

National Preventive Mechanism

ILL-Treatment in Penitentiary Establishments  
and Temporary Detention Isolators  
in Eastern Georgia



Monitoring  
Report

Public Defender of Georgia  
Georgian Young Lawyers' Association

**NATIONAL PREVENTIVE MECHANISM**

**ILL-TREATMENT IN PENITENTIARY ESTABLISHMENTS  
AND TEMPORARY DETENTION ISOLATORS IN EASTERN  
GEORGIA**

*Public Defender of Georgia*

*Georgian Young Lawyers' Association*

**Tbilisi  
2012**



Public Defender's  
office



**The report has been produced within a framework of the Public Defender's office and the Georgian Young Lawyers' Association's joint project.**

**The project is supported by the Open Society Foundations**

#### **THE PUBLIC DEFENDER'S OFFICE**

6, Nino Ramishvili st., Tbilisi, 0179  
Tel.: +99532 2913814/2913815  
Fax: +99532 2922470  
e-mail: [info@ombudsman.ge](mailto:info@ombudsman.ge)

#### **GEORGIAN YOUNG LAWYERS' ASSOCIATION**

15, J.Kakhidze str. Tbilisi, 0102  
Tel: + (995 32) 2936101/2952353  
Fax: + (995 32) 2923211  
E-mail: [gyla@gyla.ge](mailto:gyla@gyla.ge)

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## INTRODUCTION

This report outlines results of the monitoring implemented in penitentiary establishments and temporary detention isolators in 2011 under the auspices of a joint project of the Public Defender of Georgia and the Georgian Young Lawyers' Association (GYLA).

The monitoring implemented in frames of the joint project focused on ill-treatment and was carried out with the involvement of three representatives of GYLA. Consequently, for the purposes of this report, representatives of the National Preventive Mechanism group also include representatives of GYLA. The project that aimed at reinforcement of the National Preventive Mechanism has been funded by the Open Society Foundation.

Throughout the course of the monitoring, representatives of the National Preventive Mechanism enjoyed easy access to and free movement on the territory of penitentiary establishments and pre-trial detention isolators. They were also allowed to choose places for meeting detainees/prisoners at their own discretion and have confidential interviews with them.

Members of the monitoring team examined situation at penitentiary establishments and compliance of practice with Georgian legislation as well as international standards, paying particular attention to treatment of detainees/prisoners. Although the team's special focus was ill-treatment, it also looked into issues that may have a direct connection with ill-treatment, including conditions of imprisonment, discipline and punishment, condition of persons with special needs at penitentiary establishments, personnel of establishments, admission and accommodation of prisoners, serving time under a high security regime.

During the monitoring, representatives of the National Preventive Mechanism interviewed administration of penitentiary establishments, personnel and prisoners/convicts. They visited most of the inmates in each penitentiary establishment, examined and described infrastructure and living conditions at all establishments, including long-term appointment facilities and rooms for mothers and children. They visited ongoing renovation works in several establishments, all solitary confinement and quarantine cells, interviewed all prisoners that were held in these cells at the time of the monitoring.

At pre-trial detention isolators members of the monitoring team examined paperwork about individuals held in isolators, infrastructure – cells, rooms for investigation, toilets, yards, inventory, conditions for keeping food and items of inmates. Interviews with administration and detainees/prisoners revealed frequency of meals, showers, walks outside in fresh air and applicable procedures. As usual, particular attention was paid to treatment of detainees both during and after detention.

## SITUATION AT PENITENTIARY ESTABLISHMENTS

### Ill-Treatment

Based on the outcomes of monitoring conducted at penitentiary establishments throughout 2011 as well as cases that have been analyzed, it is safe to conclude that ill-treatment remains to be one of the key challenges of Georgia's penitentiary system. During the reporting period, there were frequent cases of ill-treatment at a number of facilities (Gldani N8 penitentiary establishment, Ksani N15 penitentiary establishment and a facility for treatment of convicts and defendants). However, individual cases of ill-treatment were evident at other institutions as well.

Failure to tackle the problem has resulted from a number of reasons, including the administration's wrongful approach towards prisoners. At a number of establishments, use of illegal measures for influencing and punishing prisoners is generally encouraged by the management of the system and penitentiary establishments. Furthermore, since the climate of impunity prevails among personnel of the penitentiary system, the management cares more for hiding problems rather than tackling them. Frequently prisoners are coerced by various methods to refrain from filing official complaints with the Office of the Public Defender as well as other agencies. There are cases when by negotiating with prisoners administration tries to persuade them against filing a complaint with individual agencies. Tackling the problem is also hindered by the lack of action on investigating authorities' end and their failure to act on facts.

As for the situation in 2011, monitoring has revealed a number of facts of ill-treatment, which served as the basis for the Public Defender to immediately apply to the office of the prosecutor of Georgia with the request to launch investigation.

Cases when individuals alleged ill-treatment but refrained from giving written testimony were far more frequent.

Oftentimes prisoners gave statements first to the public defender, in which they described in details facts of physical or mental harassment but request that the information remain confidential. Under para.2, Article 20 of the organic law of Georgia on the Public Defender of Georgia, “the Public Defender and a member of the Special Preventive Group shall be under the obligation to maintain the confidentiality of the secret information and the information declared as confidential, as well as information on torture, or any other cruel, inhumane or degrading treatment of a person unless this person has explicitly expressed consent for such disclosure”. Therefore, alleged facts of ill-treatment that prisoners themselves request to remain confidential and no further action to be taken are not disclosed.

