> To this end, it is important to establish mechanisms that will enable monitoring bodies to obtain reliable information about a person's status, time of enter and exit of a police station.

### **3.4.6. Identification of cases of alleged ill-treatment**

The State Inspector's Service is the most important guarantor of the detection and investigation of facts of ill-treatment, for which one of the main sources of receiving information is the temporary detention isolators. 401 reports from the temporary detention isolators (January-November) of alleged violence committed by the Ministry of Internal Affairs staff was received by to the State Inspector's Office.<sup>331</sup> It should be noted that the number of reports received from the detention facilities include the reports where detainees indicated physical and/or psychological violence against them, as well as cases where detainees did not indicate any alleged ill-treatment during the preparation of medical documentation in the detention centres, however, the doctor based on the suspicion reported the cases to the State Inspector's Service and the detainees provided information about the violence to the State Inspector's investigator during the interview. This shows how important it is for an investigator of the State Inspector's Service to meet with a detainee in a timely manner and gain the confidence to receive information about alleged ill-treatment.

By processing the data stored in the temporary detention isolators, the Public Defender studied the rate of timely appearance of the State Inspector's investigators in the temporary detention isolators, as well as the duration and conditions of the interviews with the detainees. An analysis of 495 cases handled by the Special Preventive Group reveals that out of 441 cases sent to the State Inspector's Service, the State Inspector's investigator met with the detainee in 350 cases in a temporary detention facility.<sup>332</sup> The State Inspector's investigator met with the detainee within an average of 7 hours after sending a report from the temporary detention isolator. The Public Defender considers that bearing in mind the resources of the State Inspector, as well as the fact that the State Inspector has a representative office only in 3 big cities of Georgia, visiting the detainee in the isolator in an average of 7 hours is a good indicator.<sup>333</sup>

It should be noted with regret that according to the information received during the preventive visits to the temporary detention isolators, due to the pandemic, the meetings with the investigators of the State Inspector's Service in 2021 were held mostly remotely. The investigation of torture and ill-treatment should take into account the principles of the Istanbul Protocol relating to the investigation of torture. In this regard, it is particularly important to interview the alleged victim and other witnesses, which

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<sup>329</sup> The EU Legal Aid Directive specifically states that when an interview with a police officer reveals that a person may be the alleged perpetrator of an alleged crime and may need to be apprehended, the interview with him or her should be terminated immediately. Continuation of the interview is permissible if the person is informed that s/he is considered to be the alleged perpetrator of the crime and that s/he can ask for procedural guarantees. Directive 2016/1919 of the European Parliament and of the Council of Europe, paragraph 10. Available: <<https://bit.ly/3ksCIXH>> [Last viewed: 12.01.2022].

<sup>330</sup> Report to the Government of Ukraine, European Committee for the Prevention of Torture, CPT/Inf(2018)41, 06.09.2018, para. 29, Information is available on the following website: <<https://rm.coe.int/16808d2c2a>> [Last viewed: 12.01.2022].

<sup>331</sup> Letter SIS 4 21 00033583 of the State Inspector of December 30, 2021.

<sup>332</sup> According to the Special Prevention Group, the reason for the State Inspector's failure to visit detainees in the detention facilities was mainly related to bringing the detainee to the detention center late at night and taking him to court the next morning.

<sup>333</sup> According to the letter SIS 4 21 00033583 of December 30, 2021 of the State Inspector's Service, in the period from January 1 to November 30, 2021, the Investigative Department of the State Inspector's Service received 1012 reports of alleged physical and/or psychological violence against 1062 persons by the employees of the Ministry of Internal Affairs.

should be followed by appropriate procedures and include measures such as: obtaining the consent of the victim and taking measures to protect him/her; providing conditions for conducting investigations; protecting the safety of witnesses, etc.<sup>334</sup> In order to establish an accurate picture of ill-treatment, it is first necessary to gain the trust of the alleged victim, which requires sufficient time for the survey to be conducted, creating a confidential and safe environment. **Due to the fact that detainees in temporary detention facilities are not left alone in the remote meeting room, a confidential environment is not provided during remote meetings, which affects the honest conversation with the investigator of the State Inspector's Service.** In addition, a face-to-face meeting is important for the investigator to better provide information about the State Inspector's service to the detainee, to gain confidence, and to assess the detainee's physical and psycho-emotional condition.

Under the same conditions, detainees have to remotely attend a restraining order hearing, which reduces the likelihood of a judge finding evidence of ill-treatment. Judges can play an important role in preventing ill-treatment. This role is recognized by the first paragraph of Article 2 of the UN Convention against Torture, which indicates the importance of using judicial measures to prevent torture.<sup>335</sup> Under Georgian law, if at any stage of the criminal proceedings a judge suspects torture, degrading and/or inhuman treatment against an accused/convicted person, or if the accused/convicted person has told the court themselves, the judge shall apply for an appropriate response to the relevant investigative authority.<sup>336</sup> It should also be noted that the Public Defender's recommendation to extend the same authority to judges reviewing administrative and to increase the role of judges in detecting alleged ill-treatment of detainees offenses was not implemented in 2021 either.

Another important issue related to remote court hearings is the judge's limited ability to visually assess the physical and psycho-emotional condition of the detainee.<sup>337</sup> During the remote proceedings, it is extremely unlikely that a judge will be able to identify or suspect whether a person has been subject to ill-treatment.<sup>338</sup>

### **3.5. Conditions in temporary detention isolators**

#### **3.5.1. Physical environment**

The Public Defender of Georgia welcomes the opening of a new temporary detention facility in Gurjaani in July 2021. According to the letter received from the Temporary Detention Department of the Ministry of Internal Affairs of Georgia<sup>339</sup> in 2022, the construction of a new temporary detention isolator in Bakuriani will be completed. Also welcoming is the fact that in 2021 all temporary detention isolators

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<sup>334</sup> Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), Chapter Three: Legal Investigation of Torture,

<sup>335</sup> "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction," UN Convention against Torture, Art. 2(1).

<sup>336</sup> Criminal Procedure Code of Georgia, Article 191<sup>1</sup>.

<sup>337</sup> It should also be noted that the Public Defender's monitoring report on remote court hearings also indicated technical deficiencies in remote court proceedings. There have been cases where the image of the accused either did not appear at all, or appeared flawed and blurred. See the report by the Public Defender on the monitoring of criminal hearings conducted remotely, available at <<https://bit.ly/3p8Z6Rx>> [Last viewed: 12.01.2022].

<sup>338</sup> The International Association for the Prevention of Torture in conjunction with NGOs, has appealed to the Inter-American Commission on Human Rights against a resolution on remote trials for Brazil. The International Association for the Prevention of Torture believes that during a pandemic it is possible to hold hearings on preventive measures in the courtroom so that a judge can observe suspicious cases. Information is available on the website: <https://bit.ly/3a79BQK>, [Last viewed: 12.01.2022].

<sup>339</sup> Letter MIA92103349868 from the Department of Temporary Detention of the Ministry of Internal Affairs of December 21, 2021.

that were checked by the Special Preventive Group<sup>340</sup> adhered to the norm of living space established for detainees.<sup>341</sup> Also, in all the isolators inspected by the Special Preventive Group, the artificial ventilation system worked properly and the artificial lighting was satisfactory.

Unfortunately, there are still problems in Temporary Detention Isolators that need to be addressed and brought in line with international standards. Visits during 2021 revealed that a number of temporary detention isolators were not provided with adequate natural light.<sup>342</sup> Also, in most of the isolators checked in 2021<sup>343</sup> the environment is not adapted for people with disabilities. It is still problematic for temporary detention isolators<sup>344</sup> to have semi-isolated sanitary units in two or more persons' cells, where in case of placing two or more detainees, the detainees will have to meet their natural needs in front of another detainee(s). At the same time, due to the lack of an isolated sanitary unit, a strong odor is created in the cell after the natural needs are met.<sup>345</sup> In addition, there is no flushing device in these cell toilets and instead a water pipe attached a few centimeters above the sewer open hole is used. It is noteworthy that the detainees also have to wash their hands and faces from this pipe, which excludes the protection of personal hygiene in conditions of respect for their dignity. Placing a detainee in the conditions described above for a long time<sup>346</sup> may amount to degrading treatment of detainees.<sup>347</sup>

### 3.5.2. Nutrition

As in previous years, incomplete nutrition of detainees in isolators<sup>348</sup>, which is limited to dry food only, is still problematic.<sup>349</sup> Those sentenced to administrative detention may receive such food for up to 15 days, which may cause significant damage to their health. This problem is particularly damaging to those in need of dietary nutrition. Accordingly, the Public Defender considers that the issue of proper nutrition in the isolators should be resolved immediately.

### 3.5.3. Epidemiological condition

In order to control the infection, the staff of the temporary detention isolators are provided with protective equipment - gloves and masks. Disinfectants are also available. PCR testing on COVID-19

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<sup>340</sup> In 2021, visits were made to Tbilisi №1, Tbilisi №2, Gurjaani, Sagarejo, Telavi, Signaghi, Rustavi, Marneuli, Tsalka, Batumi, Kobuleti, Ozurgeti, Lanchkhuti, Kutaisi, Baghdati, Zestaponi, Samtredia and Chiatura temporary detention isolators.

<sup>341</sup> Pursuant to Article 26, Paragraph 2 of the Order №423 of the Minister of Internal Affairs of Georgia, "On the Typical Statute of the Temporary Detention Isolator of the Ministry of Internal Affairs of Georgia and the Approval of the Internal Regulations", the living space per person shall not be less than 4 sq.m.

<sup>342</sup> Due to small windows, there is a problem with natural light in the temporary detention facilities in Sagarejo, Telavi, Signaghi, Rustavi, Marneuli, Tsalka, Batumi, Kobuleti, Ozurgeti, Lanchkhuti, Kutaisi, Baghdati, Zestaponi, Samtredia and Chiatura.

<sup>343</sup> Tbilisi №1, Tbilisi №2 and Gurjaani temporary detention isolators are exceptional and positive examples in this regard.

<sup>344</sup> Semi-isolated sanitary units are in Marneuli, Kutaisi, Zestaponi, Samtredia, Chiatura, Batumi, Kobuleti, Lanchkhuti and Ozurgeti temporary detention facilities.

<sup>345</sup> The European Court of Human Rights has ruled that semi-isolated toilets in cells are a violation of Article 8 of the European Convention (the right to respect for private and family life). ZAFRAŃSKI v. POLAND (app no.17249 / 12), para. 39-41, available: <<https://hudoc.echr.coe.int/eng?i=001-159205>> Last viewed: [25.01.2021].

<sup>346</sup> According to Article 32 (1) of the Code of Administrative Offenses of Georgia, administrative detention may be imposed for a period of up to 15 days.

<sup>347</sup> The European Court of Human Rights, when considering the violation of Article 3 of the Convention, is guided by the standard established by it and states that the material conditions of detention/imprisonment should not infringe human dignity and should not be more severe than those inevitably associated with detention. See VASILESCU c. BELGIQUE (App. No. 64682/12), para. 105. Available in French: <<https://hudoc.echr.coe.int/eng?i=001-148507>> [Last viewed: 25.01.2021].

<sup>348</sup> Exceptions and positive examples are Tbilisi N1 and st. Tbilisi N2 temporary detention isolators, where food is prepared for the detainees on the spot.

<sup>349</sup> Canned beef, dry soup, pate and bread.

of medical and non-medical personnel is performed once in 2 weeks, and all persons entering the isolator are thermal screened.

As for the detainees, they are subjected to thermoscreening when they are placed in a temporary detention isolator. In the isolators, where the medical staff is present 24 hours a day, the thermal screening of the detainees is carried out regularly by the medical staff themselves, and in isolators where no medical staff is employed or the doctor is not on duty, the thermal screening procedure is performed by the isolator staff. According to the information received from the Ministry of Internal Affairs of Georgia,<sup>350</sup> isolator staff routinely carry out the screening of the detainees once a day when changing shifts.

It should be noted positively that from July 2021, detainees when placed at the temporary detention isolators undergo a rapid test for antigen and then, if necessary, repeated<sup>351</sup> in case of symptoms characteristic of the virus. The testing is conducted by doctors of temporary detention isolators, who were trained in June 2021 to conduct the test. Unfortunately, a rapid test is not possible in temporary detention isolators where there is no doctor, which needs to be solved in a timely manner in the conditions when it is possible for any citizen in the country to take a rapid test themselves through a test purchased at a pharmacy. The Public Defender believes that it is possible to train the staff of the isolator so that, if necessary, in the absence of a doctor, they can test the detainees. This may be done by the ambulance brigade as well.

#### **3.5.4. Management of withdrawal syndrome**

According to the case law of the European Court of Human Rights<sup>352</sup> Article 3 of the Convention (Prohibition of Torture) imposes an obligation on the State to ensure the physical welfare of persons restricted of their liberty/deprivation of liberty, including by providing the necessary medical care to such persons. Failure to provide adequate treatment to detainees equates to inhuman treatment.<sup>353</sup> According to the case law of the European Court of Human Rights, the process of drug detoxification causes such severe physical and mental suffering and stress that it falls under Article 3 of the Convention. The Court noted that it is the State's obligation to prove that the detainee was receiving adequate medical care at that time.<sup>354</sup>

Article 16 of the instruction on medical care of persons placed in temporary detention isolators of the Ministry of Internal Affairs of Georgia<sup>355</sup> ensures access to substitution therapy. Individuals arrested in 2021 who were involved in a methadone substitution program during their stay in the isolator were provided with this service. In 2020, individuals on methadone replacement therapy who had previously received a 5-day dosage were no longer taken to the methadone dispenser until the expiration of the pre-taken dosage in a temporary detention isolator.<sup>356</sup> On the positive side, this approach has changed in 2021 and methadone substitution programs have been extended to individuals who had a methadone dosage of a few days taken in advance.

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<sup>350</sup> Response MIA4210349972 from the Ministry of Internal Affairs of Georgia of December 29, 2021.

<sup>351</sup> Response MIA4210349972 from the Ministry of Internal Affairs of Georgia of December 29, 2021.

<sup>352</sup> Decision of the European Court of Human Rights of 2 June 2008 in the case of *Dubeku v. Albania*, para. 41.

<sup>353</sup> Decision of the European Court of Human Rights of 24 May 2009 in the case of *Poghosyan v. Georgia*, para. 47-49.

<sup>354</sup> *Wenner v. Germany* (Application no. 62303/13), para 78-80.

<sup>355</sup> Approved by the order № 691 of the Minister of Internal Affairs of Georgia of December 8, 2016.

<sup>356</sup> National Preventive Mechanism 2020 Report, p. 145. Available:

<<https://www.ombudsman.ge/res/docs/202111112020776878.pdf>> [Last viewed: 13.01.2022].

According to the information received from the Ministry of Internal Affairs,<sup>357</sup> the medical staff in the isolator provides the individuals with symptomatic treatment of the withdrawal syndrome and, taking into account the patient/subjective data of the patient, if necessary, directs him/her to the appropriate medical institution for consultation with a specialist and further treatment. The fact that there is a means of delivering symptomatic medication on the spot is welcome. However, there are cases when the medication has a short time effect and the doctor has to do painkillers and sedatives several times a day,<sup>358</sup> which causes the patient to suffer but they are not taken to the hospital. In order to get rid of the withdrawal syndrome soon, it is necessary to transfer the patient to the appropriate institution in time. Therefore, it is important to create a common handbook for the management of withdrawal syndrome,<sup>359</sup> which will take into account the amount of assistance in the temporary detention isolator and clearly state in which case the detainee should be transferred to a hospital. Recommendation issued by the Public Defender on this issue in 2020<sup>360</sup> has not been implemented.

## **Proposal to the Parliament of Georgia:**

### Detection of alleged ill-treatment cases

- To amend the Code of Administrative Offenses and determine that if a judge suspects that the person under administrative liability could have been subjected to torture, inhuman or degrading treatment or that person himself/herself claims about it before the court, the judge shall apply to the relevant investigative authorities.
- To amend the Criminal Procedural Code of Georgia and prohibit the seizure, without the consent of the detainee, of the medical documentations produced by temporary detention facility doctors, by investigative bodies other than the independent investigative mechanism with the court order.

## **Recommendations to the Minister of Justice:**

### Informing about the rights

- To ensure in several institutions in a pilot that the process of informing detainees about their rights by police officers is recorded through technical means (audio-video recordings).

### Contact with the lawyer and a family

- To properly document the request of the detainee to notify the family or the lawyer by maintaining appropriate logbooks at the police institutions.
- To ensure confidential meeting of the detainee with the lawyer at the police institution with the proper infrastructure as needed.

### Medical examination

- To increase in 2022 the number of isolators where a medical unit is functioning.

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<sup>357</sup> Response MIA4210349972 of the Ministry of Internal Affairs of Georgia of December 29, 2021.

<sup>358</sup> For example, in one case, a patient who, while using a methadone substitution program, had a withdrawal syndrome, had general weakness, muscle pain, shivering, and anxiety. He was given medication daily to alleviate these complaints. The detainee was held in a temporary detention facility for 7 days, According to medical records, the patient went on a hunger strike for 1 day requesting transfer to a medical facility. According to the same records, he needed to take medication 3-4 times a day, although he was not hospitalized.

<sup>359</sup> A group of symptoms of varying nature and severity that occur when discontinuing or reducing the use of a psychoactive substance that is normally consumed over a long period of time and/or in large doses. The syndrome may be accompanied by physiological disorders. See link <<https://bit.ly/3aGshWM>> [Last viewed: 12.01.2022].

<sup>360</sup> National Preventive Mechanism 2020 Report. P. 145. See link: <<https://www.ombudsman.ge/res/docs/202111112020776878.pdf>> [Last viewed: 12.01.2021].



- To conduct trainings for doctors employed in the temporary detention isolators about instructions on photographing injuries on detainees' bodies and the rules on storing the photographic materials.
- To ensure that in the temporary detention isolators where there are medical units operating, the protocols drawn up by ambulance doctors are stored only with the isolator doctors.

#### Audio-video recordings

- To equip in 2022 gradually, officers of territorial agencies and the Criminal Police with body cameras and to determine by regulations their obligation to record their communication with citizens as well as the procedure and terms of storing the recordings.
- To define the obligation of patrol inspectors to videotape their interaction with citizens, by the order № 1310 of the Minister of Internal Affairs of December 15, 2005 on approving the instruction on the rules of patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia. The duty of video recording should be introduced in the following instances: identifying a person; frisking and examining a person; carrying out special inspection and examination; restricting a person or a vehicle from moving or restricting actual possession of an item, arresting a person.
- To equip gradually police vehicles with an internal and external CCTV system.
- To determine by a normative act the duty of uninterrupted video recording of a person placed in a police vehicle with an internal and external CCTV system or, if there is no such system, with a body camera.
- To install CCTV systems everywhere in police departments, divisions and stations where an arrested person or a person voluntarily invited to the questioning has to be present.
- To eliminate the practice of conducting interviews with arrested persons in the offices of a Head of Police/Deputy Head of Police and to ensure such meetings to take place only in the areas that are equipped with a CCTV system.
- To ensure in a pilot mode uninterrupted audio and video recording of questioning an arrested person in several police stations.

#### Production of documentation

- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and add a column to the sample of a protocol approved by the Annex 9 for entering the following information: the time of drawing the report; the description of the injuries on an arrested person's body; the circumstances of the arrest; if there was resistance to police and if force was used in any manner
- Through maintaining a register, to ensure documenting all persons brought to police departments, divisions and stations indicating their status, the time of entering and leaving buildings
- To introduce systematised, standardised and unified electronic database replacing logbooks maintained in police stations
- Before the introduction of the electronic database to ensure replacement of the logbooks with consultations with the National Preventive Mechanism of Public Defender.

#### Detecting alleged cases of ill-treatment

- To ensure meetings between persons placed in TDIs and investigators of the State Inspector's Service (among others, remote meetings) to be held in a confidential environment
- To ensure that remote court hearings in TDIs are held in a confidential environment, in the absence of employees of the Ministry of Internal Affairs.

#### Physical environment and nutrition

- Ensure that problems with detention conditions and nutrition described in the 2021 report of the National Preventive Mechanism are solved and inform the Public Defender of the measures taken.

#### Epidemiological situation

- To provide detainees with COVID-19 testing in all Temporary Detention Isolators upon placement.

#### Management of withdrawal syndrome

- To elaborate unified guidelines for medical personnel on managing withdrawal syndrome in TDIs, which should determine the volume of care to be provided in a TDI and clear instructions on under what circumstances an arrested person must be transferred to an inpatient facility
- Ensure timely referral of substance addicts to a medical facility.

## 4. Psychiatric institutions

### 4.1. Introduction

In 2021, the Public Defender visited the following 7 psychiatric institutions: psychiatric wards of №5 clinical hospital;<sup>361</sup> Ltd. "Acad. B. Naneishvili National Center for Mental Health "(hereinafter referred to as the "National Center for Mental Health "),<sup>362</sup> Imermedi Ltd - psychiatric department of Imereti Regional Medical Center (Terjolamedi) (hereinafter "Terjolamedi"),<sup>363</sup> psychiatric department of Batumi Medical Center Ltd.,<sup>364</sup> Surami Psychiatric Hospital of the Mental Health Center of Eastern Georgia (Surami Psychiatric Clinic),<sup>365</sup> psychiatric department of Iv. Bokeria Referral Hospital (hereinafter also referred to as "Evex Hospitals"),<sup>366</sup> Tbilisi Mental Health Center.<sup>367</sup> It should be positively assessed that the psychiatric institutions assisted the Special Preventive Group in conducting the monitoring visit in a proper manner.