The fact that prisoners allege about ill-treatment but remain within the same penitentiary establishment after they have lodged a complaint is also problematic, since they remain under supervision of same personnel who allegedly oppressed them. It triggers the syndrome of fear among prisoners and frequently they refuse to file (the case of Malkhaz A.). Public Defender has applied to the chairperson of the Penitentiary Department on a number of occasions with a recommendation to transfer such individuals to a different penitentiary establishment but none of his formal requests were granted but rather, Public Defender’s Office received similar responses maintaining that prisoners’ safety was protected and their transfer to different establishments was unnecessary.

Prisoners noted that representatives of investigating authorities either personally persuaded them against filing a complaint or were limited to a formal interview only. It is particularly true about investigators of the MCLA’s Investigating Department.

In terms of ill-treatment, prison facilities N8 and N18 in Tbilisi are particularly noteworthy, since most of prisoners alleged degrading and inhumane treatment. In this regard, the situation worsened in Ksani N15 penitentiary establishment, which is confirmed by a number of statements or complaints filed by prisoners. Nevertheless, most of these prisoners decided against taking a stance against the administration due to the afore-noted reasons and withdrew their complaints.

### ***Gldani №8 Penitentiary Establishment***

The situation is rather complicated in Gldani N8 penitentiary establishment in terms of treatment and regime. The spring monitoring has revealed that particular rules apply to prisoners at the establishment: they are prohibited from taking a nap or as little as lying down during the day. Despite unbearable heat, they were prohibited from taking a shirt off while in cell, listening to the radio at a medium volume and playing backgammon by throwing dice on a wooden board since the administration maintained that it caused excessive noise, which served as grounds for punishment. It was striking that there was an uncommon silence at Gldani prison which holds more than 3 500 inmates. It drew the attention of the European Committee for the Prevention of Torture (CPT) during its visit in 2010.

The 2010 CPT report notes: “practically no allegations of ill-treatment by staff were received during the visit to Prison No. 8 in Gldani. However, a number of inmates subsequently met by the delegation at other establishments alleged that they had been physically ill-treated by staff whilst being held at the Gldani establishment in the recent past, in particular in the “kartzet” area, the showers and upon reception. The ill-treatment alleged (consisting of punches, kicks and truncheon blows) was reportedly triggered by violations such as knocking on cell doors, talking loudly or attempting to communicate with prisoners from other cells. The delegation noted for itself that an uncommon silence reigned in the prisoner accommodation blocks at Gldani”<sup>1</sup>.

During an interview with the special preventive group, prisoners alleged that even for elementary violations of these tight rules they were cruelly punished – either by beating or by transferring them to the quarantine area, which is against the law since quarantine cells are not designated for punishment. Nevertheless, since conditions at quarantine cells were particularly unbearable, prison administration frequently resorted to this method of punishment. During the monitoring, one of the prisoners held in solitary confinement alleged that staff prisoners for making noise. According to him, he had been beaten 8 times in one year but he would not testify it in written.

<sup>1</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), paragraph 49.

Methods of collective punishment are applied in Gldani N8 penitentiary establishment – for a violation committed by an inmate, all of his cell-mates are punished, which serves as an additional mechanism for the administration to exert pressure against prisoners – a prisoner is responsible *before* his fellow-inmates for his actions and responsible *for* any violations committed by them.

Since prisoners in N8 penitentiary establishment are forced to run to the yard where they walk, some willingly refuse to take walks but spend 24 hours in their cells instead; any holdup in running towards the yard results in abusive, rude and degrading treatment of prisoners by staff. Furthermore, the monitoring group witnessed a case where a prisoner, who suffered from neurological disorders and had great difficulty to relocate, was refusing to go for a walk and since one person may not be left in a cell, all of his cellmates were not allowed to walk outside in fresh air.

There were total of 15 quarantine cells at the prison, including seven for prisoners who were to be taken to trials. These seven cells did not have any beds, only chairs; three were used as additional quarantine rooms where prisoners were held for several days and frequently for a week. Therefore, prisoners had to sleep on chairs or on concrete floor. The administration did not provide them with any mattresses or covers.

There were 48 beds in remaining 8 quarantine cells, with three bunk beds and a small table in each. Cells had small windows that partly opened. During the monitoring there were no mattresses or covers on beds, the air was heavy and there was a specific smell in cells. Prisoners clarify that while in quarantine, they did not have access to personal hygiene items or to a shower. In some cases the water system was out of order. Prisoners were not allowed to take walks and had a poor access to medical assistance.

Although prisoners refrain from providing a written statement about their alleged ill-treatment, they provide detailed description of facts of ill-treatment committed against them or other prisoners. They frequently mention the names of “Ango”, “Khonski”, Beka Mzhavanadze. During the monitoring conducted in summer prisoners were mentioning a name of Oleg – a member of the personnel with fair complexion and blue eyes. Frequently prisoners serving time at various other prison facilities inform the special preventive group of the alleged ill-treatment of prisoners in Gldani N8 prison but they refrain from publicizing the facts.

Gravity of the situation at Gldani prison is also confirmed by the fact that prisoners transferred from Gldani N8 prison to Tbilisi N8 prison, whose liquidation was recommended on a number of occasions by the Public Defender due to inhuman treatments that occurred in the prison, frequently noted that they were in much better conditions now than in the newly built prison of Gldani. The monitoring team witnessed similar situation in N12 penitentiary establishment located at the premises of the medical establishment for convicts and prisoners, where living conditions are rather deplorable.

During the monitoring conducted by the preventive group in winter in the penitentiary establishment N8, it turned out that prisoners were no longer held at quarantine areas for punishment but rather, prior to their transfer from solitary confinement to regular cells and for the period ranging from one to three days. The monitoring also revealed that prisoners are prohibited from lying down on the lower part of bunk beds during the day. Since they are also prohibited from smoking a cigarette in cell, they take turns for smoking in the toilet. Prisoners clarify that these prohibitions were introduced 2-3 months before. Furthermore, they state that it is necessary for all prisoners to shave every morning; otherwise, they may be punished. They also report that no matter how ill a prisoner is, he has to put his hands behind his back and run to the doctor’s office. They note that upon admission they were forced cut hair extremely short and since hairdressing service is not available at the facility, frequently they are forced to shave themselves by a razor.

Additionally, the monitoring team revealed a number of rules and requirements in force in Gldani N8 penitentiary establishment, which prisoners have to obey without a murmur. Otherwise, they will be punished: if an employee of a prison looks into the surveillance window any time of the day, prisoners must cease all activities and stand up facing the door. If the door opens, they must stand in line, facing the wall. Prior to inspection prisoners must clean their cells thoroughly, so that none of the items or clothes are put on a dressers or a bed. Immediately after the door opens, they must stay in line, this time facing the door. The first prisoner in line must be holding a garbage bag in his hands. They still listen to the radio keeping the volume as low as possible; avoid talking or laughing with regular voice since any sound that will travel outside cell will be perceived as noise and result in their punishment. It is confirmed by more than 500 entries in the logbook of the solitary confinement cell (“kartzet”) indicating “making noise in cell” as the type of violation. We’d like to highlight once more that Gldani prison is one of the rare prisons

where not a single voice or noise from cells is heard in the corridor. Prisoners are allowed to wash their clothes in cells but they are prohibited from drying them. Therefore, they have to dry their clothes at night and hide partly damp clothes in a dresser. Prisoners are prohibited from knocking on the door. The bell for calling an on-duty officer is not working and has never worked. Therefore, during emergencies, even when it concerns deterioration of health, prisoners are forced to stay by the door, wait for the controller to appear and summon him with a low voice. If the controller opened the cell window and called any of the prisoners, he calls out a last name, while the prisoner that approaches the door must respond by saying his name and patronymic. According to the system practiced in the prison, inmates take turns for taking a responsibility for violation committed by another prisoner. After the lights are turned off at 22:00, prisoners can't stay up or talk among each other, let alone read or do anything else even without making a noise.

Juvenile prisoners serving time at N8 prisons have alleged that they are treated the same as adult convicts. However, they have not cited individual facts of ill-treatment. The key problem that juveniles are facing in Gldani N8 prison is an extremely strict regime at the establishment that we thoroughly discussed above and that also applies to juveniles as well to its full extent. Additional rule applies to juveniles – their heads are shaved immediately upon their admission to the facility, despite the fact that under Article 21 of the Code of Imprisonment, "...The administration shall not require an accused/convict to completely remove hair unless such request is imposed by the doctor or hygienic necessity". It amounts to ill-treatment of juvenile convicts.

Prisoners report that since the new director started working, the staff is acting in a less provoking manner. They no longer swear at them for no reason from outside the cell windows or beat them regularly and for no reason. However, physical violence, even with reduced frequency, remained to be a pressing issue and as for the regime, it was tightened even more.

### ***Medical establishment for Convicts and Defendants №18***

Convicts that were transferred to the medical establishment for convicts and defendants N18 report frequent facts of ill-treatment but in most cases they refuse to give written testimony or publicize facts. Many of them state that they will not go back to the facility, even if they need to, due to an excessively tight regime there. Frequently prisoners file applications for leaving the establishment. Prisoners report that during any movement at the premises of the facility, the administration forces them to hold their hands behind their backs, even when a prisoner is unable to do so due to his physical condition. If a prisoner fails to follow the rule, all of his cell-mates are prohibited from taking a walk outside and deprived from some of their rights – e.g. use of telephone. Frequently prisoners themselves try to avoid going outside for a walk, since any movement may trigger a conflict with staff. Furthermore, some of the prisoners at N18 medical establishment allege that applications that they filed in the ECHR have resulted in the administration treating them poorly and frequently calling them names such as "a traitor of the country" and "an intriguer". They also allege that some prisoners were taken down to a morgue and beaten.

According to prisoners, the facts of ill-treatment most frequently involve employees of the facility Giorgi Avsajanishvili and Alexandre Tolordava. Some prisoners allege that director of the facility Vazha Tskhvediani also participated in beating of prisoners.

During the winter monitoring conducted by the preventive group at the facility N8, convicts noted that their treatment had significantly improved. Nevertheless, in the course of and following the monitoring, there were two convicts alleging that they were beaten by staff. Both had bodily injuries. The convicts refrained from giving written statements.