This chapter is based on information obtained from various sources, according to the methodology developed by the Special Preventive Group. These sources are: monitoring the ongoing processes in psychiatric institutions during the visit; interviewing patients; interviewing heads of psychiatric institutions, medical and non-medical staff; study of documentation produced in the institutions; information request from the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Labor, Health and Social Affairs; processing of appeals submitted to the Public Defender's Office.<sup>368</sup>

In the process of conducting monitoring visits, it is crucial for the Public Defender to minimize the risk of spreading a new coronavirus, and to protect staff and other persons at the institutions. Therefore, the Special Preventive Group during monitoring visits is guided by a specially developed methodology that ensures safe monitoring in pandemic conditions..<sup>369</sup>

This chapter describes the situation in the institutions both systematically and individually, analyzes the problems identified during the monitoring visits and their causes. The normative framework and the progress of the implementation of the recommendations issued by the Public Defender in the past years are assessed.

### 4.2. Status of implementation of recommendations

In the 2020 report of the National Preventive Mechanism, the Public Defender of Georgia addressed 27 recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia and 4 proposals to the Parliament of Georgia in order to prevent ill-treatment in psychiatric institutions. None of the 4 proposals issued to the Parliament of Georgia has been implemented.

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<sup>361</sup> Date of the visit: May 31, 2021 - June 1.

<sup>362</sup> Date of the visit: June 4-7, 2021.

<sup>363</sup> Date of the visit: June 8, 2021.

<sup>364</sup> Date of the visit: June 9-10, 2021.

<sup>365</sup> Date of the visit: June 17-18, 2021.

<sup>366</sup> Date of the visit: June 25, 2021

<sup>367</sup> Date of the visit: June 1-2, 2021.

<sup>368</sup> The facts and circumstances stated in the report are presented in full compliance with the principle of confidentiality. The documents obtained within the monitoring, as well as the reports of the members of the monitoring group are kept in the Office of the Public Defender of Georgia.

<sup>369</sup> The members of the Special Prevention Group are fully equipped with personal protective equipment during the monitoring visits (face mask, coat, hat, footwear, glove, protective shield, hand disinfectant solution). Group members are instructed to keep their distance and control their body temperature before entering the facility. They are also periodically tested for COVID-19.

Out of 4 proposals submitted to the **Parliament of Georgia**, 2 were related to the use of restraint methods<sup>370</sup>, and 2 proposals were related to the strengthening of guarantees for the legal protection of patients.<sup>371</sup>

None of the 27 recommendations issued to the **Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia** have been implemented. It is noteworthy that the recommendations issued by the Public Defender in the direction of psychiatric institutions are reflected in the resolution of the Parliament and are binding<sup>372</sup>, however, the Ministry accepts only 23 of these 27 recommendations and intends to implement them. As for the remaining 4 recommendations, the Ministry does not acknowledge the existence of a problem..<sup>373</sup>

4 of the **unfulfilled recommendations** were related to the prevention of ill-treatment in psychiatric institutions;<sup>374</sup> 3 recommendations related to changing the practice of using restraint methods;<sup>375</sup> 6 recommendations related to strengthening the guarantees of legal protection of patients in psychiatric institutions;<sup>376</sup> 2 recommendations - to provide a therapeutic and safe environment in psychiatric institutions;<sup>377</sup> 1 recommendation - to develop a unified standard of nutrition in psychiatric institutions;<sup>378</sup> 2 recommendations - to Improve the epidemiological situation in the institutions;<sup>379</sup> 2 recommendations related to improving the treatment in psychiatric institutions with antipsychotic drugs;<sup>380</sup> 4 recommendations - psychosocial rehabilitation;<sup>381</sup> 3 recommendations related to somatic health.<sup>382</sup>

It is unfortunate that, despite the promises made by the Ministry over the years, the systemic recommendations issued to improve the situation in psychiatric institutions are unfulfilled. Clearly, in such circumstances, there is a reasonable doubt as to the reliability of the intention of the of the Ministry to implement the recommendations on the Public Defender.

### **4.3. Protecting patients from violence, inhuman or degrading treatment**

Monitoring conducted in psychiatric institutions revealed that patients are not protected from psychological and physical abuse, and their needs are neglected. During the examination, the team received numerous reports of cases of physical and psychological abuse of patients by psychiatric staff. For example:

Patients at the *Ltd. Acad. B. Naneishvili National Center for Mental Health* reported that staff shouted at them, talked aggressively, and threatened them with physical restraint or isolation. Patients also talked about beatings, verbal abuse, forcible intake of powdered medications, and the practice of forcing

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<sup>370</sup> See subsection: shortcomings of the existing regulatory framework for restraint methods.

<sup>371</sup> See Chapter: Guarantees of Patient Legal Protection.

<sup>372</sup> Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2020.

<sup>373</sup> One recommendation concerned changes to the Minister's order to make it mandatory to complete the form approved by Order №108/N of the Minister of Labor, Health and Social Affairs (№IV-300-12/a) at all stages of starting, continuation and changing of patient's treatment regimen; the second recommendation concerned the study of the use of antipsychotic medications and management of side effects in psychiatric institutions by the Agency for Regulation of Medical and Pharmaceutical Activities; third - to study the needs for psychosocial rehabilitation services in psychiatric institutions and to ensure the introduction of such services in cooperation with psychiatric institutions; recommendation 4 - provide timely and adequate dental services by timely transportation to the dentist.

<sup>374</sup> See Chapter: Protecting Patients from Violence, Inhuman or Degrading Treatment.

<sup>375</sup> See Chapter: Restraint Methods.

<sup>376</sup> See Chapter: Guarantees of Patient Legal Protection.

<sup>377</sup> See Chapter: Safe and Therapeutic Environment.

<sup>378</sup> See subsection: Food and Drinking Water.

<sup>379</sup> See Chapter: Epidemiological Condition

<sup>380</sup> See subsection: Treatment with Antipsychotic Medications.

<sup>381</sup> See subsection: Psychosocial Rehabilitation.

<sup>382</sup> See Chapter: Somatic (Physical) Health.

injections. During the visit, the special preventive team received information on 5 cases of physical abuse of patients by staff. In one case, when a patient was forcibly placed in an isolation ward, s/he received a bruise on the upper limb due to the strong grip on the upper limb. Two patients reported that security guards verbally and physically assaulted them, which resulted in swearing and a slap in the face. According to the information received, in one case, a security guard physically abused a patient for turning up the volume of the TV (clapping his head). In the forensic psychiatric ward of the institution, where the convicts are placed for involuntary psychiatric care, a special preventive team received information about a physical confrontation between the patient and the security guard, during which the security guard slapped the patient in the face.

Regarding the *Tbilisi Mental Health Center*, it should be noted that compared to the previous visit of the Special Preventive Group, patients did not report incidents of physical violence by staff that much. According to the information received, at the end of 2020, an assistant nurse was fired from the facility that had been particularly violent against patients. Nevertheless, the Special Preventive Group received information on 3 cases of physical violence against patients by staff during 2021. In one case, a nurse's assistant punched a patient while forcing the injection. In one case, the nurse's assistants slapped the patient for trying to leave the ward to meet with the doctor. Also, in one case, staff (presumably an assistant nurse) slapped a patient who had just been placed in the facility on the head. In addition, patients are reported to be shouted at, laughed at, rudely addressed, and intimidated (e.g., waving a broom in order to intimidate).

During a visit to the *Kajaia Surami Psychiatric Clinic*, the Special Preventive Group received information about 2 cases of physical violence against patients by staff. In one case, a female patient had her hand twisted by a male employee while forcing an injection, causing the patient to experience physical pain. In one case, the group received information about a patient being slapped in the face and kicked in the leg by an employee. In addition, there are reports of patients being ridiculed and verbally abused by nurses' assistants.<sup>383</sup>

During a visit to *Ltd Batumi Medical Center* the Special Preventive Group did not receive any information about the physical violence committed against patients by the staff. As for verbal abuse, a number of patients in the men's ward spoke about harsh communication by the staff (e.g., "get the hell in, boy!", "Get the hell out of here!"). They say employees in the men's ward often yell at patients.

The Special Preventive Group did not receive information on the physical violence against patients by staff in *Imermedi Ltd - Imereti Regional Medical Center (Terjolamedi)*. However, patients noted that in one case there was a case of verbal abuse of a patient by staff.

The Special Preventive Group did not receive any information about the physical or verbal abuse committed by the staff against the patients in №5 Clinical Hospital Psychiatric Department and JSC Evex Hospitals Bokeria Referral Hospital Psychiatric Unit.

It should be noted that during the visits, the group received information in one case about the transportation of the patient by the "112" brigade in poor conditions. In particular, according to the patient at the Batumi Medical Center, the police officers tied the patient's hands and legs and put him lying face down in the ambulance minibus. At this time the patient was having difficulty breathing and received injuries. According to the Public Defender, transporting a patient in such conditions is equivalent to inhuman and degrading treatment of the patient.<sup>384</sup>

In *Ltd. "Acad. B. Naneishvili National Center for Mental Health"*, *Tbilisi Mental Health Center*, *№5 Clinical Hospital Psychiatric Department*, *East Georgia Mental Health Center A. Kajaia Surami*

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<sup>383</sup> According to the information received the patients are often referred to with derogatory terms such as "dirty" and "pisher."

<sup>384</sup> The patient refused to further proceed with the case.

*Psychiatric Clinic and Batumi Medical Center Ltd*, there are conflicts between patients, cases of verbal abuse and physical violence. The group found that conflicts between patients were mainly related to the theft or capture of personal belongings by one patient from another. It should be noted that in some facilities, not all patients have storage areas for personal belongings, and the cupboard that patients use are not locked and therefore, cases of stealing patients' personal belongings are frequent.

According to the Special Preventive Group, one of the risk factors for violence is the **placement of patients with different degrees of mental health problems and different needs, such as those with acute psychotic conditions, patients on long-term treatment and with intellectual disabilities in a chaotic environment without proper care and supervision.** A similar practice of placing patients can be found at the *Ltd. "Acad. B. Naneishvili National Center for Mental Health"*, *East Georgia Mental Health Center A. Kajaia Surami Psychiatric Clinic, Batumi Medical Center Ltd and Tbilisi Mental Health Center.*

With regard to the prevention of ill-treatment, it should be noted that no psychiatric institution has taken sufficient measures to protect patients from ill-treatment. The lack of an effective system for assessing and reducing patient risks is problematic.

The monitoring visit revealed that the psychologist in the psychiatric ward of №5 Clinical Hospital and the Evex Hospitals conducts psychodiagnosis with only a small number of patients. As for other institutions, the psychologist psychodiagnoses almost all newly admitted patients, although the risks of patient's violence is not assessed. An exception in this regard is the National Center for Mental Health, where all incoming patients undergo a risk assessment to identify the risk of suicide and the risk of violence. Recurrence risks are assessed only for long-term patients and beneficiaries of sanctuary, once every three months. It is important to note that risk assessment does not detect triggers and warning signs in patients at risk of violence<sup>385</sup>, which would enable staff to be aware in advance of patients' provoking factors. Knowing these factors would help them avoid the expected violence from their patients. It should be noted that in addition to risk assessment, it is equally important to reduce the identified risks, for which, unfortunately, no multidisciplinary work is being carried out.<sup>386</sup>

*In the Ltd. "Acad. B. Naneishvili National Center for Mental Health", East Georgia Mental Health Center A. Kajaia Surami Psychiatric Clinic, Batumi Medical Center Ltd and №5 psychiatric ward of a clinical hospital* insufficient number and qualification of the middle and support staff of the institutions is problematic. In these facilities, in the event of physical confrontation between patients, staff is unable to respond in a timely manner and separate patients, resulting in patients sometimes receiving injuries. In addition, it should be noted that according to the information received from the above institutions, the staff is mainly involved in conflict resolution after the verbal argument escalates into physical violence. In addition, it should be noted that in none of the psychiatric facilities visited in 2021 staff had been trained in human rights, agitated patient management, non-violent de-escalation, and physical restraint.

In the view of the Public Defender, medical staff can play a special role in ensuring the safety of patients. The European Committee for the Prevention of Torture, in a report following its visit to Georgia in 2018, states that medical personnel should be the main guarantor of dynamic safety and that security

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<sup>385</sup> Triggers - "situations or stimuli that cause a person suffering, frustration, anger, and agitation, which in turn can escalate into a potentially tense and provoking situation."

Warning Signs - "A change in mood, thoughts, or behavior that indicates that something is out of order." Identifying such signs is important to the extent that, if appropriate measures are taken in a timely manner, a crisis situation can be avoided." For details, see the World Health Organization handbook: Creating mental health and related services free from coercion, violence, and abuse. 34. Information is available on the following website: <<https://bit.ly/2QEHzAL>> [Last viewed: 29.07.2021].

<sup>386</sup> See the chapter of the report for details - "Psychosocial Rehabilitation".

(support staff) should intervene in an incident only if the medical staff themselves are unable to cope.<sup>387</sup> In order for a psychiatrist to be able to provide dynamic safety, his or her work space should be as close as possible to the space where patients are present. It should be positively noted that the offices of the psychiatrist at the National Center for Mental Health, №5 Clinical Hospital and the psychiatric ward of Evex Hospitals are located directly in the wards. At the other facilities visited, psychiatrist offices are located outside the wards, behind the locked door, and psychiatrists enter the wards only when absolutely necessary. The Public Defender believes that psychiatrists should be more actively involved in ensuring dynamic safety in the wards and that support staff alone should not be responsible for responding to cases of violence between patients.

In the absence of a specific strategy for violence prevention, insufficient staffing and qualifications, in case of conflict between patients, injections are common in all visited psychiatric facilities. In the absence of a dynamic security concept, a static safety measure such as long-term separation of patients from other patients is used to ensure safety at the National Mental Health Center and Batumi Medical Center. In particular, in the Batumi Medical Center, there are 2 and 3-person isolated rooms at the entrances of the wards, which are used to accommodate patients who are often subjected to rapid tranquilizers and forced prescriptions, whether they are on voluntary or involuntary treatment. There are frequent cases when the patient is placed in an isolated room for 2 weeks or more and does not have to enter the ward at all until discharge from the facility. A similar practice has been established at the National Center for Mental Health, where the rooms are arranged at the entrance to each ward.<sup>388</sup> The doors of these rooms are locked and supervised by a private security guard. The rooms accommodate both patients on mandatory treatment as well as patients being treated involuntarily and voluntarily. According to the information received from the institution, the basis for placing patients in isolated rooms is a personal request, the infectious disease or a mental condition. Prolonged segregation of the patient on the basis of "mental state" indicates that dynamic security and adequate patient supervision are not provided in the wards of the institutions. The same can be said for solitary confinement on personal request, which shows that due to overcrowding and poor supervision, patients prefer to be segregated from other patients for greater privacy and security.



The so-called isolation ward of "Batumi Medical Center" Ltd.

<sup>387</sup> Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT/Inf (2019) 16), para. 123, Visit of September 10-21, 2018, available in English at: <<https://rm.coe.int/1680945eca>> [Last viewed: 29.07.21].

<sup>388</sup> At the time of the monitoring visit, 21 patients were in isolated single-bed wards.

In addition to the above, it is noteworthy that none of the above-mentioned psychiatric institutions properly document the facts of conflict and violence and the measures taken to respond to these facts. The facility does not maintain a special register where conflicts between patients are recorded. Facts of violence against patients are documented only in the patient's medical records and journals of patient monitoring, which in most cases do not indicate the time of the violence, the persons involved in the incident, the causes of the violence, and the response of staff.

As for the response to the facts of violence, with the established practice in all psychiatric institutions, patients who are victims of violence do not receive psychotherapeutic support and legal assistance. In cases where the patient suffers physical injuries as a result of the violence, only medical intervention is performed on them, which is manifested in the treatment of bodily injuries.

In terms of opportunities to protect patients from torture or cruel, inhuman or degrading treatment or other ill-treatment, it should be noted that free legal aid is not available to patients at the facility. In none of the above psychiatric facilities did patients have information about their rights and grievance mechanisms and the procedures by which they could file a complaint about any violation of their rights in the facility. They did not have information about government agencies and NGOs providing legal assistance to interested parties.

Monitoring conducted in 2021 reveals that, as in previous years, patients in psychiatric institutions are victims of violence both by staff and on the part of other patients under conditions of inadequate supervision and indifference. From year to year there is no improvement in the prevention of violence and identifying the causes of violence. In the event of violence by staff the only and rare measure of response is the dismissal of staff. In cases of patient violence, the only measure taken is to separate the hostile patients or to separate the patient from other patients for a long period of time. In the absence of safeguards against enhanced pharmacotherapy and ill-treatment, a similar management model make patients even more vulnerable.

#### 4.4. Means of restraint

The Public Defender shares the spirit of the UN Convention on the Rights of Persons with Disabilities<sup>389</sup> and the World Health Organization's approach to mental health, based on a model of respect for rights and recovery,<sup>390</sup> and believes that the state should help reduce and ultimately eliminate the use of physical and chemical restraints on inpatients. To do this, it is important to **enshrine at the legislative level the obligation to use alternative methods of de-escalation** before medical staff can take extreme measures. It is also important for each institution to have crisis prevention and non-violent (de-escalation)<sup>391</sup> management policy and patient-centered therapeutic environment in general, which should ultimately eliminate the practice of using restraint methods. It should be noted with regret that, only Batumi Medical Center has the recommendation of the Public Defender taken into account to form the internal regulations on the method of "verbal de-escalation" and the "Instruction on Management of Aggressive Behavior" - the internal protocol. Nevertheless, the information received by the group during the visit reveals that the staff of the institution does not use verbal de-escalation methods and there are frequent cases of rude treatment and rapid tranquilization of patients in crisis situations.

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<sup>389</sup> Guidelines for the definition of Article 14 of the Convention on the Rights of Persons with Disabilities are available in English at: <<https://www.ohchr.org/.../GC/GuidelinesArticle14.doc>> [Last viewed: 28.07.21].

<sup>390</sup> The World Health Organization (WHO), the initiative, quality and rights of the World Health Organization aims to improve the quality of service provided by mental health institutions and protect the rights of people with disabilities, 2017, available at: <[http://www.who.int/mental\\_health/policy/quality\\_rights/en/](http://www.who.int/mental_health/policy/quality_rights/en/)> [Last viewed: 28.07.21].

<sup>391</sup> The components of de-escalation techniques are: immediate assessment of a potential crisis and prompt intervention; focusing on problem solving; empathy and persuasion; possession of stress management or relaxation techniques such as breathing exercises; allocating space for a person; offering a choice; giving time to think.



#### 4.4.1. Applied methods

Examination of facility documentation as well as interviews with patients and staff reveals that mechanical restraint and rapid tranquilization, which is essentially a chemical restriction, is used to manage the behavior of an agitated or aggressive patient in the facility.<sup>392</sup> It should be noted that, compared to previous years, the frequency of use of restraint methods by institutions has not changed significantly.

**Psyisical restraint** is applied in all facilities, although as it turns out, not all cases are documented. For example, no cases of mechanical restraint were documented at the Suram Psychiatric Clinic in 2021, although a special preventive team still received notification of a patient being physically restrained in 2021. The same can be said about the men's ward at Batumi Medical Center, where only 2 cases were documented in 2021 according to the Register of Mechanical Restraint, although patients reported more cases of physical restraint during the year. In addition, according to the information received by the Special Preventive Group, on the day of the visit, a few minutes before the start of the monitoring, the patient's fixation was removed, although it was not documented in the "fixation log", which calls into question the accuracy and authenticity of documentation. As for the women's ward of the Batumi Medical Center, neither the documentation nor the information received from other sources revealed any case of mechanical restraint against female patients.

In psychiatric institutions, **chemical restraint** of the patient is used in combination with **physical** and/or **manual restraint** to correct the patient's behavior. Against the will of patients being treated voluntarily and involuntarily (in the case of the National Center for Mental Health – compulsorily as well) in the visited institutions, in order to quickly tranquilize the patient, the medical staff uses several medicines at the same time.

#### 4.4.2. Documenting, substantiating the methods used and compliance with the instructions

Article 16 of the Law of Georgia on Mental Health and Instruction on Restriction Methods<sup>393</sup> establish the criteria for the application of the restraint and the rules for the implementation of the restraint process. In particular, the use of the restraint method only in the extreme, in the inevitable case after the exhaustion of all other means of crisis management; existence of a physician decision on the use of the restraint method; the obligation to monitor the patient's health every 15 minutes; use of the restraint method only by specialized personnel, etc. According to the law and instruction, the above criteria should be carefully reflected in the documentation. Psychiatric institutions do not have a unified approach to document production. To document cases of mechanical restraint, psychiatric institutions produce so-called "fixation journals", however, they do not indicate in detail the above criteria provided by the law and the instructions. From the institutions visited in 2021, the journals of the Tbilisi Mental Health Center are produced relatively better, in which the exact identity of the patient, duration of restraint, medications given during the restraint process and observations made is marked and to justify an extreme necessity, patient behavior is also described. The records of other institutions did not indicate one or more of the components listed above - no justification was given, no doctor's signature was given, no observations made every 15 minutes were indicated,<sup>394</sup> it was not indicated whether any medication was given to the patient. In this regard, the worst situation is in the hospital of the mental health center of "Imermedi - Imereti Regional Medical Center" Terjolamedi Ltd, where there is no

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<sup>392</sup> According to the European Committee for the Prevention of Torture, forcing medication to control a patient's behavior is defined as a chemical restraint (i.e. forcible administration of medication for the purpose of controlling a patient's behaviour). European Committee for the Prevention of Torture's Standards on Methods of Adult Restraint Methods in Psychiatric Institutions, available at: < <https://rm.coe.int/16807001c3> > [Last viewed: 14.07.2021].