### ***The Case of Kakhaber B.***

On December 1, 2011, representatives of the Public Defender met with and interviewed convict Kakhaber B. who alleged that on November 27, 2011, at night, he was immediately transferred from the prison N17 to the medical establishment N18 due to renal failure. He was placed in a cell t-9. On November 28, 2011, he requested seeing a doctor since he was suffering from unbearable pains. In response to the convict's persistent requests, staff of the establishment N18 took him down to the morgue and beat him severely. Additionally, one of the employees of the facility, Giorgi Avsajanishvili, threatened to rape him. Kakhaber B. noted that following the incident he had to lie on his stomach on the floor of the morgue in handcuffs



for 30-40 minutes. He also stated that by threatening and swearing, G. Avsajanishvili coerced him into writing that his bodily injuries were self-inflicted and that he had no complaints against the administration of N18 facility.

During the meeting with the convict, the monitoring group noticed that he had various kinds of bodily injuries.

On December 2, 2011, the convict's statement was referred from the Office of the Public Defender to the office of the prosecutor for further action. The same day, a letter from the Office of the Public Defender was sent to the chairperson of the Penitentiary Department, requesting undertaking of all necessary measures for safety of the convict. The Office of the Public Defender never received a response to the letter.

On December 7, 2011, staff of the prevention and monitoring department with the Office of the Public Defender met with and interviewed the convict, who alleged that employees of the facility continued his verbal and physical abuse. Therefore, the convict protested by going on a hunger strike and refused to take his medication. On December 7, 2011, the Public Defender recommended to the chief prosecutor of Georgia to launch investigation into the alleged ill-treatment of Kakhaber B. The same day, the Public Defender also recommended to the Minister of Corrections and Legal Assistance to ensure transfer of the convict to a civil medical establishment.

With its letter N04-12208 the MCLA informed us that the defendant had been transferred to O. Gudushauri National Center in compliance with the outpatient procedure and for a single day.

With its letter N13/57003, dated December 28, 2011, the chief prosecutor of Georgia responded to us that on December 2, 2011, an investigation into the alleged fact of inflicting damage to convict K.B.'s health was launched at the Investigating Department with the MCLA.

On February 10, 2012, the Office of the Public Defender applied to the MCLA with a written request to provide information about the criminal proceedings. With its letter N05/01-247, the MCLA responded that based on the notification received from the facility N18, investigation was launched under para. 1, Article 118 of the Criminal Code of Georgia on December 2, 2011. The convict and all employees of the establishment N18 that the convict had implicated were examined as witnesses and forensic analysis was conducted. The letter also informed that the case was re-qualified and the investigation continued under para. 1, Article 333 of the Criminal Code of Georgia. For further investigation the case was referred to the office of the chief prosecutor on January 11, 2012.

### ***The Case of Giorgi O.***

On December 24, 2011, representatives of Public Defender visited N18 medical establishment, where they met with and interviewed a convict, Giorgi O. He alleged that with reference to a criminal case and his health problems, he filed an application in ECHR in 2011. In response, the ECHR ordered medical treatment for the convict.

On December 1, 2011, the convict was transferred to the medical establishment N18. He alleged that upon his admission, head of the facility Alexandre Tolordava and head of the security service Giorgi Avsajanishvili verbally abused him. Giorgi O. alleged that Giorgi Avsajanishvili threatened him to impose additional punishment and inflict damage to his health. In response to the convict's question, Giorgi Avsajanishvili explained the reason for his threats and verbal abuse was the application filed by the convict in ECHR. According to Giorgi O, in addition to verbal abuse he was also abused physically by slapping in his face and head a number of times. He also alleged that he was ill-treated and abused physically and verbally on a number of occasions at the facility N18. Same actions were perpetrated against him several more times. The convict has implicated Giorgi Avsajanishvili and Alexandre Tolordava.

The convict has also stated that he was refused to contact his lawyer and representatives of the public defender; he was not provided with a pen and a paper; his personal hygiene items, mattress and clothes were seized. Later his mattress and clothes were returned but he never received his personal hygiene items back.

After a certain period, head of the social services Zurab Bulbulashvili visited him and informed him that based on the regime requirements he would be sentenced to administrative imprisonment, that the personnel would all take the same position and the court would deliver the decision in favor of the administration.

Following a pressure exerted against him, the convict self-inflicted an injury on his throat and his left upper limb. It was only after he lost a lot of blood that he was transferred to the surgical department, where his wounds were treated.

According to the convict, on December 24, 2011, he was sentenced to administrative imprisonment for the period of one month. During G.O.'s relocation from court to the penitentiary facility, Giorgi Avsajanishvili reminded him that his case file indicated suicide attempt and threatened to take his life.

On December 27, 2011, Public Defender applied to the chief prosecutor of Georgia with a recommendation to launch investigation into the alleged ill-treatment of Giorgi O. by staff of the penitentiary facility N18.

The same day, Public Defender's Office applied to the chairperson of the Penitentiary Department with a letter to ensure safety of the convict and transfer him to a different facility, where he would continue to be treated for his hepatitis. The Office of the Public Defender never received a response.

With its letter N13/57593, dated December 31, 2011, the office of the chief prosecutor replied that on December 27, 2011, an investigation was launched in anti-corruption unit of Tbilisi Office of the Prosecutor into the criminal case N01027211801 - exceeding official powers by employees of the Penitentiary Department of MCLA - the crime envisaged by paragraph 1 of Article 333 of the Criminal Code of Georgia.