<sup>393</sup> Order №92/N of the Minister of Labor, Health and Social Affairs of Georgia of March 20, 2007 "On Approval of the Instruction on the Rules and Procedures for the Use of Physical Restraint Methods on Patients with Mental Disorders".

<sup>394</sup> The Acad. Naneishvili National Center for Mental Health does provide records of patient monitoring, although the Special Prevention Group received information that lifting of the fixation by the fixated patients themselves there was observed indicating that the patient was not being properly observed.

special journal of physical restraint. Information about the patient's physical restraint is given in the "Daily Report Journal", which is filled in by the employee of the structural unit of the protection service of the multi-profile medical center, the so-called "resource officer-sanitary worker". The so-called record of the "report card" is confirmed by the signature of the resource officer, although it is not always signed by the doctor. Unlike other parts of the manuscript text, the time limit for physical restraint is almost always modified, which deprives the authenticity of the documentation.

As for documenting cases of chemical restraint of the patient, the Special Preventive Group found that there was no documentation produced of rapid tranquilization against the will of the patient and monitoring of the patient's state of health in the process. Institutions consider it sufficient to make a note of the medicine administration on the patient's medical record and on the prescription sheet. It is also noteworthy that in the National Center for Mental Health, the so-called civilian departments, until 2021, cases of manual and chemical restraint were documented in the logbook of the use of restrictive means. As for the so-called forensic psychiatry of the same institution, documenting such cases here continued into 2021. The quality of documentation of restraint cases at the National Center for Mental Health has deteriorated in the last two years. Records produced after 2019 (especially in so-called civil wards) are template-based and only indicate the patient's identity, time of restraint, and used injection. The journals do not describe the patient's risky behavior and do not provide a justification for the extreme necessity of using the restraint method.

In view of the above, the established practice in institutions not to justify the need for using injections without prescription, increases the risk of staff arbitrariness. The Public Defender considers that in case of injections without prescription for the agitated patient, the institutions should be guided by the National Recommendation of Clinical Practice (the guideline) - "Treatment and management of schizophrenia in adults", according to which the use of the method of rapid tranquilization is allowed only in extreme cases, when other methods of sedation are exhausted and the patient refuses to take the drug.<sup>395</sup> However, neither the chemical restriction nor the rapid tranquilization procedure is regulated by the legislation and by-laws, which allows medical staff to disregard the recommendations in the guideline and to carry out rapid tranquilization against the will of the patient without any legal guarantees.

Regarding the **duration of the restraint**, it can be said that according to the documentation, most of the cases of physical restriction in institutions last up to 1 hour. The cases of physical restraint documented in the psychiatric ward of Evex Hospitals were noticeable for the Special Preventive Group, most of which ranged from 2 to 4 hours. The records did not indicate why it became necessary to physically restrict the patient for such a long time. Under national law and international standards, the patient restraint method should be used for as short a period as possible and should be discontinued as soon as the imminent and immediate danger is eliminated. This fact suggests that the staff may have applied the maximum duration of the physical restraint without justification for the sake of freeing time and for their own comfort.

The documentation produced by the institutions does not indicate **who executes the restraint, by what means and in what place**. Patients indicate during the interview that security guards and other patients are involved in the restraint process, which is contrary to the instructions on restraint methods,<sup>396</sup> according to which the restraint must be carried out by the relevant personnel defined by the internal regulations of the institution, who have the necessary qualifications and experience in the use of methods of physical restraint. It should be noted that the restraint is mainly executed by the sanitary

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<sup>395</sup> "Treatment and management of schizophrenia in adults" - National Recommendation for Clinical Practice (Guideline) Para. 7.3.3. Available <<https://bit.ly/3InNQeq>> [Last viewed: 19.07.2021].

<sup>396</sup> Order №92/N of the Minister of Labor, Health and Social Affairs of Georgia "On Approval of the Instruction on the Rules and Procedures for the Use of Physical Restraint Methods for Patients with Mental Disorders". Par. 8. Also, the standards of the European Committee for the Prevention of Torture "on methods of restricting adults in psychiatric institutions." Standard 3.2. and 3.6. Available: <<https://rm.coe.int/16807001c3>> [Last viewed: 15.07.2021].

workers and so-called resource officers (mandaturi) of male sex, which may have been degrading to female patients. Numerous patients recall the fact of restraint used on another patient, which shows that the restraint is carried out in the presence of other patients. In the clinical hospital №5, neither the management nor the staff of the institution denied that other patients were present at the restraint process and used the lack of a special restraint room as an argument. It should be noted with regret that after using the restraint method, **patients are not interviewed** and their feelings are not analyzed. In rare cases, the patient may be referred to a doctor, although neither psychiatrists nor psychologists have a methodical approach to this process.

#### **4.4.3. Shortcomings of the existing regulatory framework for restraint methods**

In general, it should be noted that institutions do not consider the method of restraint as a special measure and therefore do not exercise particular caution with regard to legal requirements. This is evidenced by the fact that in the institutions visited in 2021, when applying the method of restraint to a patient on voluntary treatment, in no case was the procedure for **reviewing the legal status of the patient initiated**, as provided for in paragraph 8 of Article 16 of the Law of Georgia on Mental Health. In 2020, the Public Defender welcomed the amendment to the Law of Georgia on Mental Health on reviewing the patient's legal status when applying the restraint method to a patient on voluntary treatment, which, in addition to the recommendation of Public Defender, was also a recommendation of the European Committee for the Prevention of Torture.<sup>397</sup> Unfortunately, the change in the law did not have an impact on the established practices in the institutions. The above article is completely ignored. The institutions failed to submit a document confirming that they had discussed the voluntary status review and made a reasoned decision that there was no need to refer to court. Therefore, the Public Defender considers that in order to enforce the norms of the law in practice and to create appropriate safeguards for patients, the instruction on restrictive methods should be updated immediately, which defines precisely the measures to be taken by the institutions in case of application of the restraint method to a patient on voluntary treatment.<sup>398</sup>

In addition to the above, the instruction on restraint methods has not been updated over 1 year after the amendments to the Law of Georgia on Mental Health. Consequently, **the instruction even formally no longer complies with the Law of Georgia on Mental Health** and still does not regulate important issues such as the obligation to develop a special register/ journal; place and circumstances of the restraint application; specific characteristics of the special means used; obligation to document the injury and obligation of the staff to interview the patient.

In 2021, as a result of monitoring conducted in 7 psychiatric institutions, it can be said that the practice of using restraint methods towards the patient has not changed significantly compared to previous years and no effort has been made to finally eliminate the use of restraint methods. The normative framework does not regulate a number of important issues related to the use of restraint methods at all, and the institutions also ignore the existing guarantees, which is not followed by a proper response from the state.

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<sup>397</sup> Follow-up report of the European Committee for the Prevention of Torture's visit to Georgia on 10-21 September 2018, para. 136.

<sup>398</sup> Order №92/N of the Minister of Labor, Health and Social Affairs of Georgia "On Approval of the Instruction on the Rules and Procedures for the Use of Physical Restraint Methods for Patients with Mental Disorders".

## **4.5. Guarantees of legal protection for patients**

### **4.5.1. Ignoring guarantees of patient consent and legal protection**

Human rights international<sup>399</sup> and regional<sup>400</sup> mechanisms clearly indicate the cancellation of involuntary psychiatric treatment. In its in-depth interpretation of Article 14 of the UN Convention on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities has called on the States to repeal a provision in legislation restricting liberty on the basis of disability, including psychosocial and intellectual disability. However, for countries to finally abandon involuntary psychiatric treatment, it is important to carry out complex reforms. Meantime, before involuntary treatment is abolished altogether, it is essential that the State ensures that a person is admitted to a hospital without his or her consent only in the extreme cases provided for by national law, with adequate guarantees of judicial control and legal protection.

Under the Law on Mental Health, inpatient psychiatric care is voluntary, except as provided by law.<sup>401</sup> Consent must be confirmed by the patient signing an informed consent form for hospitalization and treatment.<sup>402</sup> Unlike voluntary psychiatric care, in the case of involuntary inpatient psychiatric care, the conclusion of a commission of psychiatrists and a court decision are required. The legislation also provides for specific procedures for reviewing decisions.<sup>403</sup>

#### **4.5.1.1. In the process of being transferred to a hospital**

Transfer of a person to the hospital with the participation of emergency medical care and patrol crews against his/her will is a limitation of a person's liberty and the initial stage of involuntary hospitalization<sup>404</sup> and from this stage on s/he must be explained in a comprehensible manner the grounds and rights of limitation of liberty. The person should also be informed where they are being transferred and for what purpose. They should also be explained that they have the right to a lawyer, to inform a family member or any third party of his or her choice about the limitation of liberty and to request an independent medical examination.<sup>405</sup>

The heads of psychiatric institutions and psychiatrists in a conversation with the Special Preventive Group say that often the 112 emergency medical brigades bring in psychiatric institutions people who do not need inpatient psychiatric care, against their will. This is due to the fact that doctors of emergency medical brigades often fail to distinguish between family conflict and the patient's acute mental state. In addition, according to the heads of psychiatric institutions and psychiatrists, the operators of "112" ignore the limits of inpatient beds and categorically demand that the inpatient receive a patient. There have been cases where an ambulance crew left a patient in the yard of an institution.

Such a practice is unacceptable for the Public Defender and we consider it important that the emergency medical teams, which are announced on the spot on the basis of the 112 hotline, have the appropriate qualifications so that patients who do not need it are not taken to the hospital. In addition, 112 operators

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<sup>399</sup> Article 17 of the 2006 United Nations Convention on the Rights of Persons with Disabilities.

<sup>400</sup> Recommendation of the Committee of Ministers of the Council of Europe (2004) on the protection of the human rights and dignity of persons with mental disabilities in 10 Member States, available at: <https://rm.coe.int/rec-2004-10-em-e/168066c7e1> [last viewed : 23.07.21].

<sup>401</sup> Situations provided for in Articles 16 (methods of physical restraint of the patient), 18 (involuntary inpatient psychiatric care) and 22<sup>1</sup> (compulsory psychiatric treatment) of the Law on Mental Health.

<sup>402</sup> Paragraph 2 of Article 17 of the Law of Georgia on Mental Health.

<sup>403</sup> The patient will receive involuntary inpatient psychiatric care until the criteria for involuntary inpatient psychiatric care expire, but this period should not exceed 6 months. The commission of psychiatrists is obliged to consider the expediency of continuing the patient's involuntary inpatient psychiatric care on a monthly basis.

<sup>404</sup> Paragraph 3 of Article 18 of the Law of Georgia on Mental Health.

<sup>405</sup> Excerpt from the 8th General Report of the European Committee for the Prevention of Torture CPT/Inf (98) 12-part, para. 51. Available: <<https://rm.coe.int/16806cd43e>>, [Last viewed: 02.08.2021].

should refer the patient only to a psychiatric facility that does not have exhausted bed limit and can receive the patient.

#### **4.5.1.2 When placed in a hospital**

Following the involuntary transfer of a person to the hospital with the participation of emergency medical care and patrol crews, the legal procedures necessary for involuntary inpatient care are not enacted. Unfortunately, in order for institutions to avoid the procedures required for involuntary inpatient psychiatric care, they get patients to sign an informed consent form in ways that exclude or question the veracity of the expression of free will. In particular, during the monitoring visits, cases were revealed when psychological pressure or deceiving was applied to persuade the patient to sign.<sup>406</sup>

At the National Center for Mental Health, patients claimed to have signed a consent form for an antigen test. Patients sign a written informed consent form without having proper information about the service. Some of the interviewed patients do not remember the fact of signing, in addition, many respondents can not read in Georgian and do not know what they signed. The situation is similar in other psychiatric institutions.

A case was identified at the Tbilisi Mental Health Center, where it was found that one of the patients refused to be hospitalized upon entry and the institution was compelled to refer to the court, however, there was a patient signature on the informed consent form on the patient's medical card, which once again confirms that patients are not explained what they are signing and are not allowed to study the informed consent form. The practice of signing a patient informed consent form without proper information about psychiatric care runs counter to the approach of the European Committee for the Prevention of Torture, according to which consent is considered to be an expression of free will only if it is preceded by the provision of complete, accurate and comprehensive information to the patient about the assistance offered.<sup>407</sup>

The monitoring also revealed cases where patients on formal voluntary treatment did not sign informed consent forms. Of particular note in this regard was the psychiatric ward of Terjolamed Ltd, where none of the medical cards contained the patient's signature on the informed consent form, and the patients signed after the Special Preventive group entered the facility.

All of this clearly indicates a clear disregard for the patient's will when hospitalized, as well as the interest of psychiatric institutions in circumventing legal guarantees of patient protection. This situation usually persists until the institution's psychiatrists decide to discharge the patient from the hospital. In psychiatric institutions, it is obvious that the majority of patients on formal voluntary treatment request to leave the hospital, but their request is not even considered.

#### **4.5.1.3. In the process of treatment**

It should be noted with regret that the legislation does not stipulate the obligation to obtain separate informed consent forms for hospitalization and for treatment. Consequently, as in the case of inpatient consent, patients' wish is neglected when selecting treatment methods. Thus, it is important to provide patients with information about their rights, the essence of treatment, methods and duration, both at the initial stage of hospitalization and later.<sup>408</sup> The informed consent of the patient regarding the treatment

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<sup>406</sup> According to a number of patients admitted to the hospital, doctors told them that if they did not sign the informed consent form, the court would apply 6 months of involuntary treatment to them. During the interview, it was clear to the members of the special prevention group that the mention of court and 6 months of involuntary treatment in patients was associated not with justice but with crime and punishment and for fear of this the patients were compelled to sign for informed consent.

<sup>407</sup> Standards of the Committee for the Prevention of Torture. Para. 41. Available <<https://rm.coe.int/16806cd43e>>, [Last viewed: 08.07.2021].

<sup>408</sup> "All patients, regardless of their status, should be given the opportunity to refuse treatment or other medical intervention, and any exceptions to this principle should be prescribed by law and made clear." Excerpt from the 8th General Report of the

is crucial, as it concerns strong psychotropic medications, the use of which may cause suffering and significant harm to the individual's health. Compulsory medication, including to patients with mental health problems, violates the right to privacy and family life guaranteed by Article 8 of the European Convention on Human Rights, and in particular the physical inviolability of the person.<sup>409</sup> Treating a patient without consent may even lead to level of torture and ill-treatment.<sup>410</sup>

In the psychiatric facilities visited in 2021, the majority of patients did not know what medications/injections they were taking, did not know what the side effects of these medications were, and why it was important to take specific medications. Numerous patients have reported not even knowing their own diagnosis. There are cases when the patients themselves observe the side effects of the prescribed treatment, such as shivering, excessive salivation, excessive drowsiness, and ask another doctor to change the prescription, although the prescription remains largely the same. It is especially difficult to meet a doctor at the Batumi Medical Center, where the doctor's office is located away from the ward, and some doctors are reluctant to enter the ward. Consequently, patients do not have the opportunity to talk to their doctor and discuss treatment methods. Terjolamedi Psychiatric Department and Mental Health Center of Eastern Georgia A. Kajaia Surami Psychiatric Clinic do not allow patients to approach the doctor's office and talk to them.

In all the facilities visited, patients noted that forced injections were common practice and that resistance was useless. If a patient refuses medication, he or she is forced to take the medication in powdered form or have an injection. In this process, medical staff uses security guards, sanitary workers or other patients. The practice of executing prescription against the will of the patient (by force) is also confirmed by the records of the nurse in the institutions. Injections are mostly done in the wards, although it is common in corridors and, in some facilities, in dining areas as well. Reportedly, injections are done in the presence of other patients, making patients feel humiliated.

#### **4.5.2. The problem of realizing patient rights in practice**

##### **4.5.2.1. The problem of informing patients about their rights**

Informing patients about their rights is crucial to protecting them from mistreatment. The Public Defender has been pointing out for years that it is important to develop and approve the obligation of a psychiatric institution by the order of the Minister, to provide patients with regular verbal and written information on inpatient's bylaws, patient rights, and inpatient policy in plain and understandable language. Interviewing patients reveals that neither institution has explained their rights to patients in writing or verbally. In only one case (at the Tbilisi Mental Health Center) did the Special Preventive Group see a list of rights handed to a patient that was done after the patient insisted it.

Unfortunately, only two institutions - the National Center for Mental Health and the Batumi Medical Center - posted a list of patient rights on the stands of some departments. Although there is a list of rights in the corridors of the wards at the information boards, patients did not have information about it and therefore were not aware of their rights. As for the National Center for Mental Health, excerpts from the law on patient rights were posted on the stand in some departments, although the text taken from the law is not easily understandable for the patients and needs to be delivered in a more comprehensible language. It should be noted that the National Center for Mental Health has a Patients' Rights Protection Service, although the monitoring does not confirm that it is engaged in any activities in terms of informing patients of their rights.

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European Committee for the Prevention of Torture - "Involuntary Placement in Psychiatric Establishments", para. 41. Available: <<https://rm.coe.int/16806cd43e>> [Last viewed: 30.12.2020].

<sup>409</sup> Glass v. the United Kingdom, no. 61827/00, § 70, ECHR 2004-II, X v. Finland.

<sup>410</sup> Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment before the General Assembly, A/63/175, 28 July 2008, para. 63, available at <<https://digitallibrary.un.org/record/635981?ln=en>>, [Last viewed: 30.12.2020].

#### 4.5.2.2. Limitation of patients' rights

According to Article 15, Paragraph 3 of the Law of Georgia on Mental Health, a doctor is authorized, in case of extreme necessity, to restrict a number of patients' rights for their own safety, which must be indicated in the medical documentation. The Public Defender considers that the procedure for restricting any rights provided to patients by law, both at the legislative and practical levels should be strictly regulated, among them, in order to prevent arbitrariness, it is important to specify the maximum time for the restriction, criteria and appeal procedures for each right.<sup>411</sup>

The problem of restricting patient rights is particularly evident in the case of a patient on a voluntary treatment leaving the facility for a short period of time and the right to use the telephone. All voluntary patients in the facilities visited in 2021 were arbitrarily restricted from leaving the hospital, so that there was no formal written decision of the doctor. The only verbal argument of the institutions why voluntary patients are not allowed to leave the institution is that if the life or health of the patient is endangered outside, the institution will be held responsible.<sup>412</sup> Consequently, institutions only allow the patient to leave the hospital after family members come to the facility to take him or her. The Public Defender considers that patients who formally receive voluntary psychiatric care, who request a discharge and for whom there is no legal basis for the application of the involuntary psychiatric care procedure, should be discharged immediately from the hospital. In 2021, several cases of patient escape were reported at the Evex Hospitals Psychiatric Unit and Suram Psychiatric Clinic, after which the institutions contacted the patrol police and demanded the return of the escaped patient. In most cases, the patrol police returned the patients who had fled the facility, although they had no legal basis to do so as the patients were formally receiving voluntary treatment. The Public Defender considers that the patrol police should not be involved in the return of a patient unless the institution presents a court order for involuntary hospitalization of a person.

Interviews with patients and staff show that the right to use the telephone depends on the doctor's verbal permission. Patients will have their mobile phones confiscated as soon as they enter the facility. №5 Clinical Hospital should be positively mentioned, where most of the patients owned mobile phones and smartphones. But some patients are still arbitrarily restricted from using the telephone without a reasoned decision in writing from a doctor. Patients who have their own phone are warned not to hand over their phone to specific patients who are prohibited from using the phone. None of the patients at Suram Psychiatric Clinic have a telephone except one.

One of the patients at the Batumi Medical Center mentioned that the phone was taken away when s/he had to inform his/her family member of his/her whereabouts and since the hospitalization coincided with the weekend (there is no social worker at the Batumi Medical Center on the weekend who helps patients use the telephone), was unable to report to family members until Monday that s/he was in a psychiatric hospital.

In the event of an arbitrary restriction on the use of a phone, institutions have two main arguments - to avoid unfounded calling to 112 and the request of family members not to be bothered by the patient. The Public Defender considers that in case of unfounded calls made by the patient to 112, the institution may, by a reasoned decision and for a specified period of time, restrict the patient's right to use the telephone. As for keeping the family members unbothered, restricting the patient's right to use the phone for this purpose is completely inadmissible and is a gross violation of the law, whereas the restriction

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<sup>411</sup> See National Preventive Mechanism 2020 Report. P. 166-170. Available:

<<https://www.ombudsman.ge/res/docs/2021040114045198598.pdf>> [Last viewed: 12.07.2021].