### ***Daba-Ksani Penitentiary Establishment N15***

In 2009-2010 the monitoring group paid a particular attention to the penitentiary establishment N15, since most of the formal complaints and applications that Public Defender's Office received involved allegations about ill-treatment of prisoners by the administration and staff of the establishment. During the reporting period, the number of such complaints was significantly decreased; however, there were several cases when convicts indicated that the administration of Ksani establishment beat him, meaning that it remains on the list of problematic penitentiary establishments in terms of ill-treatment of prisoners.<sup>2</sup>

During the monitoring at Ksani N15 penitentiary establishment, three convicts – I.Ch., N.Kh., and I.D. alleged that they were beaten by staff upon their admission at the establishment. They had different types of bodily injuries. According to the convicts, they were beaten after I.Ch. objected against the insulting words of one of the establishment's employees. Public Defender applied to the chief prosecutor of Georgia with a recommendation to launch preliminary investigation into the alleged fact. The investigation was launched under para. 1 of Article 333 of the Criminal Code of Georgia but was later terminated since all three convicts later withdrew their allegations.

### ***Investigation into alleged facts of ill-treatment***

Results of the monitoring conducted in closed penitentiary establishments as well as the analysis of applications filed with the Office of the Public Defender demonstrate that ill-treatment remains to be a problem at penitentiary establishments and police. The Public Defender highlighted this issue in a number of his parliamentary and special reports. Legal response to alleged facts of torture and inhuman treatment is the prerogative of the prosecutor's office. In order to fully eliminate the practice of ill-treatment, it is necessary to effectively investigate each of the facts and suppress the climate of impunity that proves to be a serious problem nowadays. The Public Defender applied to the office of the chief prosecutor of Georgia with regard to a number of such facts but investigation is frequently protracted or terminated.

Lack of action on part of investigating authorities and their inefficiency engenders the climate of impunity among law enforcement officers. At the same time, it promotes lack of victim's confidence in investigation, which certainly serves in no support to revealing and eliminating the practice of ill-treatment.

According to the ECHR case law, where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment<sup>3</sup>. Under such circumstances, it is incumbent on the State to provide a plausible explanation

<sup>2</sup> In the process of preparing this report, two other convicts – I.M. and N.T. applied to the Public Defender with allegations of ill-treatment; however, having provided an extensive statement addressed to the Public Defender, one of them requested the alleged facts to be kept as confidential. The Public Defender addressed the Office of the Chief Prosecutor of Georgia with a recommendation to initiate investigation into the alleged ill-treatment of the second convict on March 14, 2012.

<sup>3</sup> E.g. *Bursuc v. Romania*, October 12, 2004;

of how the injuries were caused, failing which a clear issue arises under Article 3 ECHR.<sup>4</sup>

In its General Report N14, the CPT notes, that investigation shall be absolutely detailed and extensive, it shall be conducted swiftly and persons responsible for it shall not be related to persons involved in the mentioned developments<sup>5</sup>; however, often the investigation into alleged facts of ill-treatment of inmates in penitentiary establishments are undertaken by the Investigating Department with the MCLA, which questions efficiency of investigation even more.

In its 2010 report, the CPT notes: "...the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. Some of the delegation's interlocutors met during the visit were of the opinion that information indicative of ill-treatment was frequently not followed by a prompt and effective response, which engendered a climate of impunity. According to them, most complaints of ill-treatment were dismissed; at best, the officers concerned were disciplined. It was suggested that the Prosecutor's Office often failed to initiate criminal cases into complaints of ill-treatment, and that when cases were opened; this was rarely under Section 144 of the Criminal Code, but rather under Section 333. Furthermore, it was said that the proceedings were protracted and very rarely led to convictions, which diminished trust in the system for investigating complaints".<sup>6</sup>

The Public Defender highlighted the afore-noted issue on a number of occasions in his parliamentary reports and noted that one of the problems related to investigation of alleged ill-treatments was their wrongful qualification. Frequently cases are opened under the Article dealing with exceeding official powers as opposed to torture or inflicting of bodily injuries. The former is an official crime and envisages a lighter sanction.

According to the information at our hand, throughout the last two years there was a single case involving ill-treatment that was concluded with a positive result - two employees of Kutaisi N2 penitentiary establishment of the Penitentiary Department were detained for beating of convict Ramaz P. We remain hopeful that this case will not be the only exception and other investigations launched into similar facts will be concluded with a logical outcome in the future.

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In 2011 the Office of the Public Defender applied to the office of the chief prosecutor of Georgia a number of times in written, requesting the following information:

1. Number of cases where preliminary investigation was launched under Articles 332-333 of the Criminal Code of Georgia, as well as Articles 144<sup>1</sup>-144<sup>2</sup>-144<sup>3</sup> of the code (separately);
2. Number of persons whom criminal prosecution were instituted against, including number of public servants (by indicating individual agencies where they serve) <sup>7</sup>;
3. How many of the criminal cases were taken up by common courts for the hearing on merits of the case?
4. Number of plea bargains concluded;
5. Number of criminal cases initiated under the aforementioned Articles where the proceedings were later terminated and on what grounds.

With its letters N13/41367 and N13/10332, the office of the general prosecutor of Georgia informed us that there were 20 criminal cases initiated under Article 144<sup>1</sup> of the Criminal Code of Georgia (torture) in 2011. Criminal proceedings were instituted against 3 individuals. Investigation was terminated in 11 criminal cases.

Not a single criminal investigation was initiated under Article 144<sup>2</sup> of the Criminal Code of Georgia (threat of torture).

<sup>4</sup> Selmouni v. France, June 28, 1999;

<sup>5</sup> CPT's General Report N14, para. 25-42

<sup>6</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), paragraph 17

<sup>7</sup> Definition of torture as provided by the Criminal Code of Georgia does not correspond to the definition of the UN Convention against Torture, one of the differences being that Article 144<sup>1</sup> (torture), (threat of torture) and Article 144<sup>3</sup> (degrading or inhuman treatment) fail to indicate a specific perpetrator – an official or a civil servant.

There were investigations initiated in 9 criminal cases under Article 144<sup>3</sup> of the Criminal Code of Georgia (degrading or inhuman treatment). Proceedings were terminated in 3 criminal cases and one case was taken up by court, where verdict of not guilty was delivered.

In 2011, investigation under Article 332 of the Criminal Code of Georgia (abuse of official authority) was launched in 77 criminal cases. Proceedings were terminated in 29 criminal cases. Criminal prosecution was instituted against 67 individuals and cases involving 75 defendants were taken up by court. The court delivered verdict of guilty against 78 individuals.

In 2011, investigation under Article 333 (exceeding official powers) of the Criminal Code of Georgia was launched in 127 criminal cases. Investigation was terminated in 58 criminal cases. Criminal prosecution was instituted against 25 individuals. Cases involving 29 defendants were taken up by court. Court delivered verdict of guilty against 32 individuals.

Our very same letters also requested information about plea bargains that have been concluded in criminal cases – number of criminal cases were preliminary investigation was terminated and on what grounds but the office of the prosecutor never provided the information.

In his previous reports, the Public Defender applied to the office of the chief prosecutor of Georgia with a request to compile detailed statistics on investigations into alleged facts of torture and ill-treatment that would have illustrated the number of civil servants, including employees of penitentiary establishments and police officers, whom criminal prosecutions were instituted against. Nevertheless, judging from the responses that we received from the office of the prosecutor of Georgia, statistics on investigations into alleged facts of torture and ill-treatment are still compiled in an incomplete manner. It is impossible to determine the number of civil servants that were held criminally liable or in cases that involve Articles 332 and 333 of the Criminal Code of Georgia, it is impossible to determine whether a civil servant was punished for ill-treatment or for any other official crime. It goes without saying that despite our request, affluence of convicted public servants with individual agencies had not been indicated in the responses.

Presidential decree N250 on the adoption of the *2011-2013 Action Plan for the Strategy of Combating Ill-Treatment and Fighting against Ill-Treatment* imposes the obligation to compile statistics on the office of the chief prosecutor of Georgia. The Action Plan envisages the obligation of the office of the chief prosecutor of Georgia to compile the information about individual practices of ill-treatment by civil servants.

Following its visit in 2010, the CPT recommended improvement of methods for compilation of statistical information to the Government of Georgia: “The compilation of statistical information is not an end in itself; if properly collected and analyzed, it can provide signals about trends and can assist in the taking of policy decisions. Increased co-ordination between the Ministry of Internal Affairs and the Chief Prosecutor’s Office is clearly needed in this respect. The CPT invites the Georgian authorities to introduce a uniform nationwide system for the compilation of statistical information on complaints and disciplinary and criminal proceedings and sanctions against police officers. Further, steps to provide information to the public on the outcome of investigations into complaints of ill-treatment by the police could help counter a perception of impunity.”<sup>8</sup>

Furthermore, it is also noteworthy that investigating authorities were not particularly proactive when it came to ill-treatment of prisoners. Under paragraph 1 of Article 101, information reported by media may serve as the basis for launching probe in a case. However, a probe is not usually launched without a complaint or an official notice (see the case of Malkhaz A. below).

#### RECOMMENDATIONS FOR THE CHIEF PROSECUTOR OF GEORGIA:

- **Take investigations into all alleged facts of ill-treatment during detention and at penitentiary establishments under his personal control, in order to ensure effective and prompt investigation;**
- **Ensure compilation of detailed statistics about the practice of ill-treatment by civil servants according to individual agencies, which will enable thorough monitoring of the situation in the field of combating torture;**
- **Ensure provision of comprehensive and timely information on investigation of alleged facts of ill-treatment to the Public Defender of Georgia.**

<sup>8</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), paragraph 17

## Conditions of Imprisonment

### *Overcrowding*

Throughout 2011 there were instances of overcrowding at certain penitentiary establishments. The CPT provided a number of recommendations for ensuring 4 square meters of living space per prisoner but the new Code of Imprisonment envisages the same space that was envisaged in the law of Georgia on Imprisonment.<sup>9</sup> It is noteworthy that at some penitentiary establishments space allocated for each prisoner fails to live up to the requirements of national legislation.

In certain penitentiary establishments there was a problem of overcrowding throughout the year or during certain periods in 2011. At some penitentiary establishments prisoners did not have as little as their own beds (Tbilisi N1 and Rustavi N17 establishments).

In his parliamentary reports, the Public Defender constantly voices recommendations to address the problem of overcrowding, since the number of prisoners is disproportionate to the ensuring their rights in adequate manner, which complicates due implementation of healthcare reform in penitentiary system and negatively reflects on the state budget. The Public Defender recommends revision of excessively tight criminal policy and giving priority to alternative, lighter punishments in cases that involve less dangerous crimes in the process of determination of criminal prosecution policy.<sup>10</sup>

The amendment to Article 40 of the Criminal Code of Georgia in 2011 is a positive step forward since it allows for the use of community service as a sanction alternative to imprisonment. The Public Defender remains hopeful that practicing the amendment will alleviate the problem of overcrowding at penitentiary establishments.