<sup>412</sup> Judgment of the European Court of Human Rights in the case of *Fernandes de Oliveira v. Portugal* no. 78103/14, January 31, 2019. Para. 124-132. The Grand Chamber did not hold the state accountable for violating the right to life for the escape of a patient receiving voluntary treatment from a psychiatric institution, and for committing suicide. The decision stated that although patients are vulnerable, if there is no real and imminent danger, especially in the case of a person receiving voluntary treatment, the institution/state is not liable and a positive obligation is not breached.

of the patient's right should serve a legitimate purpose and not creation of comfort for the patient's family members.

It is also complicated to use the institution's telephones. During the monitoring visits, patients came to the wards to the Special Preventive Group and asked to let them call. The situation is especially difficult in the psychiatric ward of Terjolamed, where before each call, the patient must obtain permission from a doctor. Institutions have different practices regarding telephone times and payment. For example, at the National Center for Mental Health, patients can use the telephone every day until 6 pm, although they have to pay for it themselves. The fee is mostly paid by family members by topping up the phone balance. The telephone balance is accounted by the security guard of the department. However, monitoring reveals that patients are unable to speak in a confidential environment, and some patients have not made a call in weeks due to family members not paying the amount. Noteworthy is the condition of newly admitted patients who do not know how to use the phone or do not remember the phone numbers of family members to contact them.<sup>413</sup> There are shortcomings in the realization of the right to make telephone calls in the Batumi Medical Center, where there is no confidential environment. With the help and presence of a social worker, the patient is given the opportunity to use the telephone every other day Monday to Friday.

The Public Defender believes that it is important for patients to have their own phones back, and in their absence, to be able to make at least 1 call per day by telephone of the institution. The patient should not rely on the goodwill of staff to land them their telephone, especially in the face of pandemic restrictions, when patients have even more limited contact with family members.

#### **4.5.2.3. Lack of an accessible, simple and confidential complaint mechanism**

The most important guarantee for the protection of the patient from ill-treatment is the introduction of an accessible, simple and confidential complaint mechanism for patients, both inside and outside the psychiatric institution.<sup>414</sup> The internal grievance mechanism formally exists at the National Center for Mental Health, the Batumi Medical Center, the Tbilisi Mental Health Center, and the Surami Psychiatric Clinic, where grievance boxes are located in the departments.



*National Center for Mental Health*



*Tbilisi Mental Health Center*

<sup>413</sup> Better situation in the wards of patients on compulsory treatment and convicted patients, where patients save money every month to buy unlimited calls and enjoy the right to call for 10-15 minutes daily.

<sup>414</sup> Article 13 of the Convention on the Rights of Persons with Disabilities.



Boxes placed at the National Center for Mental Health are not sealed, are not locked, and anyone can take out a complaint from there. No one explains to patients why there is a complaint box. According to several patients, they are aware of the existence of a grievance box, although they have instructions from staff that no complaint can be lodged there. Despite the request, the institution did not provide the Special Preventive Group with a document regulating the rules governing the removal and review of complaints. As it turned out, the function of removing and collecting complaints rests with psychologists. According to the psychologists, a commission is formed once every 2 months, which includes psychologists, social workers and doctors, although the activities of the commission are not confirmed by records, and there are no protocols for opening a complaint box. The monitoring team inspected the letters stored in cellophane bags in the psychologist's office. The bags do not have any inscriptions and therefore it is unclear when the letter/complaint was withdrawn and from which department; it is not specified what the response was to this or that letter. Thus, the Public Defender considers that such a mechanism can not be considered as a confidential and effective internal appeal mechanism.

The complaint boxes at the Tbilisi Mental Health Center have no indication, therefore, the white boxes installed in the wards are considered by some patients to be a donation box. Patients are not provided with information about its purpose and use. Consequently, the interviewed patients did not put a complaint or suggestion in the box. There is no written procedure in the institution, based on which the periodicity of opening the complaint boxes, the response mechanism, etc. would be regulated. Consequently, the boxes do not serve the purpose of a confidential and accessible internal complaint mechanism. The same situation is in Surami Psychiatric Clinic and Batumi Medical Center, where, for the reasons listed, the grievance mechanism cannot be used effectively.

As for out-of-hospital grievance mechanisms, patients mainly contact state bodies, including the Public Defender, by telephone. The Public Defender's hotline number is posted in the institutions, however, due to telephone problems, non-confidential environment and lack of awareness, incoming calls and appeals from psychiatric institutions are very scarce both in the Public Defender's Office and in the NGOs working on patient rights. For example, in 2021, the Public Defender's Office received 13 appeals from the National Center for Mental Health, where more than 500 patients are permanently present, most of which are convicts transferred from penitentiary institutions and persons undergoing forced psychiatric treatment. In these appeals patients also talk about obstruction in the sending of complaints by the staff of the institution. It should also be noted that patients do not have access to legal advice regardless of whether there is a lawyer in the facility. Against the background of the circumstances described above, patients in psychiatric institutions are in a severe and vulnerable condition.

#### **4.6. Safe and therapeutic environment**

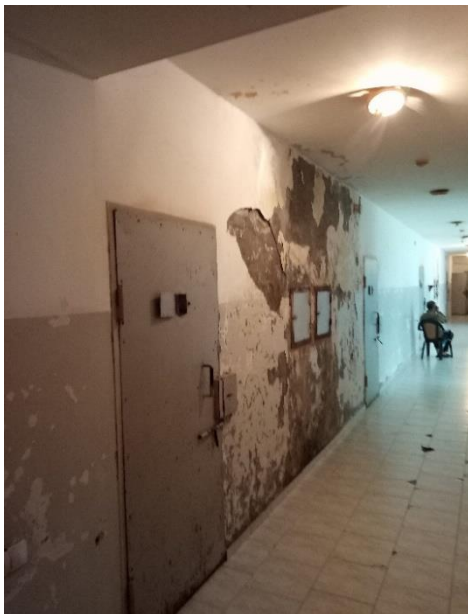
##### **4.6.1. Sanitary-hygienic condition**

As a result of the monitoring visits to the psychiatric institutions, it was found out that the ceiling and walls of the men's ward of the psychiatric institution of the Batumi Medical Center in the corridor and wards of the hospital were damaged by moisture, the plaster has fallen off, the ventilation system is not functioning, there was a heavy, pungent odor during the visit.



*Batumi Medical Center*

Similarly, the poor infrastructural situation is in “Acad. B. Naneishvili National Center for Mental Health sections 9, 10, 11 and 12. Plaster has fallen off the walls of the hospital corridor, the ceilings and walls in the wards have been damaged by moisture, the wooden floors are old and have collapsed as a result of prolonged utilization.



*Forensic Psychiatric Unit of the National Center for Mental Health*

The infrastructure in the Tbilisi Mental Health Center is also old and faulty, where plaster has fallen off the walls of the hospital corridor and wards, the dividing walls between the chambers are made of "gypsum board" material, which is collapsed at places as a result of the use of physical force.

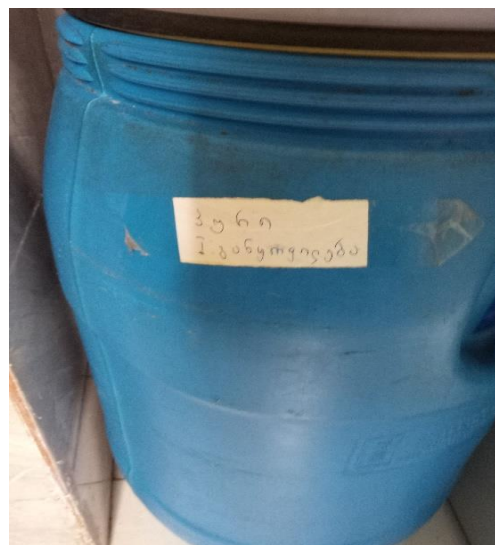


*Tbilisi Mental Health Center*

The infrastructural and living conditions of these facilities do not ensure adequate treatment of patients in the conditions of protection of their dignity. The entire infrastructure is outdated and in need of repair.

There are severe problems in terms of sanitation in the bathrooms of Surami Psychiatric Clinic. Although the clinic had a large-scale renovation and infrastructure was improved in 2019, water is leaking from the ceiling in the bathrooms, plaster has fallen from the walls damaged by moisture, the ventilation system is not functioning, only natural ventilation can not provide proper airing of the bathrooms, due to which there is a strong odor.

During the monitoring visits, washbasins in the bathrooms of Suram Psychiatric Clinic were not provided with hot water. The issue of providing bed linen was also problematic. Several patients reported that they were frequently getting old, torn linen that had an unpleasant odor. Patients complained during the visit about the improper washing of dishes in the canteen of the facility. According to them, in many cases, old traces of fat were left on the dishes.



*Surami Psychiatric Hospital*

Bathrooms in the Tbilisi Mental Health Center and departments 9,10, 11, 12 wards of "Acad. B. Naneishvili National Center for Mental Health require repair/replacement of damaged showers and faucets and maintenance of the ventilation system.



*Tbilisi Mental Health Center*



*Forensic Psychiatric Unit of the National Center  
for Mental Health*

As a result of the monitoring visits, it was also found that in none of the above-mentioned facilities are patients fully provided with the standard<sup>415</sup> 8 square meters living area. Patients have to live in an average area of 4-5 square meters.<sup>416</sup>

With the exception of the №5 Clinical Hospital Department of Child and Adult Psychiatry and psychiatric ward of Bokeria Referral Hospital, patients are not provided with adequate household items in any of the above facilities, not all patients have an individual cupboard or wardrobe for storing personal items.

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<sup>415</sup> Resolution №385 of the Government of Georgia of December 17, 2010.

<sup>416</sup> Acad. B. Naneishvili National Center for Mental Health "- in an average 17.5 sq.m. there are placed 3-4 patients in the wards, 4-5 patients are placed in the wards of the area of 22.5 sq.m., In 42 sq.m area wards - 7-9 patients on average; In Batumi Medical Center - an average of 4-5 patients are placed in the 21.5 sq.m. wards; Surami Psychiatric Clinic - 10 sq.m. wards accommodate 2 patients, 12 sq.m. wards accommodate 2 patients, 3 patients are placed in the 18 sq.m. ward. An average of 6-7 patients are placed in the 34.5 sq.m. wards.





*Batumi Medical Center*

The wards of male patients of the psychiatric institution of the Batumi Medical Center do not have doors and patients move chaotically in each other's wards, therefore, patients' privacy is not ensured.



*Batumi Medical Center*

As a result of the monitoring visits, it was found that in psychiatric institutions, there is a different practice of providing patients with hygiene items. Not all institutions fully provide personal hygiene items to patients. Female patients are provided with hygienic pads only on request. Patients in the №5 Clinical Hospital Department of Child and Adult Psychiatry and psychiatric ward of Bokeria Referral Hospital are provided with toilet paper, liquid and solid soap, and other hygiene items are brought by patients from home. In some institutions<sup>417</sup> patients are not provided with bath slippers and have to enter the bathroom barefoot, which increases the risk of spreading transmissible diseases. Patients at the

<sup>417</sup> Surami Psychiatric Clinic; Batumi Medical Center; Tbilisi Mental Health Center.

Tbilisi Mental Health Center report that soap and towels are given only once a week when entering the bathroom. At the same facility, patients are provided with the services of a stylist. During a visit to the Tbilisi Mental Health Center, members of the Special Preventive Group observed the process of haircuts and beard shaving, when the stylist cut the patients' hair with an electric machine so that the electric machine was not cleaned/sterilized after each use.<sup>418</sup>

As a result of monitoring visits to institutions, the Special Preventive Group also found that in a number of institutions<sup>419</sup> staff uses patient labor (cleaning of hospital corridors, bathrooms and wards) in exchange for coffee, cigarettes and extra food, without financial compensation.

Patients in the sections 9, 10, 11 and 12 of Acad. B. Naneishvili National Center for Mental Health reported that the problem of lice in clothes was common. Cockroaches and bugs are also common in the wards of the same institution, the windows are not equipped with insect protection nets and patients are bothered by mosquitoes, rodents are also spread from the damaged wooden floor.



*Forensic Psychiatric Unit of the National Center for Mental Health*

#### **4.6.2. Nutrition and drinking water**

Patients in psychiatric institutions are provided with three meals a day. The food ration of all establishments includes a three-component lunch and a hot dish. However, it should be noted that in institutions (except Tbilisi Mental Health Center<sup>420</sup>) most of the patients indicated that the food was not varied and enough for everyone. They were also not provided with fruits and vegetables. Patients at Acad. B. Naneishvili National Center for Mental Health and the psychiatric wards of the Batumi Medical Center said that their pensions were spent mainly on food because the food was not enough at the institution.

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<sup>418</sup>Technical Regulation - Approval of the Sanitary Norms for the Prevention and Control of Infections during the Production of Aesthetic and Cosmetic Procedures in Public Institutions, Resolution №473 of the Government of Georgia.

<sup>419</sup>"Acad. B. Naneishvili National Center for Mental Health"; Psychiatric Department of Batumi Medical Center; Surami Psychiatric Clinic.

<sup>420</sup> There was a supply of vegetables and fruits in the canteen during the visit to the Tbilisi Mental Health Center.



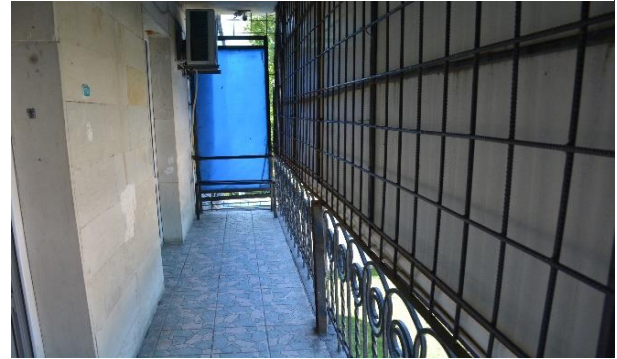
Unlike other institutions mentioned above, Surami Psychiatric Clinic is not periodically supplied with drinking water, so patients have to save drinking water with disposable bottles.

#### 4.6.3. Walking space

Acad. B. Naneishvili National Center for Mental Health provides walking and relaxing open spaces for patients. In sections 9; 10; 11 and 12 of the institution there are two concrete walkways fenced with iron bars, where a barn, a basketball shield is arranged, and there is also a covered space. The 5th and 7th lodgings of the institution have two concrete yards between the buildings. In the new building of the institution there is a walking concreted yard fenced with iron net, equipped with a basketball shield, volleyball net, there is also table tennis and covered space with table and chairs for board games and relaxation. Patients are provided with open walking and rest areas in the psychiatric wards of Batumi Medical Center, Surami Psychiatric Clinic and Tbilisi Mental Health Center. A football and basketball court and table tennis are arranged in the walking space of Batumi Medical Center. №5 Clinical Hospital Department of Child and Adult Psychiatry, Iv. Bokeria Referral Hospital Psychiatric Department and Imereti Regional Medical Center Psychiatric Department do not have their own walking space.



*Forensic Psychiatric Unit of the National Center for Mental Health*



*Terjolamedi*

#### 4.6.4. Secure infrastructure

In the buildings of psychiatric institutions, fire extinguishers were placed as fire-fighting measures, an evacuation plan was posted in the corridors of the hospital and were equipped with smoke detectors.

Facility spaces, including bathrooms in the wards, were not adapted for people with disabilities. In addition at the Tbilisi Mental Health Center stairs leading to the dining room and the yard are slightly curved and there is a danger that the patient will slip and receive bodily injuries while using the stairs.

#### 4.7. Epidemiological conditions

The monitoring revealed that in order to prevent the spread of the new coronavirus, the meeting of patients and visitors in psychiatric institutions was restricted, personal protective equipment was purchased, PCR testing of staff has been underway since late 2020, and rapid antigen testing was performed when receiving a patient.

During the monitoring visits, the meetings between the patients and the visitors were resumed at the Tbilisi Mental Health Center, and only the visitor was wearing a face mask during the meeting. At the Suram Psychiatric Clinic, they could only meet outside the facility to pick up a parcel, and again, only the visitor was wearing a face mask.<sup>421</sup> At the other facilities, patients meetings with the visitors were still suspended. According to the Public Defender, it is important that if visits are allowed, the patient and the visitor are both equipped with personal protective equipment and kept at a distance.

The Public Defender believes that the sanitary-hygienic condition of the institutions, overcrowding, inability to keep distance, patients being closed for most of the time and incomplete use of personal protective equipment by the staff increase the risk of spreading the infection. It should be noted that in March 2020, the National Center for Mental Health, unlike other institutions, developed a "specific plan of measures to prevent coronavirus infection (COVID-19)." This plan includes strengthening epidemiological supervision, controlling the temperature of staff, banning outsiders from entering the facility, equipping and proper use of disinfectants and antiseptics, hygiene, etc. Despite the development of the plan, staff at the facility did not regularly use personal protective equipment, and disinfectants were placed in areas where patients could not reach them. When it comes to hygiene, interviewing patients has shown that there is either no soap or it is shared by all. Patients also noted that hygiene items were distributed during the Special Preventive Group visit.

According to the Public Defender, it is important that all institutions have a plan of measures to be taken to prevent COVID-19 and that its implementation is strictly controlled. It should also be noted that according to the observation of the Special Preventive Group, on the first day of the monitoring visit, the staff of the psychiatric institutions paid less attention to the observance of the mask-wearing rule, and in the following days they strictly observed it. This suggests that at other times, when the Special Preventive Group monitoring visit is not taking place, medical staff do not wear a mask properly, creating a risk of spreading the infection. As for the patients, they are not equipped with personal protective equipment at all.

It should be noted that medical staff undergo PCR testing every two weeks. It is noteworthy that in the conditions of deteriorating epidemiological situation in the country (summer period of 2021), the medical staff leaves the facility after finishing work. The Public Defender believes that in such conditions, in order to minimize the risk of coronavirus transmission in the facility, PCR testing of staff working in psychiatric facilities should be performed at shorter intervals. It should be noted that the National Center for Mental Health has an on-site laboratory where PCR testing is performed. On the positive side, from the end of 2020, all patients undergoing hospitalization undergo a rapid antigen test, which reduces the risk of coronavirus transmission in the hospital. In addition, patients are admitted to the hospital for thermal-screening and collection of epidemiological history. As for inpatients, if any had a fever, they were administered on the spot, by a physician-therapist, and tested for COVID-19 only if the patient still had a fever after treatment. During this period, the patient remained in the ward. Such practices pose a risk of spreading the coronavirus to the hospital, and it is important that during pandemic, in the event of a fever, the patient be isolated in a timely manner and tested for the virus. In addition, apart from a rapid test, it is important that patients undergo PCR testing if they have

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<sup>421</sup> In one case, the Special Prevention Group witnessed a case when even the visitor was not wearing a face mask.



symptoms.<sup>422</sup> It is noteworthy that the institutions do not have isolation wards where it would be possible to place a patient with suspicious symptoms. It is true that a medical room is arranged in the Batumi Medical Center, but here, several patients are placed in one space and the risk of transmitting the virus is high. Thus, it is important to set up isolation wards in all facilities where, in doubtful cases, the patient will be placed separately before receiving a test result.

During interviews in psychiatric institutions, it was found that Kovid-positive patients were mostly transferred to the Rustavi Mental Health Center or Imermedi (Terjolamedi). It should be noted that in late 2020 and early 2021, in psychiatric institutions<sup>423</sup> cases of coronavirus have been identified. After COVID-19 was detected in Clinical Hospital №5, some of the patients were discharged and some of the Covid-positive patients were transferred to Rustavi Psychiatric Institution. After that, for 2 weeks, the department was no longer receiving patients.

"Batumi Medical Center" and "Imermed" have an infectious department, where positive patients are placed. As for the National Center for Mental Health, a separate ward was set up for positive patients, from where, in case of aggravation of the coronavirus clinical picture, the patient is transferred to Batumi Medical Center or Terjolamed.<sup>424</sup>

At the time of the visit, information posters related to the new coronavirus had not been posted in either patients' rest rooms or wards. Disinfectant solutions were in areas where patients could not reach. Although hand hygiene is of particular importance in preventing the new coronavirus, hand washing rules have also not been posted with washbasins for patients. In addition, in some cases, there was no soap in the toilets. Patients said they often did not have soap and washed their hands only with water.

In view of all the above, the Public Defender considers it important to pay special attention to hygiene, equip patients with personal protective equipment, place disinfectants in places accessible to them, when meeting visitors, both the visitor and the patient should use a mask and keep the recommended distance. Patients should spend as much time as possible outdoors, in the fresh air. It is also important to conduct regular thermal-screening of patients and, in case of suspicious symptoms, to be able to separate patients in a timely manner.

Finally, we would like to focus on the importance of vaccination and the approaches available in this regard. The UN Subcommittee on Prevention of Torture calls on States Parties to give priority to vaccination of persons deprived of their liberty or otherwise restricted their liberty under the State Vaccination Program. In addition, it is important to provide these individuals with complete information about the vaccination program, its benefits and side effects. States should ensure that vaccination is voluntary and based on informed consent.<sup>425</sup> Therefore, in addition to testing and detecting suspicious cases during placement in psychiatric facilities, it is important to provide patients with information about vaccination, its benefits, and side effects. Vaccination should be done according to the wishes and medical indications of the patients.

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<sup>422</sup> For example, one patient had symptoms, underwent a rapid test twice, and was not confirmed. Only a second PCR test confirmed the case.