#### RECOMMENDATIONS FOR THE PARLIAMENT OF GEORGIA

- **Make corresponding amendments to the Criminal Code of Georgia for replacing current practice of consecutive sentencing with concurrent one.**
- **Implement necessary measures for decriminalizing crimes that are less dangerous to public;**
- **Make corresponding amendments to the Code of Imprisonment fixing a living space per inmate at 4 square meters.**

#### RECOMMENDATION FOR THE CHIEF PROSECUTOR OF GEORGIA:

**In the process of determination of criminal prosecution policy, give priority to alternative, lighter punishments in cases that involve less dangerous crimes.**

### *Living Conditions*

Under the European Prison Rules, “The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation”.<sup>11</sup>

“In all buildings where prisoners are required to live, work or congregate: the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

Artificial light shall satisfy recognized technical standards; and there shall be an alarm system that enables prisoners to contact the staff without delay<sup>12</sup>.”

According to the case law of the ECHR, in addition to ill-treatment and degrading treatment, violation of Article 3 of the European Convention may be resulted by the conditions that a prisoner has to live in.

<sup>9</sup> A living space per inmate must be at least 2 sq.m. at penitentiary establishments, 2.5 sq.m at a high security prison, 3 sq.m. in penitentiary establishments for women, 3.5 sq.m. in penitentiary establishments for juveniles and 3 sq.m. at medical establishments.

<sup>10</sup> See Public Defender’s Parliamentary Report 2010

<sup>11</sup> Principle 18.1

<sup>12</sup> Principle 18.2

According to the one of the basic principles of the European Prison Rules, “prison conditions that infringe prisoners’ human rights are not justified by lack of resources”.

In his report the Public Defender provided recommendation to close down Tbilisi N1 penitentiary facility a number of times since placement of prisoners in Tbilisi N1 prison may equal inhuman and degrading treatment. The Public Defender provides recommendations to liquidate establishments that fail to live up to any standards in terms of a living space, lighting, ventilation, heating, hygiene; infrastructure is outdated the extent that it can no longer be renovated.

According to the information published on the official web-site of the MCLA<sup>13</sup>, the Council of Europe Development Bank (CEB) approved the project worth 60 million Euros for the Government of Georgia on 10 June, 2011 for the construction of the Laituri penitentiary complex, with a capacity of 2 000 inmates. The Public Defender remains hopeful that after the entry into service of the establishment, facilities where placement of inmates is not advisable due to the living conditions there will stop functioning.

### ***Ksani N15 Establishment***

Despite the cosmetic repairs of the closed part of the establishment, the situation there has not been essentially improved. Walls of cells covered with thick, uneven layer of concrete – the so-called Shuba - remain problematic. Heating is provided by electric ovens. Cells lack both natural and artificial lighting. The establishment is infested with cockroaches. During the monitoring, we noticed that the water sewage system was out of order.

During the monitoring in August-September 2011, inmates held in cell N20 of the closed part of the establishment N15 informed public defender’s representatives that they had no dresser in the cell and therefore, they had to keep their clothes and personal items under their beds, in plastic bags. The information was verified during the monitoring by representatives of the National Preventive Mechanism and it turned out that there was a single amortized 2-a dresser in cell N20. The Public Defender’s office addressed the director of the facility with a written request of information whether they provided inmates with dressers for keeping their personal items. With its letter N10/34/3-4998 the Penitentiary Department’s establishment N15 informed us that in cell N20 in the closed part of the penitentiary establishment N15 all inmates have access to a dresser, with two inmates sharing one. The information was verified by the monitoring group. It turned out that the response of the director was far from truth and the situation remained the same in cell N20.

In the so-called old zone there are three barrack-like residential buildings and a single “medical unit”. Following the March 6, 2010 fire, the residential building was repaired, not including a portion of its second floor. There are forty inmates held in this area. The barrack is divided into four parts by a canvas. Concrete floors miss chunks here and there. Heating, although insufficient, is provided by electric ovens and it was cold in the barrack during the monitoring. It is also noteworthy that due to the existing conditions, convicts are unable to keep the place clean. A toilet is located in the very same section of the building. Its sanitary and hygienic conditions are quite poor.

As for the renovated part of the building, the first floor has been housing a dining room following renovation works. At the dining room convicts have meals three times a day. There are not means for heating and it was unbearably cold there during the monitoring.

There are 172 convicts held on the first floor and 156 on the second. Each floor is 343 square meters. There are four electric ovens for heating on each floor that are far from sufficient; therefore, it was cold in the barrack similar to other barracks of this unit. Additionally, there are no ceilings on the second floor and the barrack is straightly covered by tin. Convicts don’t have any dressers and they have to keep their clothes in cardboard boxes or in large plastic bags. The floor is concrete and walls have been plastered with cement. Convicts clarify that although they tidy their barrack every day, it is impossible to keep the place clean and their beds and personal items are constantly covered in dust. There is no central AC system in the barrack, whereas seven windows (1sq.m. each) fail to provide natural lighting and ventilation for a 343 sq.m. area. 1.9 sq.m. spaces are allocated to each convict on the first floor and 2.1 sq.m. on the second floor. Water is leaking in one of the wings of the residential building - specifically, in one of the two parts of the second floor – and convicts have to cover their beds with plastic bags due to the humidity.