<sup>423</sup> At №5 Clinical Hospital, in December 2020, one patient was first diagnosed with the new coronavirus, and after patient testing, 5 more patients were diagnosed. For the second time, in April 2021, one patient was diagnosed with coronavirus, and after testing other patients, it was determined that 3 more patients were infected. In December 2020, 25 patients at the Surami Psychiatric Clinic were diagnosed with the new coronavirus.

<sup>424</sup> A total of 154 cases of coronavirus infection were detected at the National Center for Mental Health in 2020-2021, of which 8 patients were transferred to a hospital of infectious diseases, two of whom died.

<sup>425</sup> Recommendations of the UN Subcommittee on Prevention of Torture for the Coronavirus Pandemic to States Parties and National Preventive Mechanisms, subparagraphs (15) (a) and (b). CAT/OP/12, July 18, 2021.

## 4.8. Psychiatric assistance

### 4.8.1. Treatment with antipsychotic medications

Psychiatric care in psychiatric hospitals is not biopsychosocial in nature and is practically reduced to pharmacotherapy. According to the Public Defender, a biopsychosocial approach is important to provide adequate psychiatric care, which, in addition to pharmacotherapy, also includes the patient's psychosocial rehabilitation, taking into account the needs of the patient. Against the background of the challenges in terms of psychosocial rehabilitation in psychiatric institutions<sup>426</sup>, Pharmacological burden is increasing. Patients are not properly involved in the process of providing psychiatric care; some of them do not know the name of the diagnosis and the prescribed medication. They also do not have information about the main and expected side effects of the prescribed medications. It should be noted that there are problems in psychiatric institutions in terms of production of medical documentation.<sup>427</sup> In particular, part of the stationary cards do not contain the daily records of the doctor,<sup>428</sup> therapeutic medication prescription sheet, some prescription sheets do not indicate the date and it is difficult to determine what period the prescription is for.

Psychiatric institutions had antipsychotic drugs, but no longer had the drug Cyclodol (Trihexyphenidylum) and its analogues, which were out of stock due to the shortage in the country. This medication is used to manage the side effects of antipsychotic medications.<sup>429</sup> The deficit creates significant problems, in particular, psychiatrists limit the possibility of changing the choice and dose of antipsychotic medication, due to the urgent need to manage the side effects of antipsychotic medication, they use diazepam or other drugs of the benzodiazepine group. These medications should not be used for a long time as they also have side effects and cause the development of addiction syndrome.<sup>430</sup>

National recommendations for clinical practice in the management of psychiatric cases are still being ignored when managing an acute patient. When receiving an inpatient, pre-tranquilization, use of injectable forms of medication, and polypharmacy are preferred without prior assessment of risks,<sup>431</sup> instead of monotherapy<sup>432</sup>, which significantly increases the likelihood of detecting side effects of psycho-pharmacotherapy. In accordance with national recommendations for clinical practice in the country,<sup>433</sup> Oral medications should be offered when schizophrenia is newly diagnosed, as well as during an acute attack or relapse.<sup>434</sup> But the records do not show why a patient who is voluntarily hospitalized is not allowed choosing between a pill and injectable forms of medication and why tablet forms are not preferred over injectable forms of psychotropic drugs.

During visits, prescribing several antipsychotic medications at the same time was still a problem in psychiatric institutions. In addition, there are cases when the patient is prescribed two, three or more

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<sup>426</sup> See the subsection of psychosocial rehabilitation.

<sup>427</sup> At the National Mental Health Center, Batumi Medical Center, №5 Clinical Hospital Psychiatric Department, Terjolamed and Evex Hospitals, according to the medical staff, the records are made electronically and then placed on the medical card. During the visits, no such records were inserted in the medical records.

<sup>428</sup> Medical card records.

<sup>429</sup> National Recommendation for Clinical Practice (Guideline) - "Treatment and Management of Schizophrenia in Adults", (4.7) Side effects; Table 4.11 Common Extrapyramidal Side Effects (Parkinson's syndrome, acute dystonic reaction, akathisia, and later dyskinesia).

<sup>430</sup> For example, in one case, a patient was treated with sol. Neorelium benzodiazepine group) due to extrapyramidal syndrome (Parkinson's syndrome, acute dystonic reaction, akathisia and later dyskinesia).

<sup>431</sup> A pharmaceutical product containing the same active substance(s) designated by two or more trade names. Simultaneous appointment of interchangeable and/or drugs of the same pharmacological group (taking into account the route of administration).

<sup>432</sup> Use of only one medication, one substance for treatment.

<sup>433</sup> National Recommendation for Clinical Practice (Guideline) - "Treatment and Management of Schizophrenia in Adults", Chapters: 4.8.1.1.; 4.8.1.2.

<sup>434</sup> Taking the medication through the mouth.

antipsychotic medications, including, in some cases, the medication "Zopin" ("Clozapine").<sup>435</sup> In accordance with national recommendations for clinical practice in the country,<sup>436</sup> for most patients, except in special circumstances, it is recommended to prescribe one antipsychotic medication. It is important to avoid polypharmacy to reduce the risk of QT interval prolongation<sup>437</sup> and sudden cardiac death.<sup>438</sup>

The Public Defender indicates in numerous reports that the use of the drug "Zopin" (active substance "Clozapine") should be carefully considered whether in combination with other antipsychotic and different groups of psychotropic drugs, or as monotherapy. In addition, the European Committee for the Prevention of Torture in its report<sup>439</sup> emphasizes the need for regular blood tests when prescribing clozapine. On the recommendation of the Committee, the Georgian authorities should immediately ensure that regular blood tests are performed in all psychiatric facilities in case of clozapine use. Also, train the staff of the institution so that they can identify the side effects of "Clozapine", which may have fatal consequences.

In view of all the above, the Special Preventive Group concludes that the psychiatric cases are not being adequately managed. The services provided are not focused on recovery and are not based on respect for personal autonomy. Moreover, in some cases, the intervention performed causes significant harm to the patient.

#### **4.8.2. Psychosocial rehabilitation**

According to the legislation of Georgia,<sup>440</sup> one of the components of psychiatric care is the patient's psychosocial rehabilitation, which aims to maintain the patient's social and labor contacts and to develop the skills that define his or her ability to live independently in society.

Unfortunately, the state mental health program still does not provide psychosocial rehabilitation intervention during short-term treatment. Consequently, there is no multidisciplinary work in psychiatric institutions that provide only short-term inpatient psychiatric services and there are practically no therapeutic and rehabilitation activities. In terms of the provision of psychosocial services, the situation is even worse in the case of patients on long-term treatment who are unable to receive psychosocial rehabilitation services based on individual needs under the state program.

Psychiatric institutions do not meet the minimum standards of psychosocial rehabilitation in the country.<sup>441</sup> They are unable to connect service users to community-based services. Social workers employed in institutions do not work in connection with outpatient services, employment and

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<sup>435</sup> For example, in one case, a patient was prescribed four antipsychotic medications at a time, including two injections: intramuscularly, tiserцин 25 mg/ml twice daily, and haloperidol 5 mg/ml twice daily, in tablet form, azaleptin (Clozapine) 100 mg/day and Ketilept 200 mg/day. S/he was also prescribed Diazepam 5 mg / 2.0 ml twice daily as an injection and neurolepsin (carbamazepine) 1200 mg/day in tablet form. The second patient was prescribed four antipsychotic medications, Sedarex, at 8 mg / day; Haloperidol 10 mg bpm; "Azaleptin" 200 mg / day, "Tiserцин" 100 mg / day, also prescribed "Diazepam" 5 mg / 2.0 ml 2 times a day and "Neurolepsin" 1200 mg / day. The third patient was prescribed zolafren (olanzapine) 20 mg / day (max. Therapeutic dose) and azaleptin (clozapine) 150 mg / day. A fourth patient was prescribed three antipsychotic medications: Zolafren (olanzapine) 20 mg / day (max. Therapeutic dose), haloperidol 30 mg / day (max. Therapeutic dose), and azaleptin (clozapine) 150 mg / day. Carbamazepine 600 mg / day was also prescribed.

<sup>436</sup> National Recommendation for Clinical Practice (Guideline) - "Treatment and management of schizophrenia in adults", p. 46.

<sup>437</sup> A heart rhythm disorder that potentially causes a rapid, chaotic heartbeat.

<sup>438</sup> Most of the authors consider the use of 5 to 10 drugs as polypharmacy, or the simultaneous use of different drugs of the same group, or even the misuse of one drug, regardless of the number. See link: <<https://bit.ly/35h14YY>>

<sup>439</sup> European Committee for the Prevention of Torture in its report on the visit to Georgia on September 10-21, 2018. See link: <<https://rm.coe.int/1680945eca>> [Last viewed: 02.08.2021].

<sup>440</sup> Law on Mental Health, Article 21

<sup>441</sup> Order №112/n of the Minister of Labor, Health and Social Affairs of Georgia of April 2, 2007 approving the standards of psychosocial rehabilitation. <<https://www.matsne.gov.ge/ka/document/view/70012?publication=1>> [Last viewed: 02.08.2021].

rehabilitation. Social workers are unaware of employment promotion programs in the country that would enhance patient social support. They are also unaware of existing day care centers and/or other possible programs in which patients may be involved.

### Short-term intervention

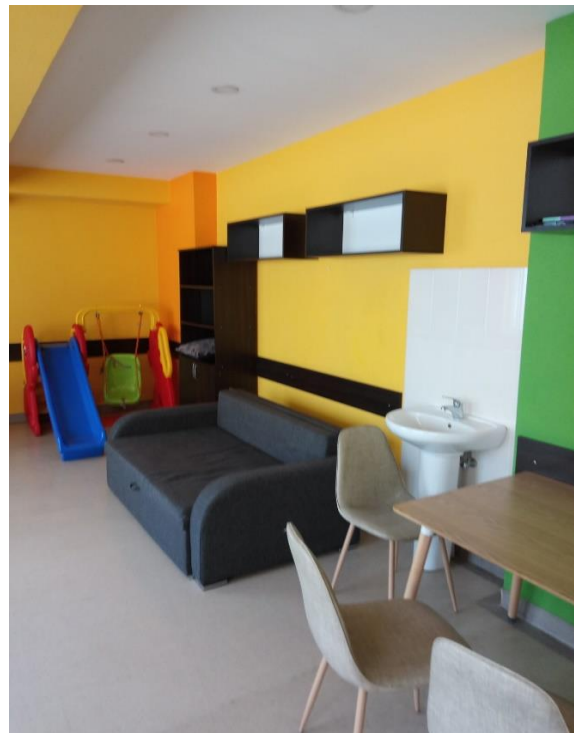
In 2021, the Special Preventive Group visited 3 psychiatric institutions as part of the monitoring, which provide only short-term inpatient psychiatric services. №5 Clinical Hospital, Evex Hospitals and Terjolamed have no multidisciplinary work and almost no therapeutic and rehabilitation activities.

In **№5 Clinical Hospital**, the schedule for both children and adults is limited to the time of receiving medication and food. The rest of the free time patients spend in their own wards or corridors. Patients are not taken to fresh air at all.

The playroom in the children's section, which is common to all children, is not equipped with appropriate equipment, toys. There is only one swing and a toy house in the room, designed for children around 3-6 years old, which does not essentially correspond to the age group of the children in the department. It should also be noted that the door of the playroom was locked during the visit, although according to the manager, it is always open.



*Playroom in the pediatric ward of 5 Clinical Hospital*



Similarly, neither **Terjolamed** nor **Evex** have the opportunity for patients to have fun and spend an interesting time, the patients' daily routine is the same. Therapeutic environment is not created in the institutions. They mostly spend time indoors, go to the hall or lay down. There is no space in these facilities where the beneficiaries will be able to rest, relax and have an interesting time.



*Evex section corridor, for patients*



*Walking space for Terjolamed patients*

**Terjolamed** does not have a yard where patients can go out and use balconies that are so covered that it is impossible to see outside. In "**Evex**" patients are not allowed to move freely on the territory of the institution. Some noted that they walk to the yard for five minutes. According to several patients, they have not been taken to fresh air since the placement.

Due to the lack of space in **№5 Clinical Hospital**, group psychotherapy is not provided and only individual meetings are held with patients. However, it should be noted that not all patients are involved in the insufficient psychosocial activities in the facility. The need to involve the patient in the services of a psychotherapist is determined by the psychiatrist. The institution employs 1 psychotherapist, who works 3 days a week.

During the visit to **Terjolamedi**, it was determined that there is no therapeutic environment in the facility and no psychosocial rehabilitation is underway. The facility does not have activities that would help patients maintain and develop skills. The institution employs 1 psychologist and 1 social worker. As for the psychiatric department of "**Evex**", after interviewing the staff and patients and studying the documentation, it was found that there is no psychosocial rehabilitation in the facility. The institution does not have specialists in psychotherapy, psychoeducation or psychosocial work, and the only psychologist employed in the institution is at work once a week and conducts only psycho-diagnostics.

**According to the Public Defender, despite the fact that patients are accommodated in the above-mentioned institutions for a short time, it is important to identify their needs and set short-term goals, which will be calculated during their stay there and help service users maintain and develop skills.**

#### Long-term intervention

As a result of the monitoring conducted at the **Tbilisi Mental Health Center**, it is clear that in terms of psychosocial rehabilitation, nothing has changed in the institution compared to the previous monitoring.<sup>442</sup> According to staff, the facility has undergone minimal changes - one social worker has been added and the facility currently serves two social workers, while the occupational therapist's workload has been increased by one day to three days a week. In parallel with medical treatment, the facility does not have a therapeutic environment and no psychosocial rehabilitation support measures are taken.

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<sup>442</sup> Public Defender of Georgia, National Preventive Mechanism, Emergency Monitoring Report of Tbilisi Mental Health Center (September 15-16, 2020), p. 21-25, available at the following address: <https://www.ombudsman.ge/res/docs/2021030322483868585.pdf> [Last viewed: 30.07.21].

The monitoring conducted at the **Acad. B. Naneishvili National Center for Mental Health** revealed that the direction of psychosocial rehabilitation in the clinic is limited,<sup>443</sup> The biopsychosocial, multidisciplinary approach, assessing the individual needs of beneficiaries, developing individual plans for beneficiaries and ensuring their implementation is not of a regular nature. The institution does not have developed protocols and guidelines that provide the beneficiaries with the skills necessary for independent living, which is essential for the recovery of patients and improvement of mental condition. A small proportion of patients sit in the dining room, paint or engage in mandala therapy (coloring of figures). The vast majority of patients do not even know anything about these activities.

The facility is significantly limited in the ability to spend interesting time, patients' day routine is the same. According to the interviewed patients, they mostly spend time indoors, go to the hall or lay down, watch TV periodically, they have the opportunity to be in the fresh air for only one hour or an hour and a half a day, in some cases, they do not even go for a walk because they say there are not enough chairs or sitting areas in the yard and therefore they prefer to stay in the room.

No psychosocial rehabilitation work is underway at **Surami Psychiatric Clinic**. Patients are not evaluated using a biopsychosocial model and no work with them is carried out on an individual basis. The facility has an occupational therapy room, although only a small number of patients use it. Patients learn from each other about the possibility of using the occupational therapy room, they are not informed by the staff and are not offered activities. Employees attribute this to lack of time, busy schedules and lack of specialists. Only some patients have the opportunity to move freely in the yard, most of them are out in the fresh air with a certain schedule.

According to the staff of the **Batumi Medical Center**, due to the ongoing pandemic and repair works in the facility, the rehabilitation programs have been suspended. It should be noted that the therapies were not modified to address the need for virus prevention and as a result, previously scarce activities were discontinued altogether. According to patients, "nothing happens in the facility" and "locking one in four walls" will not help a person. Patients also express anxiety outside, due to infrequent taking out to fresh air.

**The Public Defender calls on the state to ensure the introduction of comprehensive psychosocial rehabilitation programs in the field of mental health in such a way that the programs are implemented at the earliest possible stage, based on multidisciplinary assessment of individual needs, strengths and facilitate their participation in all spheres of public life.**

#### **4.9. Somatic (physical) health**

Patients who have been taking antipsychotic medications for a long time should undergo regular physical health examinations.<sup>444</sup> In the National Guideline for the Management of Schizophrenia<sup>445</sup> the importance of monitoring antipsychotic medications to the early detection of somatic problems, severity assessment, and proper selection of antipsychotic treatment strategies is emphasized. The table of the estimated frequency of the study of patients' physical and biochemical parameters is also given.

Patients undergo inpatient blood and urine tests for common hepatitis C and glucose and, if necessary, repeat the tests. Common blood and urine tests alone can not ensure proper management of side effects.

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<sup>443</sup> Public Defender of Georgia, National Preventive Mechanism, thematic Monitoring Report of Ltd Acad. B Naneishvili National Center for Mental Health (April 22-25, 2019), p. 17, available at the following address: <https://www.ombudsman.ge/res/docs/2019101014124916439.pdf> [Last viewed: 02.08.21].

<sup>444</sup> Treatment and Management of Adult Schizophrenia - National Clinical Practice Recommendation (Guideline), Chapter 4.2.

<sup>445</sup> Treatment and Management of Schizophrenia in Adults - Clinical Practice Recommendation (Guideline), Chapter 4.7.

To manage the side effects of medications, it is important to provide clinical-laboratory, dynamic assessment and control of the risk of developing agranulocytosis, metabolic processes.<sup>446</sup>

Therapist services were provided at all facilities during the visits. №5 Clinical Hospital Psychiatric Ward, Evex Hospitals Psychiatric Ward and Terjolamed Psychiatric Ward are multi-profile hospital wards where patients are consulted by a clinic therapist if needed. At Suram Psychiatric Clinic, a therapist is called in if needed. The National Center for Mental Health and the Tbilisi National Center for Mental Health have a therapist on site. Batumi Medical Center also employs a doctor-therapist; unlike other institutions, the therapist's services are not free of charge here.<sup>447</sup>

Access to a therapist in these facilities is welcome, but it is not enough to provide the necessary medical care. Therapists' services are limited to counseling and symptomatic treatment. Medications prescribed after the consultation must be purchased by the patient him/herself, which is an additional cost for them. **The mental health program does not provide funding for patients' somatic health care. Consequently, patients have to pay for additional examinations and long-term treatment themselves. Even when some of the patients are in the facility for a long time, and some of them do not even have a family, due to lack of financial resources, they do not have access to such treatment and thus, their lives and health are endangered.**

Patients admitted to a psychiatric hospital benefit from a universal health care program. Nevertheless, patients are not eligible for the planned medical care provided by the program because its condition is co-financing. Added to this is the problem of transportation, including access to dental services, which is associated with additional costs and human resources. Psychiatric institutions say that it is virtually impossible to allocate additional funds from the meager funding of a psychiatric hospital to provide physical health at the institution level. In psychiatric hospitals, which are departments of multidisciplinary hospitals, the transfer of the patient is very simple, although even in this case the transfer happens mostly in emergencies.

As for dental services, the state program of mental health provides only emergency therapeutic and surgical dental services; otherwise the patient himself/herself pays for the services. Psychiatric institutions do not have on-site dental services, and transportation is associated with additional costs. During the visits, it was found that patients who needed dental care but could not receive it were present at the Surami Psychiatric Clinic and the Tbilisi Mental Health Center.<sup>448</sup> In both cases, a patient's family member was expected to arrive at the facility to take the patient for dental care. It is important that in the presence of dental problems, the patient is provided with appropriate services in a timely manner by ensuring on-site dental services or timely transfer.

In view of the above, it is important that the Ministry take all necessary measures to ensure that patients placed in psychiatric facilities, especially those who have been in the facility for a long time and are unable to leave, in the presence of somatic (physical) health problems, timely appropriate medical care should be available so as not to complicate their health status.<sup>449</sup> In addition, it is important to ensure that patients of the appropriate age group placed in psychiatric facilities are tested for early detection of diseases and are subject to screenings provided by the screening program.<sup>450</sup>

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<sup>446</sup> Treatment and management of schizophrenia in adults - National guideline for clinical practice (guideline).

<sup>447</sup> The cost of the initial consultation with a doctor-therapist is 25 GEL.

<sup>448</sup> Patients were given an analgesic during toothache, and one of the patients was given an alcohol swab during toothache.

<sup>449</sup> The same problem is pointed out in the report of the European Committee for the Prevention of Torture on its visit to Georgia on September 10-21, 2018. It is unacceptable to the committee for patients with mental health problems hospitalized who do not have the financial means to take care of their somatic health and calls on the state to take immediate steps to eliminate this problem. Report on the visit to Georgia of the European Committee for the Prevention of Torture (CPT/Inf (2019) 16), para. 128, Visit of September 10-21, 2018.

<sup>450</sup> State Health Programs 2021, Annex 1 Early Detection and Screening of Diseases (Program Code 27 03 02 01). The program includes screening for cervical cancer, breast cancer, colorectal and prostate cancer for appropriate age groups.



## Cases of decease

Improper treatment of somatic health problems, inadequate monitoring of health status and neglect of relevant risk factors may result in death of beneficiaries. The Public Defender reiterates that according to the case law of the European Court of Human Rights, the state bears responsibility for the violation of the right to life if the lack of proper care and treatment for persons placed in psychiatric institutions leads to their death.<sup>451</sup>

It should be noted that the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia does not provide complete statistics on deaths in psychiatric institutions. This is confirmed by the work done by the Office of the Public Defender of Georgia. According to the information provided by the Ministry, 12 patients died in 2020 and 2021 at the National Center for Mental Health, on the spot, in the hospital, and according to information obtained by members of the National Preventive Mechanism, from January 1 to October 8, 2021 alone a total of 14 patients died in the National Mental Health Center on spot after being transferred other inpatient facilities.<sup>452</sup>

The Public Defender calls on the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia to take timely steps to create a register for systematizing statistics on patients who die in psychiatric institutions or after being transferred to other medical institution due to deteriorating health. Accurate registration of deceased patients is essential for the Ministry to respond to these cases and prevent such cases in the future.

In turn, it is important that comprehensive statistics on patient deaths are maintained by psychiatric institutions themselves. Accordingly, the Ministry should oblige psychiatric institutions to provide relevant information in the event of a patient's death. It is also important that somatic hospitals also have an obligation to notify the Ministry of Health of the deaths of patients who have been transferred from a psychiatric facility.

In addition to producing statistics on deaths, it is important to study each case of death and determine how timely the patient received medical care and what became the cause of death. Based on the analysis of this information, they should take measures to prevent the death of patients as much as possible.

### 4.10. Staff working conditions and qualifications

Insufficient number of staff, poor qualifications, improper performance of funvtions, lack of motivation, low pay and unfavorable working conditions were identified as significant problems during the monitoring visits carried out by the Special Preventive Group in psychiatric institutions<sup>453</sup>. As a result, patients are unable to receive adequate biopsychosocial assistance under the state program, based on individual needs.

#### *Overloading and lack of staff*

**There is still an obvious shortage of professional and support staff in psychiatric institutions, which has a negative impact on the quality of psychiatric care. With the increasing demand for inpatient psychiatric care for patients with severe mental illness in the country, unresolved issue is the long-term stay in hospital for those who do not require inpatient psychiatric care, but due**

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<sup>451</sup> Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, decision of the European Court of Human Rights of 17 July 2014, appeal №47848/08, 143-144.

<sup>452</sup> The information was obtained by the National Preventive Mechanism both through the study of transfer and discharge journals at the National Center for Mental Health and through the study of notifications in the Khoni District Division. The inspection of the journal revealed 10 deaths, and an additional 4 cases in the Khoni District Division.

<sup>453</sup> №5 Clinical Hospital Psychiatric Department; Acad. B. Naneishvili National Center for Mental Health; Psychiatric inpatient department of Batumi Medical Center; Surami Psychiatric Clinic; Terjolamedi Mental Health Station; Tbilisi Mental Health Center; Adult Mental Health Department at Evex.



**to the extreme scarcity of outpatient, community-based services, it is not possible to discharge them from the hospital and thus unload inpatient mental health care services. Overcrowding in psychiatric facilities prevents the creation of a therapeutic environment. Under these conditions, the probability of professional burnout of staff is high, which has a negative impact on the psychiatric case management process.**

The staff of the inpatient mental health service of the **Batumi Medical Center** indicated that the number of referrals to the hospital and the number of cases of hospitalization has increased, which leads to the overcrowding of the hospital. In addition, it was noted that in the context of the internal spread of COVID-19 and the infection of staff, the staff was subject to a particularly heavy burden of the safe management of psychiatric cases. Overloading and staff shortages were evident in both the women's and men's wards of the Batumi Medical Center. The staff was not able to de-escalate the conflict that arose several times during the day and to separate the patients in a state of psychomotor agitation, which had a negative impact on the therapeutic environment.

In the **Psychiatric Department of №5 Clinical Hospital**, in the conditions of frequent admission and discharge of patients<sup>454</sup>, there are only two psychiatrists working in the adult ward, one position of psychiatrist is vacant. According to the staff, the available human resources are insufficient.

During the visit to the **Tbilisi Mental Health Center**, it was found that only 2 social workers, 2 psychodiagnostic psychologists and 1 part-time ergotherapist work with 210 patients in the institution, which, according to the staff, is not enough.

At the **Acad. B. Naneishvili National Center for Mental Health**, 13 psychiatrists provide psychiatric care to patients, which is an increase compared to the previous visit.<sup>455</sup> In the field of psychosocial rehabilitation, 4 psychologists were employed, of which only 3 psychologists conducted individual and group meetings, and 1 psychologist (head of the psychological service) was engaged in the first diagnosis of patients. Accordingly, there are about 180 patients for each psychologist.<sup>456</sup> The institution also employs 1 social worker and 2 specialists of the Beneficiaries and Patients' Rights Protection Service. Both staff and patients indicated staff shortages at the facility. It should be noted that 559 patients were in the hospital during the monitoring, while the facility limit was 540, which indicates the overcrowding of the hospital.

At the Surami Psychiatric Clinic, 95 patients were present during the visit. The institution has one psychologist, who is responsible only for working in the field of psychodiagnostics. The facility also employs one social worker and one occupational therapy instructor. They do not work individually with patients and do not make appropriate rehabilitation plans for them, which according to the staff is because of busy schedules of managers, and lack of specialists.

#### *Staff qualifications and retraining problem*

The qualification of the staff and the issue of their retraining are problematic in psychiatric institutions. The staff of psychiatric institutions need training in issues such as developing plans tailored to individual needs, multidisciplinary work, patient rights, de-escalation techniques, a recovery-based

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<sup>454</sup> In March 2021, 21 children and 73 adolescents were admitted to inpatient treatment, 25 children and 66 adolescents were discharged; at the same time, there were around 25-30 patients and 5-14 children in the inpatient department; 17 children and 96 adults were admitted in May, 15 children and 69 adults were discharged; An average of 25-30 adults and 5-14 children undergo inpatient treatment at the same time.

<sup>455</sup> During the visit of the National Preventive Mechanism on April 22-25, 2019 at the Acad. B. Naneishvili National Center for Mental Health, 8 psychiatrists provided psychiatric care to patients, who were assisted by 3 residents, therefore one psychiatrist had to manage approximately 75 both chronic as well as acute psychiatric cases with 24-hour shifts once every 8 days. Information is available at the following address: <https://www.ombudsman.ge/res/docs/2019101014124916439.pdf> [Last viewed: 16.07.21].

<sup>456</sup> 559 beneficiaries underwent treatment at the facility for the monitoring visit period.

approach, and modern psychiatry. Unfortunately, in the current situation, the management of psychiatric cases and patient care in institutions is carried out only at the expense of practical experience, often in ignorance and violation of national and international standards. It should also be noted that most of the staff do not have job descriptions, their presentation of duties is vague, their work is not evaluated and monitored.

Institutions do not care about raising the qualifications of employees in modern approaches, nor do they promote continuing education. Nor is there an oversight mechanism that would facilitate continuing education for specialists and effective case management.

The ombudsman calls on the Ministry to take active steps to encourage and facilitate the elaboration of professional development programs for psychiatric institutions, including the introduction of and access to qualified training programs.

### *Improper performance of functions*

During the monitoring visit to the psychiatric institutions, the improper performance of the duties by the staff was also noticeable. This refers to the non-performance of functions that are explicitly prescribed by law and are the responsibility of the staff. In particular, the majority of patients admitted to the facility are not provided with complete, objective, timely and comprehensible information about their illness, treatment and side effects of treatment;<sup>457</sup> patients have no information about their rights and responsibilities.<sup>458</sup> Moreover, in many cases, there are illegal, arbitrary and unjustified restrictions on rights.<sup>459</sup>

It should also be noted that the lack of staff and small resources do not justify the fact that some institutions do not have psychosocial activities at all, and where they do, they are not result-oriented. Specialists do not actively communicate with patients, identify their needs, plan individual and group work, and work to increase patient motivation. Some employees are often engaged in non-professional activities.<sup>460</sup> In addition, although some facilities have psychosocial rehabilitation rooms, they are not used regularly.<sup>461</sup> For example, the spaces of various therapies (ergotherapy, art therapy, psychotherapy) operating in the psychiatric wards of **Batumi Medical Center** are arranged, equipped with appropriate working materials: paint, paper, stationery, drawing and knitting materials, however, the number of patients involved in therapy is quite small. In addition, although the institution has specialists in various fields (psychologist-art therapist; psychologist; ergotherapist; social worker), no work is being done to develop the skills necessary for patients to live independently. It is noteworthy that a significant part of the social worker's working time is spent on assisting patients in communicating by phone with other persons and resolving social issues. The lack of psychologists in the facility is obvious. In addition, the institution's psychologists are more focused on the basic principles of therapists' work and the content of their activities and are less busy working directly with patients.

### *Low pay and unfavorable working conditions*

According to the monitoring group, one of the reasons for the lack of qualified staff in the facility is low pay and unfavorable working conditions. Insufficient number of qualified staff reduces proper supervision of patients, increases the risk of violence and fails to provide adequate biopsychosocial assistance to patients. It is noteworthy that the service staff of the institutions expressed dissatisfaction with their working conditions and low pay. Employees of psychiatric institutions do not have insurance,

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<sup>457</sup> For more information, see Chapter: Psychiatric Assistance.

<sup>458</sup> Most of the patients surveyed did not have information about their rights.

<sup>459</sup> See the Patient Legal Protection Guarantee chapter for details.

<sup>460</sup> For example, At the Naneishvili National Center for Mental Health, psychologists are tasked with opening complaint boxes and reviewing letters, which should be within the competence of a social worker, not a psychologist.

<sup>461</sup> Batumi Medical Center; Tbilisi Mental Health Center.

meals are also not provided for employees on a 24-hour shift. The lack of space for therapeutic activities is also problematic in some psychiatric institutions.

There is no space for therapeutic activities in **the psychiatric department of №5 Clinical Hospital for children and adults**, they need both space allocation and inventory for organizing therapeutic activities. Due to the ongoing repair and rehabilitation works at the Naneishvili National Center for Mental Health, it is not possible to organize a therapeutic environment and they use the doctor's room on the wings to for the meetings with patients, and the dining area - for group meetings. At **Surami Psychiatric Clinic**, a psychologist does not have a work room for confidential meetings and individual work.

The Public Defender considers it important that the institutions pursue an active policy of attracting new staff. At the same time, in parallel with attracting new staff and employment, it is important to maintain qualified staff in the institutions. To do this, it is necessary to balance the difficult and time-consuming work, the remuneration of the staff of the institution and the favorable working conditions. Therefore, the Public Defender calls on the Ministry to study the financial resources available in the institutions and to eliminate the factors hindering the improvement of working conditions for the staff of the institution.

## **Recommendations**

### *Protecting patients from violence, inhuman or degrading treatment*

#### **Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- The Ministry should develop and implement a rule on reporting to the independent bodies the detection, documentation, investigation and monitoring of acts (torture, cruel or inhuman, degrading treatment or punishment, exploitation, violence and insults) referred to in Articles 15 and 16 of the Convention on the Rights of Persons with Disabilities.
- The Ministry should develop and implement a strategy for the prevention and response to conflicts between patients, which will also include the obligation to provide appropriate psychological assistance to patients who are victims of violence.
- The Ministry through monitoring in psychiatric facilities should identify and prevent violence against patients by staff, including involuntary forced injections and medications.
- The Ministry should develop and implement detailed instructions for staff communication with patients in psychiatric institutions, which should include standards for the protection of patients' rights and the provision of quality psychiatric care.
- The Ministry should ensure in psychiatric facilities to train staff on at least the following issues: multidisciplinary work, de-escalation techniques, patient rights and ethics standards, a rehabilitation-based approach and modern psychiatry, with particular emphasis on the importance of understanding by staff the importance of bio-psycho-social model and development the necessary skills to implement it in practice
- Study and eliminate a long-term separation of patients from other patients at Naneishvili National Center for Mental Health and Batumi Medical Center Ltd.

### *Restraint methods*

#### **Proposals to the Parliament of Georgia:**

- By amending the Law of Georgia on Mental Health, it should be determined that the requirements and guarantees provided for by Article 16 of the Law of Georgia on Mental Health

(application of restrictions on the patient) shall be extended to the forced rapid tranquilization of a patient.

- The Law of Georgia on Mental Health should determine the obligation of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia to develop and approve a mandatory internal document on crisis prevention and management for psychiatric institutions in order to minimize the risks of escalation of the situation so that the use of extreme measures does not become necessary.
- The Law of Georgia on Mental Health should clearly define the measures to be taken by the institutions in case of applying the restraint method to a patient on voluntary treatment and the procedures for reviewing the legal status of the patient and in case of non-compliance, the relevant sanction.

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Develop and implement mandatory internal crisis prevention and management guidelines for psychiatric institutions to minimize the risk of escalation of the situation and therefore use of extreme measures does not become necessary.
- The Ministry should study through the monitoring the legality and justification of the use of restraint methods, as well as the issue of revising the status of patients who are formally voluntarily treated in psychiatric institutions, after the use of restraint methods towards them.
- Update the instructions on the rules and procedures for the use of methods of physical restraint through consultations with the Public Defender's Office and organizations of persons with disabilities.

Legal protection guarantees of patients

**Proposals to the Parliament of Georgia:**

- Through the amendments to the Law of Georgia on Mental Health provide a clear procedure for restricting a patient's rights for the sake of safety ensuring the legal guarantees (specify what criteria need to be met for each right to be restricted, for how long each right may be restricted and how this decision can be appealed).
- Clearly distinguish between informed consent for hospitalization and informed consent for treatment by amending the Law of Georgia on Mental Health.

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Study the cases of hospitalization by receiving formal voluntary consent of patients subject to psychiatric care and take all necessary steps to immediately discharge patients for whom there is no legal basis to apply the procedures of involuntary psychiatric care
- For emergency medical crews responding to incoming reports of psychiatric cases received from the Public Safety Management Center (112) of the Ministry of Internal Affairs develop detailed instructions on convincing a patient by persuasion, determination of the need for involuntary placement in a psychiatric hospital, and explanation of the patient's rights
- Develop and approve, by order of the Minister, a unified form of informed consent for placement in a psychiatric hospital, where complete, accurate and detailed information on the essence of psychiatric care and patients' rights will be provided in a comprehensible form; at the same time, the order should define the obligation of the psychiatric institution to provide the patient with a copy of the informed consent, as well as information on whom to apply to if s/he does not want to stay in the hospital

- Amend the order of the Minister,<sup>462</sup> to make it mandatory to fill in the form approved by the order №108/n of the Minister of Labor, Health and Social Affairs of Georgia (№IV-300-12/a) at all stages of starting, continuing and changing the treatment scheme
- Develop and approve by order of the Minister the obligation of the psychiatric institution to ensure introduction of oral and written information in a language that a patient understands about the hospital's internal regulations, patient rights and inpatient policy immediately after the patient is placed in the institution and then regularly afterwards
- Develop and approve by order of the Minister mandatory, accessible, simple and confidential procedures for submitting applications/complaints outside the psychiatric institutions
- In accordance with the Law of Georgia on Mental Health, to ensure the realization of the right of patients to freely use telephones and other means of communication
- In accordance with the Law of Georgia on Mental Health, to ensure the realization of the right of a patient on voluntary treatment, to leave the hospital for a short time, unless there is a decision made by the physician to restrict this right due to the urgent need
- In psychiatric institutions, ensure the meeting of the patient and the visitor in compliance with the epidemic norms.

**Recommendation of the Ministry of Internal Affairs of Georgia:**

- Eliminate the practice of returning patients to voluntary treatment fleeing from psychiatric hospitals.

*Therapeutic and safe environment*

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Take all measures to monitor the compliance of the conditions of psychiatric institutions with the standards set by the Regulation on the Issuance of Licenses for Medical Activities and Inpatient Institutions through systematic monitoring
- Take all measures, including the allocation of financial resources, to eliminate the problems listed in the 2021 report of the National Preventive Mechanism in psychiatric institutions in terms of safe and therapeutic environment.

*Epidemiological conditions*

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Facilitate the management of psychiatric inpatients to ensure that there are at least two isolated wards in the facility with individual bathrooms, where it is possible to isolate the patient before the COVID-19 test results
- Facilitate the management of psychiatric facilities to provide patients and staff with comprehensive information about the vaccination program, its benefits and side effects, to ensure voluntary vaccination of patients and staff
- Examine the implementation of the recommendations set in the Mental Health and COVID-19 Clinical Practice Recommendation (Guideline), by the institutions including:
  - Placing COVID-19-related information posters in a place accessible to patients
  - Use of personal protective equipment by the staff of the institution

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<sup>462</sup> Order of the Minister of Labour, Health and Social Affairs of Georgia on the approval of the rule of placement in a psychiatric hospital №87/n, March 20, 2007 Tbilisi.

- Patient access to at least 70% hand sanitizer solution under staff supervision
- Supply the sanitary-hygienic units of the institutions with liquid and dry soap
- Equipping the patient and the visitor with personal protective equipment and keeping a distance during the meeting of a patient and a visitor.

Psychiatric assistance - treatment with antipsychotic medications

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Examine whether patients are provided with treatment information on a regular basis in a language they understand
- To instruct the Agency for Regulation of Medical and Pharmaceutical Activities to study the practice of using antipsychotic drugs in psychiatric institutions and managing side effects
- Eliminate the problem of supply of the drug "Cyclodol" in time, so that psychiatric institutions can use it to manage side effects
  - Provide training for psychiatric staff to identify side effects of clozapine that may be fatal
  - Instruct the relevant service to regularly check medical cards in psychiatric institutions so that inpatient medical cards are produced in accordance with the requirements existing in the country.

Psychiatric assistance - psycho-social rehabilitation

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Amend the mental health program to make the psycho-social rehabilitation component available to patients on short-term treatment
- Collaborate with psychiatric institutions to ensure the introduction of the psychosocial rehabilitation programs for service users, which will focus on recovery and promote a person's independent life and involvement in all areas of public life
- Ensure that the role of social workers in institutions is increased so that social workers have a responsibility to find community programs and introduce them to patients.

Somatic health

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Revise the existing funding model for somatic health care so that in the event of somatic (physical) health problems patients of psychiatric inpatient treatment can be fully and timely provided with the necessary medical services, including dental care, for this purpose, a) patient transportation costs should be considered; b) if necessary, the costs of hiring a doctor-therapist or family doctor in the institutions; c) the issue of full reimbursement of planned medical services should be clearly defined
- To instruct the relevant unit of the Ministry to produce statistics on patients transferred and deceased due to deteriorating health conditions in psychiatric institutions and/or transferred from psychiatric institutions to other civil sector clinics, including indicating the causes and the place of death.
- Make changes to the mental health program and, in accordance with existing guidelines in the country, provide for the management of side effects of medications through appropriate examinations and consultations.

- Provide agranulocytosis in psychiatric facilities,<sup>463</sup> clinical-laboratory dynamic assessment of the risk of metabolic processes and especially the development of hyperglycemia<sup>464</sup>, also control leukocytes<sup>465</sup> to manage medication side effects
- Provide screening examinations for patients placed in the facility
- Ensure that the therapist consults all patients upon admission to the facility.

*Staff working conditions and qualifications*

**Recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:**

- Examine the financial situation of the institutions and ensure through cooperation and support with the institutions:
  - Increase the number of staff working during day and night in the inpatient departments of institutions
  - Increase the salaries of the employees of the institutions and provide them with insurance
  - Create appropriate therapeutic spaces for psychosocial specialists in institutions
  - Providing food to the staff on a 24-hour shift
- Facilitate the elaboration of professional development programs for psychiatric institutions, including the introduction of and access to qualified training programs.

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<sup>463</sup> Decrease in the number of leukocytes (white blood cells) in the blood.

<sup>464</sup> High blood sugar.

<sup>465</sup> White blood cells.

## 5. Human rights in the field of defense

### 5.1. Introduction

The purpose of the National Preventive Mechanism (Department) of the Public Defender's Office of Georgia is to check the legal status of conscripts and military servicemen of any rank through preventive visits. For this purpose, in 2021, within the framework of monitoring, we visited 8 military units of the Ministry of Defense of Georgia;<sup>466</sup> 3 paramilitary units of the Ministry of Internal Affairs of Georgia;<sup>467</sup> as well as 5 external protection departments of the Main Division of External Protection and Information-Technical Security of the Penitentiary Department of the Special Penitentiary Service.<sup>468</sup>

During the monitoring visits, we reviewed the material conditions in the military units, checked the documents and interviewed the servicemen individually (in total, 85 servicemen were interviewed in the Georgian Defense Forces, including 22 fixed-term military servicemen and 11 female servicemen; 9 fixed-term military servicemen were interrogated in the paramilitary subdivisions of the Facilities Protection Department of the Ministry of Internal Affairs, 11 fixed-term military servicemen were interrogated in the external protection departments of the Special Penitentiary Service). Monitoring was conducted using a pre-designed, special tool.

The novelty of the activity was the fact that as soon as the monitoring results were first established, due to the urgency of various issues, the Public Defender of Georgia repeatedly addressed the Minister of Defense of Georgia with urgent recommendations.

The Public Defender positively assesses the decision of the Ministry of Defense to provide translation services to military servicemen who do not know the Georgian language in the Georgian Defense Forces, in November 2021, the quantitative quota of 6-year service contracts was added to the units of the Georgian Defense Forces with the following distribution: in the Aviation and Air Defense Command of the Defense Forces - 2 translators (1 Azerbaijani and 1 Armenian translator); 2 translators (1 Azerbaijani and 1 Armenian) in the Defense Forces Training and Military Education Command; in the Logistics Command of the Defense Forces - 2 translators (1 Azerbaijani and 1 Armenian translator).<sup>469</sup> The Public Defender has been requesting the admission of a translator to the units of the Georgian Defense Forces with a recommendation for years.

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<sup>466</sup> Georgian Defense Forces: Special Operations Battalion "West"; 10th Brigade of the National Guard; 2nd Infantry Brigade of Western Command; 3rd Infantry Brigade of Western Command; 6th Artillery Brigade of the Western Command; Central Command Point of the Aviation and Air Defense Command; Anti-Aircraft Missile Battalion of the Air Defense Brigade; Field Camp Paldo of the 20th Brigade of the National Guard.

<sup>467</sup> MIA Facilities Protection Department: 2nd Sub-Division of 2nd Division of 3rd Unit; First Subdivision of the First Division of the 3rd Unit; Subdivision 3 of the First Division of the 2nd Unit.

<sup>468</sup> Divisions 2, 3, 8, 14 and 17 External Protection and Information-Technical Security of the Penitentiary Department of the Special Penitentiary Service;

<sup>469</sup> Letter № MOD 22101211965 of the Ministry of Defense of Georgia, November 18, 2021.



## 5.2. Georgian Defense Forces

### 5.2.1. Protection from ill-treatment

In the reporting period, as a result of visits to military units, the Special Preventive Group did not receive any information about violence by a superior or other military serviceman against a serviceman, although it was found that, as in previous years, the practice of informal and collective punishment of servicemen remains a systemic problem.<sup>470</sup>

According to the information received, in the Special Operations Battalion of the Georgian Defense Forces Special Operations Forces "West", 10th Brigade of the Georgian National Defense Forces; Central Command Point of the Aviation and Air Defense Command and Anti-Aircraft Missile Battalion of the Air Defense Brigade, in case of disciplinary misconduct by military servicemen, for the purpose of punishment, without legal grounds<sup>471</sup> they are required to perform additional physical activities (jogging, lifting, push-ups), they are also forced to stay in the military unit. According to the fixed-term servicemen, additional physical activity (jogging, lifting, push-ups) in the form of informal punishment is of a systematic nature during the period of primary military training (quarantine).

In addition, as a result of the visits, the Group found that the use of informal methods of punishment also applies to contract servicemen, in the 6th Artillery, 2nd and 3rd Infantry Brigades of the Georgian Defense Forces. In particular, in the event of a disciplinary misconduct on the part of contract servicemen, in order to be punished, like conscripts, after working hours, they are forced to remain in the military unit.

It should be noted that, as in previous years, the application of the principle of illegal punishment of conscripts - "one for all, all for one" remains a problem, which implies that in the event of a disciplinary misconduct by one military serviceman, with him the entire platoon is punished informally.

The recommendations of the Committee of Ministers of the Council of Europe (hereinafter referred to as the Committee) state that military discipline must be characterized by fairness and that procedural guarantee must be provided. On the recommendation of the Committee, in the event of a disciplinary misconduct by a military serviceman, the imposition of a disciplinary sanction on him should be considered only within the framework of disciplinary proceedings and in case of confirmation of misconduct, only a disciplinary sanction prescribed by law may be imposed.<sup>472</sup> In

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<sup>470</sup> See the 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia. P. 421. Available at:

<<https://ombudsman.ge/res/docs/2021040110573948397.pdf>>. [Last viewed: 23.12.21]

<sup>471</sup> The Resolution of the Government of Georgia №124 of March 17, 2016 on the Approval of the Military Disciplinary Statute of the Military Servicemen of the System of the Ministry of Defense of Georgia determines which action constitutes a disciplinary misconduct and what kind of disciplinary action should be taken. The statute does not provide for additional physical activity as a measure of disciplinary responsibility or leaving them in the military unit against their will.

<sup>472</sup> Council of Europe: Committee of Ministers, Recommendation of the Committee of Ministers CM/Rec (2010) 4 Member States, on the human rights of members of the armed forces, paragraph 19, 24 February 2010, available at:

addition, upon the commencement of disciplinary proceedings, the military serviceman must be properly informed and they must be able to participate in the disciplinary proceedings and appeal the decision.<sup>473</sup> The Committee notes that the practice of collective and informal punishment of military personnel, including unreasonable restrictions on the right to leave the military unit during non-working hours and forced labor, is prohibited.<sup>474</sup> In view of the above, in the opinion of the Public Defender, the obligation for a military serviceman to remain in the military unit for the purpose of informal punishment is an illegal act and leads to the illegal restriction of the right of free movement of military servicemen.<sup>475</sup>

As for performing additional physical activities in the form of informal, individual and collective punishment, according to the surveyed military servicemen, performing such additional physical activities is not particularly difficult for them and does not violate their dignity. Nevertheless, according to the Public Defender, such action is an illegal practice that creates risks of ill-treatment, because, in specific cases, taking into account the health condition of a military serviceman, their physical abilities, subjective perception, the complexity and form of the physical activity, the use of such punishment can cause more stress and suffering than it does related to military service and reach the minimum level of inhuman and degrading treatment.<sup>476</sup>

In terms of protection against ill-treatment of military personnel, it is noteworthy that during visits to military units, military personnel did not have information about their rights, appeals procedures, and did not have information that it is inadmissible to punish or persecute a military serviceman for filing a complaint.<sup>477</sup> At the same time, in virtually all military units, signs of institutional culture are observed, which significantly hinders the existence of an effective grievance mechanism. In particular, according to the informal rules of the Defense Forces, filing a complaint is considered unacceptable behavior. Failure to follow these rules will damage a military serviceman's reputation and cause them to lose respect in the eyes of others. Any relationship with them becomes unacceptable to other servants and they are expelled from the community. It is also noteworthy that during the visits, throughout the conversations with the members of the Special Preventive Group, a number of military servicemen mentioned that they had been subjected to disciplinary sanctions or that they had been informally punished by the above-mentioned methods, however, the grievance mechanism was not used, which was mainly due to the lack of information about the grievance mechanism and distrust of this mechanism.

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<https://www.refworld.org/docid/506979172.html> [Last viewed: 23.12.21].

<sup>473</sup> Ibid. Paragraph 21.

<sup>474</sup> Ibid. Paragraphs 16 and 18.

<sup>475</sup> Constitution of Georgia, Article 14.

<sup>476</sup> Decision of the European Court of Human Rights in the case, CHEMBER v. RUSSIA (7188/03) Para. 49. Available at: <https://hudoc.echr.coe.int/eng#{%22itemid%22:light%22001-87354,%22}}> See. Also: Lyalyakin v. Russia.

<sup>477</sup> Law of Georgia on the Status of Military Duty, Article 20.

In view of the above, the Public Defender believes that the Ministry of Defense of Georgia should take all measures to prevent any retaliation or pressure on a military serviceman due to a complaint and to duly inform all military personnel of its inadmissibility.<sup>478</sup>

### **5.2.2. Living and working conditions**

During the reporting period, visits to military units of the Defense Forces revealed that providing adequate housing and working conditions for military personnel remains a problem. Some of the military units where the visit took place were undergoing renovations,<sup>479</sup> which was not completed and the military servicemen had to live/work in buildings whose sanitary-hygienic condition was unsatisfactory.

After the visits during the reporting period, before the preparation of the final monitoring report, the Public Defender addressed several letters to the Minister of Defense of Georgia, provided information on the infrastructural challenges identified during the visits to the military units, which needed to be addressed immediately and asked for appropriate measures to be taken.<sup>480</sup>

The visits revealed that the walls and ceiling of the Special Operations Battalion of the Special Operations Forces "West", as well as the unrepaired buildings of 2nd and 3rd Infantry Brigades of the 6th Artillery Brigade of the Defense Forces were damaged by moisture. Protection nets from insects were not installed on the windows of the residential units of the same military units, which is why insects were allowed in the bedrooms.

During the visits, in fact, all military units faced the problem of WCs, which is a significant challenge in terms of sanitation. In particular, the inventory was depreciated, and the ceilings and walls were damaged by the moisture. The sewer system was not working properly and water was dripping on the floor. The artificial ventilation system was faulty, causing the smell of sewage in the residential buildings.

The problem of overcrowding was detected in the Special Operations Battalion of the Special Operations Forces West, and the 2nd Infantry Brigade of the Defense Forces, where, due to lack of space in the bedrooms, individual lockers for personal belongings of military personnel were taken out into the corridor.

In terms of personal hygiene of servicemen, it should be noted that during the visits, there were not adequate number of washing machines in the Special Operations Battalion of the Special Operations Forces, West, and in the 10th Brigade of the National Guard, which made it virtually

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<sup>478</sup> Council of Europe: Committee of Ministers, Recommendation of the Committee of Ministers CM/Rec (2010) 4 Member States, on the human rights of members of the armed forces, paragraph 12, 24 February 2010, available at:

<https://www.refworld.org/docid/506979172.html> [Last viewed: 23.12.21].

<sup>479</sup> Georgian Defense Forces: 10th Brigade of the National Guard; 2nd Infantry Brigade of Western Command; 3rd Infantry Brigade of Western Command; 6th Artillery Brigade of the Western Command.

<sup>480</sup> Letter №14-1/10223 of the Public Defender of Georgia of October 27, 2021; Letter №14-1/10739 of November 11, 2021 and letter №03-7/47 of 10 January 2022.

impossible to wash linen and clothing of military personnel with proper frequency. In addition, in the bathrooms of the 6th Artillery Brigade, 2nd and 3rd Infantry Brigades of the Defense Forces, liquid soap dispensers and paper towels were not placed everywhere. It should be noted that paper towels were also not placed in the bathrooms at the Central Command Point of the Georgian Defense Aviation and Air Defense Command, the Anti-Aircraft Missile Battalion of the Air Defense Brigade and the Field Camp of the 20th National Cadet Brigade, Paldo. Also, during the visit, it was found that the bed linen in the infantry wards of the 2nd Infantry Brigade had not been properly washed. In this regard, we were informed from the Ministry of Defense<sup>481</sup> that the necessary works for the proper functioning of the heating system are being carried out seasonally in the brigade infirmary, and that during the inspection period, the full observance of the sanitary-hygienic norms was hindered by the course of these works. According to them, as a result of the completion of the works, these shortcomings have been eliminated.

In terms of providing rest and recreation opportunities for military personnel, it should be noted that the gym operated only in the 2nd Infantry Brigade of the Defense Forces and in the Special Operations Battalion of the Special Operations Forces, "West", which was used only by contract military personnel. Amusement and recreation areas (billiards and tennis tables) were arranged only in the Special Operations Battalion of the Special Operations Forces, "West", which was also used only by contract military personnel.

In the opinion of the Public Defender and the Special Preventive Group, the poor living conditions of the conscripts in the Special Operations Battalion of the Special Operations Forces, "West" are particularly noteworthy. It should be noted that in the mentioned military unit there are both conscripts and contract military servicemen, whose living and working environment are clearly different from each other. Fixed-term military servicemen are stationed in the so-called "sandwich" on the territory of the military unit, where the ventilation system is faulty and there is a heavy odor, the floor is amortized, the bedroom windows are not equipped with insect protection nets, due to which the military personnel are bothered by mosquitoes. The bathrooms (shower and toilet) provided for them during the visit were in an extremely unsanitary condition, the sewerage system was faulty, due to which, in case of washing, liquid and fecal masses spilled on the floor from the toilet. The ventilation system in the bathrooms did not work and the shower equipment was damaged. In addition, it should be noted that in the same military unit, in the building for contract military servicemen, there was a recreation/entertainment space and a gym, although the use of these spaces was not allowed for conscripts. It should be noted that conscripts were allowed to exercise only in the tent located in the yard of the military unit, which was used as a warehouse for household items, and among other items, stored obsolete training inventory, which was moved from the gym for contract servicemen.

According to the Public Defender, the living conditions of conscripts in the Special Operations Battalion of the Special Operations Forces, "West", are clearly different from the living conditions of other military servicemen, including contract servicemen in the same unit. In the opinion of the

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<sup>481</sup> Letter MOD32101279232 dated December 6, 2021 of the Ministry of Defense of Georgia.

Public Defender, the difficult living conditions created for conscripts in this military unit, the lack of sanitary-hygienic conditions and the lack of adequate rest/recreation conditions for them contradict the obligation to create dignified living conditions for military servicemen.<sup>482</sup>

According to information provided by the Ministry of Defense,<sup>483</sup> in the Special Operations Battalion of the Special Operations Forces, "West", the problem of water leakage during rain in the bedrooms of contract military personnel has been eliminated. Restoration works of the ventilation system are also underway. According to them, in order to eliminate the disorder of the sewerage system, an immediate response is carried out at the local level, but the problem has not been solved and in case of heavy rainfall, it is typical problem for the Adjara region. As for the laundry, according to them, in order to prevent the spread of the coronavirus and to protect the health of military personnel, the service personnel hired in the laundry were fired for a certain period. Consequently, the military personnel themselves were operating the washing machines, which led to the malfunction of some of the machines. According to the Ministry of Defense, currently washing machines have been added to the site, and work is underway to return the hired service personnel to work.

The same letter informed us that by the end of 2021, additional washing machines would be installed in the residential buildings of the 10th cadre brigade of the National Guard of the Defense Forces, and the dryers would also be activated. Currently, the toilets in the brigade area are located in the outdoor area, where the wiring is outdated, which makes it somewhat difficult to fully comply with the sanitary-hygienic norms. In addition, the renovation of both bathrooms and ventilation system in the residential building has been completed and the complete sewerage system is being rehabilitated, after which the internal toilets will be connected to the network and the external toilets will be canceled. According to the Ministry of Defense, this will completely eliminate the shortcomings.

The monitoring revealed that there was no assessment/survey of women's needs and appropriate measures were not taken. None of the above-mentioned military units provided women with toilets and showers separately, except for the newly renovated residential buildings,<sup>484</sup> where the military were not housed yet. Women were also not provided with special hygiene items. According to the information received from the Ministry of Defense,<sup>485</sup> in the 3rd Infantry Brigade, distinctive signs were placed in the bathrooms for female military servicemen, as well as in the 6th Artillery Brigade, and the required number of bathrooms for female military servicemen was allocated separately. In the residential buildings of the 6th Artillery Brigade of the Defense Forces, repair works are underway and it is planned to fully rehabilitate the sewerage system. The Public Defender welcomes the improvement of the infrastructure of the military units, the ongoing repair works

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<sup>482</sup> According to Article 4 of the Law of Georgia on the Status of Military Servicemen, the social and legal protection of military servicemen is guaranteed by the state, which provides military servicemen with suitable living conditions, taking into account the special conditions and peculiarities of military service.

<sup>483</sup> Letter MOD22101279231 dated December 6, 2021 of the Ministry of Defense of Georgia.

<sup>484</sup> 10th Cadre Brigade of the National Guard; 2nd Infantry Brigade of Western Command; 3rd Infantry Brigade of Western Command; 6th Artillery Brigade of the Western Command.

<sup>485</sup> Letter MOD32101279232 dated December 6, 2021 of the Ministry of Defense of Georgia.

and hopes that the repair works will be completed in a short time and as a result, the military servicemen will be provided with decent working and living conditions.

### **5.2.3. Nutrition and drinking water**

Three meals a day for military servicemen in the Georgian Defense Forces is provided by the State Nutrition Company Ltd. Most of the military personnel surveyed during the monitoring visits were satisfied with the variety of food, the quality, the amount of food and the possibility of addition.

Drinking water is supplied to all listed military units on a continuous basis. During the visit to the 10th Cadet Brigade of the National Guard (05.10.2021), not all residential buildings and headquarters buildings were equipped with a sufficient number of water dispensers, due to which military personnel had to be supplied with drinking water from taps in the yard or bathrooms. In order to respond to this challenge in a timely and appropriate manner, the Public Defender of Georgia addressed a letter<sup>486</sup> to the Minister of Defense of Georgia on October 27, 2021, in response of which we were informed that<sup>487</sup> appropriate number was added to the water dispensers at the residential barracks, already installed during the monitoring visit, the dispensers were also placed in the headquarters and guard buildings.

### **5.2.4. Fire safety**

In order to protect fire safety in the units of the Georgian Defense Forces, in order to provide primary and emergency response at the locations of permanent or temporary deployment of the unit and to eliminate the consequences, in accordance with the existing standard,<sup>488</sup> a fire-rescue group has been set up. Interviews with military personnel during the visits revealed that most of them did not have information about fire safety rules, while every military serviceman is required to know and follow fire safety rules, so that in case of fire, each of them can immediately take measures to call the fire-rescue team and extinguish the fire with the available means, to save weapons, ammunition, equipment and other property.<sup>489</sup> Also, no evacuation plan was posted on all floors of the Western Command 2nd and 3rd Infantry Brigade residential buildings in a visible place, and the fire safety boards on the outer façade of the buildings were not fully equipped with proper equipment.<sup>490</sup> According to the letter received from the Ministry of Defense of Georgia, the fire safety boards located on the outer facade of the residential buildings were filled with the required amount of equipment; an evacuation plan was posted on all floors of the residential buildings in a visible place and a request for procurement was sent to the relevant service to eliminate the shortage of fire extinguishers in the brigade.

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<sup>486</sup> Letter №-14-1/10223 of October 27, 2021 of the Public Defender of Georgia.

<sup>487</sup> Letter №-MOD22101279231 of the Minister of Defense of Georgia dated 06.12.21.

<sup>488</sup> Resolution №-519 of the Government of Georgia of August 21, 2020 "On Approval of the Charter of the Internal Service of the Ministry of Defense of Georgia", Article 50.

<sup>489</sup> Resolution №-519 of the Government of Georgia of August 21, 2020 "On Approval of the Charter of the Internal Service of the Ministry of Defense of Georgia", Article 113.

<sup>490</sup> 2nd Infantry Brigade of the Georgian Defense Forces.

### 5.2.5. Medical services and epidemiological situation

In case of complaint, military servicemen can apply to the medical unit/infirmiry, where they will receive first aid,<sup>491</sup> and if necessary, they will be referred to a family doctor for medical insurance. In addition to receiving services at insurance provider clinics, military personnel are transferred to a military hospital if necessary. In order to receive planned medical services, military servicemen enjoy insurance, the conditions of which, according to them, have improved compared to previous years. On the positive side, the military personnel themselves have not expressed any dissatisfaction with the medical services. Despite the positive trends, the medical staff (staff at the brigade infirmiry and medical points) indicated a problem with staff outflows related to low pay and busy work schedules.

During the visits, it was found that there are significant challenges in the military units in terms of coronavirus control, in particular, there is no periodic testing of military personnel, they are not supplied with personal protective equipment and military personnel move mostly without a face-mask. It is noteworthy that the canteen service personnel in the 2nd and 3rd brigades of the Georgian Defense Forces did not wear face-masks. The members of the Special Preventive Group were explained that only those on duty were given face-masks, which, according to the monitoring group, is insufficient, as a large number of people move around the military unit during the day and, consequently, there is an increased risk of spreading the virus. The Public Defender considers that since according to the order<sup>492</sup> of the Minister of Defense of July 5, 2021, it is obligatory to wear a face-mask in all enclosed spaces, it is important that all military servicemen are provided with a face-mask and at the same time, to observe the rule of wearing it.

As for the thermal-screening, most of the military units visited received thermal-screening of the military personnel upon entering the facility. Only in the Special Operations Forces Special Operations Battalion, West, was thermal-screening carried out in the presence of complaints. In order to detect COVID-19 in a timely manner, it is of particular importance to detect the symptoms in a timely manner; therefore, it is important to have regular thermal-screening in all military units.

In addition to wearing a face-mask, it is important to pay special attention to the protection of personal hygiene, as well as the processing of items and places of common use. In several military units<sup>493</sup> at the water dispenser there was a general purpose cup used by military personnel. To prevent the spread of the virus, it is important to have a supply of disposable cups with water dispensers and/or for military personnel to use individual cups. It is also important to properly inform military personnel about the coronavirus, both through information meetings and through the distribution of information material, so that military personnel can be more vigilant and strictly follow preventive measures. The information received from the Ministry of Defense that after the

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<sup>491</sup> Medical Parts / Infirmiry is provided with first aid medicines, as well as painkillers and anti-cold medicines.

<sup>492</sup> "On Measures Taken in Prevalence of New Coronavirus (SARS-COV-2) Infection (COVID 19) in Georgia".

<sup>493</sup> At the Central Command Point of the Aviation and Air Defense Command and at the Anti-Aircraft Missile Battalion of the Air Defense Brigade.

visits of the Special Preventive Group, the old information posters in the military units have been renewed, is welcome.<sup>494</sup>

The monitoring revealed that periodic testing of military personnel on COVID-19 is not provided in military units. Testing on COVID-19 is performed only in the presence of symptoms. Thus, it is important to carry out periodic testing of military personnel on COVID-19, at least in the manner in which it is implemented in the penitentiary system. Penitentiary staff undergoes PCR test once a week and rapid antigen test once every 72 hours.

In addition to the above, the issue of isolating a military serviceman before the result of the test is also noteworthy. Employees are mostly allowed on medical leave for a period of 3 days, during which time they must undergo a PCR test. In the Special Operations Battalion of the Special Defense Forces of the Georgian Defense Forces, "West", the Special Preventive Group detected a case when a serviceman with symptoms was not isolated before receiving the PCR test result, and later the test was positive.

According to the response received from the Ministry of Defense,<sup>495</sup> the military servicemen instantly inform the immediate supervisor about the contact (direct contact) with the person infected with COVID-19 and in coordination with the relevant medical service the serviceman is transferred to self-isolation for a period of 12 (twelve) calendar days. According to the Ministry of Defense<sup>496</sup>, in the brigades<sup>497</sup> persons infected with COVID-19 are registered in accordance with the columns provided in the Journal of Infectious Diseases Registration (Form №1-011/MED); the search for contacts is carried out by the doctor of the unit, about which the commander of the unit is additionally notified by the relevant report, which contains information on the date of confirmation of infection, date of transfer of the employee to self-isolation, address, placement of the infected in isolation and in case of complication, transfer to the appropriate medical facility.

In the military units visited, the Special Preventive Group revealed a different practice from that described in the explanation of the Ministry of Defense. In the event that a military serviceman develops a symptom in the military unit and is confirmed to have COVID-19, gathering of epidemic history is mostly done by direct commanders, by oral survey. In this regard, no documentation is prepared. For its part, the Infectious Diseases Journal does not include information about an infected person's contacts.

During the visits, it was found that there are gaps in the use of isolation rooms and in documenting this fact as well. In particular, according to the personnel of the 10th cadre brigade of the National Guard, the persons infected with COVID-19 are isolated in a specially designated place, however, they did not present any documents proving this, nor could they indicate the room that was used for isolation.

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<sup>494</sup> Answer MOD 2 21 01279231 received from the Ministry of Defense of Georgia, December 6, 2021.

<sup>495</sup> Ibid.

<sup>496</sup> Ibid.

<sup>497</sup> 2nd and 3rd Infantry Brigades of the Defense Forces; 6th Artillery Brigade of the Defense Forces.



In the infantry of the 3rd Infantry Brigade of the Defense Forces, according to the personnel, the employees with suspicious symptoms were placed in 2 isolation rooms and there was a case when due to the number of employees with suspicious symptoms, two patients had to be placed in one room at the same time. According to the assessment of the Special Preventive Group, in order to reduce the risk of spreading the infection, it is important that persons who did not have contact with each other before placement are not placed in the isolation room together.

In view of all the above, the Public Defender considers that it is necessary for the medical staff to make efforts to prevent the spread of coronavirus, which should include the timely detection of suspected cases of coronavirus, as well as timely detection and isolation of confirmed case contacts, in addition, medical staff should ensure proper documentation of the measures taken.

#### **5.2.6. Economic, social, civil and political rights**

As in previous years, in 2021, military servicemen in the Georgian Defense Forces, during their military service, are provided with military uniforms and military shoes, which are given twice a year, according to the season.

During the monitoring, interviews with military personnel revealed that most of them (contract military personnel) are not provided with service housing, due to which some of the personnel are forced to stay at the base in the conditions when in none of the above-mentioned military units, the remaining personnel are provided with the opportunity of entertainment and recreation. Military personnel living at the base have the right to leave the military unit after working hours, but are obliged to return by 22:00, and must it borne in mind that a person who is not sober will not be allowed at the base.

Monitoring visits revealed that access to information for the remaining personnel in the military units was provided only after the end of working hours, via television and the Internet. It should be noted, however, that in residential parts of military units, the TVs are mainly located in the duty unit, where there is not enough space and inventory for the personnel to watch TV, which, according to the Public Defender, does not provide adequate access to entertainment, recreation and information for military personnel.

Interviews with contract military personnel revealed that they were not able to benefit of reduced rent and utility bills, even though by law 50 percent of their utility bills should be covered.<sup>498</sup>

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<sup>498</sup> According to Article 19 of the Law of Georgia on the Status of Military Servicemen, military servicemen (except for fixed-term military servicemen) and their family members pay 50 percent of the cost of apartment rent, telephone installation and subscription fees (except for international and long distance calls), collective antenna, radio network, gas, heating, household services, cold and hot water and other utilities, and the remaining 50 percent will be reimbursed from the state budget with funds allocated to the relevant military agency.

The interviews also revealed that military personnel are not reimbursed for transportation costs in any case, even though the legislation also provides for reimbursement of 50 percent of their transportation costs.<sup>499</sup>

The Public Defender's recommendation to increase the monthly salary of compulsory military servicemen has not been implemented. Their salary is still 50 GEL, which is not even enough to cover the cost of transportation from their home to the military unit for a month.

In view of all the above, according to the Public Defender, the state cannot provide military servicemen with the guarantees provided by law.<sup>500</sup>

The rules for the use of means of communication by military servicemen in the Defense Forces of Georgia are regulated by the Order №MOD 32000000115 of the Minister of Defense of Georgia of February 3, 2020 №, according to which, the use of mobile phones by the personnel is prohibited during the working hours defined by the internal regulations, in trainings, exercises, during the execution of the daily regulations and during the extraordinary mode of work of the unit (barracks). It should be noted that in previous years, military personnel were prohibited from using their mobile phones in all of the above cases, as well as after working hours and during breaks in training, exercises or during various courses. The Public Defender addressed a recommendation to the Ministry of Defense in his 2019 parliamentary report,<sup>501</sup> to amend the Order №MOD 32000000115 of the Minister of Defense of Georgia of February 3, 2020 on the Rules for the Use of Means of Communication by Georgian Defense Forces Servicemen, to allow the use of mobile phones by military personnel and civilians of any rank during the working day, except for the time spent in the daily routine and the period of training and exercises. It should be noted that the above-mentioned order has not been changed, however, it should be positively noted that after the recommendation of the Public Defender, the practice of using mobile phones in the Defense Forces has changed. In particular, according to the military servicemen, they can use a mobile phone during non-working hours and when resting during the training period. Moreover, according to them, during working hours, if necessary, they have the right to use the corporate phones on duty and, as an exception, to temporarily use their own mobile phones, with the consent of their immediate supervisor, which is welcome. However, the Public Defender believes that it is important to strengthen this good practice at the normative level as well.

## **Recommendations:**

### **The Minister of Defense of Georgia:**

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<sup>499</sup> According to Article 19 of the Law of Georgia on the Status of Military Servicemen, a military serviceman, on business trips, during main and additional vacations, to travel to and return to a sanatorium-medical institution, also, in case of discharge from military service - to travel to the place of residence chosen at discharge, when moving to another settlement, has the right to travel by all types of road transport (except taxis) - at the expense of funds allocated from the state budget to the relevant military agency.

<sup>500</sup> Law of Georgia on the Status of Military Servicemen, Article 14, Article 19.

<sup>501</sup> Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia in 2019. P. 394. Available at: <https://ombudsman.ge/res/docs/2020040215365449134.pdf> [Last viewed: 01.03.22.].

- The Military Police Department of the Ministry of Defense should systematically control and eliminate the use of non-statutory punishment for military servicemen, as well as the practice of collective punishment and provide the Public Defender's Office with information on the measures taken.
- Ensure that personnel enlisted in the Defense Forces are informed about the human rights, duties and grievance mechanisms of members of the Armed Forces; to this end, the lawyer should be instructed to hold individual and group meetings with the military at appropriate intervals; also, the above information should be provided to the military in an easily understandable language (without complicated legal terms and wording) and posted in places accessible to the military.
- Timely repairs and inventory of the residential buildings of the Defense Forces, elimination of infrastructural problems and improvement of sanitary-hygienic conditions, fully equipping the residential buildings with insect protection nets; provide separate sanitary-hygienic facilities for all female military personnel in all military units.
- In all military units where conscripts serve their compulsory military service, the opportunity should be given, on an equal footing with contract servicemen, to enjoy the gym and entertainment space available at the base.
- Instruct the commander of each unit of the Defense Forces to ensure that the subordinate personnel are trained in the rules necessary for fire safety and firefighting in accordance with the requirements of the existing standard.<sup>502</sup>
- All military servicemen should be provided with face-masks, information material on the rules of wearing face-masks should be posted on the territory of military units and the observance of the rules of face-masks should be monitored.
- Develop a rule for periodic testing of military personnel and ensure periodic testing of military personnel on COVID-19.
- Provide training for medical staff on infection control in collaboration with the National Center for Disease Control and Public Health to increase the role and efforts of medical staff in preventing the spread of the virus, including timely detection of suspected coronavirus cases, and timely detection and isolation of confirmed contacts. Medical staff should ensure proper documentation of the measures taken.
- In order to prevent the spread of the virus, isolation rooms should be set up in all military units, where persons with suspicious symptoms should be placed before receiving a test result.
- Provide each military serviceman enlisted in the Defense Forces with a service residence during the period of service - in compliance with the requirements of the current legislation, or consider the possibility of providing military servicemen with apartment rent.
- Apply the benefits provided by the existing legislation to the personnel enlisted in the Defense Forces when paying for transportation and utility costs.<sup>503</sup>

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<sup>502</sup> Resolution №-519 of the Government of Georgia of 21 August 2020 on the Approval of the Charter of the Internal Service of the Ministry of Defense of Georgia, Article 113.

<sup>503</sup> Law of Georgia on the Status of Military Servicemen, Article 19.

- Amend the Order №MOD 32000000115 of the Minister of Defense of Georgia of February 3, 2020 on the Rules for the Use of Means of Communication by Georgian Defense Forces Servicemen and clearly stipulate that persons of any rank, military and civilian, may, if necessary, during working hours, exceptionally, be allowed to use their own mobile phone in agreement with their immediate supervisor, except for the period of daily routine and the period of training and exercises.

### 5.3. MIA Facilities Protection Department

The main function of the military servicemen in the Department of Facility Protection is to ensure protection of the administrative buildings of the Ministry system, as well as other strategic facilities, to register the persons entering the facilities and to participate in public safety and law enforcement measures.<sup>504</sup>

Interviews with conscripts revealed that, as in previous years, the practice of informal and collective punishment in the event of a disciplinary misconduct by a conscript in the Facilities Protection Department remains a systemic challenge.

According to the information received, in case of committing a disciplinary misconduct by conscripts in all three above-mentioned subdivisions, in order to be punished, without legal grounds, they are obliged to perform additional physical activities (jogging, lifting, pushing, and walking in order). According to the interviewed military servicemen, performing such additional physical activities is not a special difficulty for them and does not violate their dignity. Nevertheless, in the opinion to the Public Defender, such action is an illegal practice that creates risks of ill-treatment because in specific cases, the use of such a sentence may result in more stress and suffering than is related to military service and reach a minimum level of inhuman and degrading treatment, depending on the health condition of the military serviceman, physical abilities, subjective perception, complexity and form of physical activity.<sup>505</sup> The Public Defender also believes that the application of the illegal principle of collective punishment - "one for all, all for one" - may lead to controversy among conscripts.

As in previous years, it remains a challenge to apply the principle of unlawful punishment of conscripts - "one for all, all for one", which, in turn, implies that if a military serviceman commits a disciplinary misconduct, his platoon will be punished along with him. It is noteworthy that in 2020, on the fact of informal punishment revealed as a result of a visit made by the staff of the Public Defender's Office to the Training and Preparation Unit of the Combat Division, the person arrested on charges of inhuman treatment and abuse of office was found guilty by a Tbilisi jury and sentenced to 5 years in prison.

<sup>504</sup> Order №136 of the Minister of Internal Affairs of Georgia of March 31, 2016 on the Approval of the Statute of the Department for the Protection of Objects of the Ministry of Internal Affairs of Georgia.

Order №1009 of the Minister of Internal Affairs of Georgia of December 31, 2013 on the Approval of the Rule of Compulsory Military Service in the Ministry of Internal Affairs of Georgia.

<sup>505</sup> Decision of the European Court of Human Rights in the case, CHEMBER v. RUSSIA (7188/03) Para. 49. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-87354,%22%5D%7D> [Last viewed: 30.12.2021].

As for the living and working conditions of military servicemen in the Department of Facility Protection, it is welcome that none of the above-mentioned subdivisions had a problem of overcrowding<sup>506</sup> and the requirements of the standard were met.<sup>507</sup>

In Subdivision 3 of Division 1 of Unit 2 and in Subdivision 3 of Division 2 of Unit 3, conscripts were not provided with individual cupboards and backpacks and personal items were stored in a commonly used closet. None of the bedrooms and study rooms in the above unit was equipped with mosquito nets and they were disturbed by mosquitoes. The situation was deplorable in the toilet of the 3rd subdivision of the first division of the 2nd unit, which is also used by one of the subdivisions of the Special Tasks Department of the Ministry of Internal Affairs, the vent and ventilation system did not work and there was a strong unpleasant odor, the toilet washers were out of order, the toilet doors were not closed.

According to the Public Defender, the living conditions of conscripts and the lack of sanitary-hygienic conditions in these paramilitary units contradict the obligation to create dignified living conditions for military servicemen.<sup>508</sup>

The Public Defender welcomes the improvement of the provision of food to the conscripts enrolled in the first subdivision of the 1st Division of the 3rd Unit. In previous years<sup>509</sup> the ministry provided only dry food to the military personnel enrolled in this unit,<sup>510</sup> from this year, they are provided with a full three-course meal. The interviewed military personnel are satisfied with the variety, quality and quantity of food, as well as the possibility of addition. There were no water dispensers in the 2nd subdivision of the 2nd division of the 3rd Unit and the 3rd subdivision of the 1st division of the 2nd Unit, due to which the military servicemen had to take drinking water from the tap in the yard of the division with disposable bottles.

As for the issue of medical services, in case of any need, they call the ambulance brigade and act in accordance with their recommendations. Every person entering the territory of the division, including military servicemen, is subjected to thermal-screening at each entry. Conscripts are provided with a sufficient number of face masks while on a 24 hours shift. Disinfectants and disinfection barriers are placed at the entrances of all buildings.

As in previous years, conscripts enrolled in the Department of Facility Protection in 2021 are provided with military uniforms and military boots twice a year during their military service,

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<sup>506</sup> 30 sq.m. in the 2nd subdivision of the 2nd division of the 3rd Unit. There were 7 military servicemen in the area; In the first subdivision of the first division of the 3rd Unit in 35 sq.m. there were 8 military servicemen; in the 3rd subdivision of the first division of the 2nd Unit there were 3 military servicemen in the 28.7 sq.m. area.

<sup>507</sup> Statute of the Internal Service of the Georgian Armed Forces, Article 144 - an area of 2.5-4 square meters shall be allocated for the deployment of personnel in the bedrooms for each military serviceman.

<sup>508</sup> Law of Georgia on the Status of Military Servicemen, Article 4 - The state guarantees the social and legal protection of military servicemen by providing them with suitable living conditions, taking into account the special conditions and peculiarities of military service.

<sup>509</sup> Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia. P. 424. Available at:

<https://ombudsman.ge/res/docs/2021040110573948397.pdf>. [Last viewed: 18.01.22].

<sup>510</sup> Canned meat - 2 pcs.; Pate - 1 pc.; Bread - 600 gr.; Chocolate (50 gr.) - 2 pcs.

however, according to military personnel, the shoes are not issued according to the season, are of poor quality and soon deteriorate.

As a result of the monitoring visits, it was found that in the above-mentioned subdivisions, the personnel did not have access to the media. The First Sub-division of the First Division of the 3rd Unit and the 3rd Sub-division of the First Division of the 2nd Unit did not have a TV set, in the 2nd Subdivision of the 2nd Division of the 3rd Unit, due to non-payment of the tariff for paid channels, they had limited access to television, as well as other media (radio, internet).

### **Recommendations:**

#### **To the Minister of the Interior:**

- The General Inspectorate of the Ministry of Internal Affairs should systematically control and eliminate application of non-statutory punishment as a measure of responsibility and practice collective punishment of conscripts; at the same time, provide information on the measures taken to the Office of the Public Defender
- Timely repair and ensuring inventory of the above-mentioned subdivisions of the Department of Facility Protection; eliminate infrastructural problems and improve sanitary-hygienic conditions; living and working rooms should be fully equipped with insect protection nets
- Ensure the placement of a sufficient number of water dispensers in the units<sup>511</sup>
- Military shoes should be replaced with new, high quality shoes and issued twice a year - according to the winter and summer seasons
- Provide adequate access to media for conscripts enrolled in the Facilities Protection Department

#### **5.4. Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service**

The main function of conscripts enrolled in the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service is to protect the external security of the penitentiary institutions, the outer perimeter, including the restricted external area.<sup>512</sup>

Conscripts enrolled in the 17th Department of External Protection undergo compulsory military service in the barrack regime, and conscripts enrolled in the other four divisions – in turn once in 3 days.

Interviews with conscripts in the above-mentioned 5 divisions of the Special Penitentiary Service revealed that, as in previous years, in Units 3 and 17 of the External Protection, the illegal practice

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<sup>511</sup> Sub-division 2 of Division 2 of Unit 3 and Sub-division 3 of Division 1 of Unit 2.

<sup>512</sup> Order №631 of the Minister of Justice of Georgia of September 30, 2020 on the Approval of the Statute of the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service.

of informal and collective punishment in the event of a disciplinary misconduct by a conscript remains a systemic challenge.

According to the information received during the visits to the 3rd (visit date: 11/08/2021) and 17th (visit date: 17/09/2021) Divisions of the Ministry of Foreign Affairs, in case of a disciplinary misconduct committed by conscripts in both of the above-mentioned departments, in order to be punished, they are obliged to perform additional physical activities without legal grounds (jogging, push-ups, squats, walking in order); they are prohibited from cigarette smoking for about 2 hours, as well as left in the division for 2 hours after the end of the daily routine. According to the Public Defender, the obligation for a military serviceman to remain in the military unit for the purpose of informal punishment constitutes an illegal act and leads to the unlawful restriction of the personal liberty and freedom of movement of military servicemen.<sup>513</sup>

Also, as in previous years, the application of the principle of illegal punishment of conscripts - "one for all, all for one" remains a systemic challenge, which means that in the event of a disciplinary misconduct by a military serviceman, informally, the whole platoon will be punished. According to conscripts, such practices are, on the one hand, positive because they get accustomed to helping and uniting with each other. For example, in the daily routine they alternate with each other when necessary and the supervisors support this. However, according to them, there were cases when members of the platoon were punished along with conscript for systematic misconduct, and because of this, a conflict arose, the discussion of which continued after the end of the daily routine, after the conscript was discharged.

According to the Public Defender, the use of informal punishment methods for conscripts enrolled in the external security departments of a penitentiary institution poses risks of ill-treatment, because in particular cases the use of such punishment, depending on the state of health, physical capacity, subjective perception, complexity and form of physical activity, it may result in more stress and suffering than connected to military service and reach a minimum level of inhuman and degrading treatment.<sup>514</sup> The Public Defender also considers that the application of the illegal principle of collective punishment - "one for all, all for one" - poses a real risk of confrontation and violence between conscripts.

The Public Defender has been pointing out for many years that the issue of providing food for conscripts enrolled in the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service has been a constant challenge. Military personnel who serve once every three days are not provided with food, they have to bring food from home during each shift. Also, transportation costs from their residence to the military unit are not provided, nor are hygiene items provided. In view of all the above, the Public Defender believes that the state cannot

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<sup>513</sup> Constitution of Georgia, Articles 12 and 14.

<sup>514</sup> Decision of the European Court of Human Rights in the case, CHEMBER v. RUSSIA (7188/03) Para. 49. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-87354,%22%5D%7D> [Last viewed: 31.12.2021].

provide military servicemen enrolled in the penitentiary system with the guarantees provided by law.<sup>515</sup>

As for the living and working conditions of the above-mentioned departments, the Public Defender welcomes the elimination of the infrastructural challenges existing in the previous years and hopes that every military serviceman in all external protection units of the penitentiary institution will be provided with decent living and working conditions.<sup>516</sup> The Public Defender also welcomes the increase in the salaries of conscripts enrolled in the penitentiary system.<sup>517</sup>

## **Recommendations:**

### **To the Minister of Justice of Georgia**

- The General Inspectorate of the Ministry of Justice should systematically control and eliminate use non-statutory punishment as a measure of responsibility of conscripts and practice of collective punishment; provide information on the measures taken to the Public Defender's Office
- Reimburse military personnel enrolled in the External Protection Divisions (except Division 17) of the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service in addition to the amount required for food and transportation.

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<sup>515</sup> According to Article 12 of the Law of Georgia on the Status of Military Servicemen, a military serviceman is fully financed by state; According to Article 19 of the same law, when a military serviceman travels on a business trip, during basic and additional vacations, to travel to and from a sanatorium-medical institution, also, when discharged from military service - to travel to the chosen place of residence, when moving to another settlement, has the right to travel by all types of road transport (except taxis) - at the expense of funds allocated from the state budget to the relevant military agency.

<sup>516</sup> According to Article 4 of the Law of Georgia on the Status of Military Servicemen, the state guarantees social and legal protection of military servicemen, providing the military serviceman with suitable living conditions, taking into account the special conditions and peculiarities of military service.

<sup>517</sup> Until 2021, the monthly salary of military servicemen enrolled in the barracks regime for compulsory military service in the special penitentiary service system was 5 GEL, and the monthly salary of military servicemen on duty once every 3 days was 52 GEL. From 2021 their salary has increased to 70 GEL.