<sup>13</sup> [http://www.mcla.gov.ge/index.php?action=page&p\\_id=451&lang=geo;](http://www.mcla.gov.ge/index.php?action=page&p_id=451&lang=geo;)

Another building with the capacity of 588 inmates is two-storied as well. The first and the second floors of the residential barrack are divided into two parts each. There is one room on the first floor and four rooms on the second. For over the years the barrack has not undergone any repair works. Its sanitary and hygienic conditions are poor, it is infested with cockroaches. Toilets on both floors have an out-of-order sewage system and their sanitary and hygienic condition is rather deplorable. There is a lack of heating by electric ovens. Residential barracks have sufficient natural lighting and ventilation. The barrack is 913 square meters with 1.55 square meters of living space for each convict.

The third building is the so-called medical unit with a shower room on the first floor. The shower room has no windows; there is no central AC system; there are ceramic tiles on the floor, ceilings and walls are painted; the room is damp and plaster is falling off in chunks.

The so-called medical unit is in a deplorable condition to the extent that patients must not be held there. There is a so-called old medical unit at the establishment where convicts with health problems are placed. The building is in a poor condition to the extent that patients must not be held there.

There is a common toilet in a yard of the so-called old zone; its sanitary and hygienic conditions are deplorable. Sewage system is out of order, producing an unbearable smell. As for the toilets in residential barracks, in addition to the fact that they are in need of repair work, convicts report that they are insufficient and therefore, inmates frequently have to stand in line in the morning.

### ***Rustavi N5 Establishment***

The new penitentiary establishment for women N5 was opened on November 6, 2010 with a capacity of 1200 inmates.

There are A, B, C, D residential buildings at the establishment as well as a section for imprisonment, a house for mothers and children, a place for TB-infected inmates to live. A medical unit is located in the building B of the establishment.

In building A there are 38 cells, 16 cells in building B, 74 cells in building C and 71 cells in building D; 30 cells in the section for imprisonment, including 1 for quarantine, 1 for juveniles and 1 for solitary confinement. There are four rooms in a house for mothers and children; a place for TB-infected inmates to live has 3 cells.

Cells in the facility mostly hold 6 inmates. There are twenty cells in building C that hold 3 inmates each.<sup>14</sup>

There are bunk-beds in each cell. Living space per inmate is 3 square meters<sup>15</sup>. There are tables and chairs as well as a dresser for each inmate in cells.

Except for the unit for juveniles as well as mothers and children, everywhere else is a concrete floor. Since women frequently complained about negative effects of concrete floor on their health, the administration allowed them to have carpets; however, there were only couple of cells with carpets during the monitoring.

All cells in Rustavi N5 establishment has 1.7 sq.m. windows with metalloplastic frames that provide natural lighting and ventilation, with exception of 19 cells in building C that were used as a cell-type quarters; each of these cells has 0.65 sq.m. windows and therefore, they lack natural lighting and ventilation. Cells are heated by a central heating; however, it was particularly cold in corner cells of the residential building during the winter monitoring. Furthermore, central heating system in the imprisonment unit failed to provide adequate heating in cells. Therefore, inmates were provided with electric oil heaters. Artificial lighting in cells is adequate.

### ***Rustavi N6 Establishment***

Undertaking of cosmetic repair works in the old part of the establishment N6, as recommended by the Public Defender of Georgia, is a positive step forward. It is commendable that windows with metalloplastic frames were installed in cells. Since these windows can be fully opened, sufficient air conditioning is provided to cells. This novelty should also be introduced in other establishments as form and construc-

<sup>14</sup> formerly used as a cell-type quarters

<sup>15</sup> For instance, an area of a cell with the capacity of 6 inmates is 2,96\*6,6, an area of a toilet - 1,57\*1,53;

tion of windows, as well as double or triple glazing from inside cells make adequate air conditioning impossible.

Air conditioning of cells in the new residential building is problematic due to absence of ventilation system. The establishment lacks artificial lighting since there are so-called eco-bulbs in cells with low voltage. The water system on the first floor is frequently damaged and in need of repairs.

The first floor of the new residential building, which is damp and has inadequate living conditions, is in need of comprehensive repairs.

### ***Tbilisi N12 Establishment***

Sanitary and hygienic conditions at N12 semi-open establishment are poor. As it was noted a number of times, the establishment has not undergone cosmetic repairs since the day it was built, except for the first floor where staff rooms and medical unit are located. Heating is provided by electric ovens. The establishment mostly holds convicts with little time remaining on their sentences as well as elderly convicts.

### ***Rustavi N17 Establishment***

In residential buildings I, II, III and IV, sanitary and hygienic conditions in cells is mostly inadequate and in need of capital repairs. Lighting is provided by artificial means since size of windows do not let sufficient natural lighting in. Paint on the walls has been peeled off on certain areas; cells are air conditioned by opening windows, however inadequately; taps in some of the cells are out of order; some cells lack light bulbs; cells are mostly heated by a central heating.

Shower cabins in the so-called "old zone" have no means of air conditioning and inmates are forced to leave the door open.

### ***N19 Establishment for Convicts Infected with Tuberculosis***

There are three residential buildings isolated from one another at the establishment for convicts infected with tuberculosis. Except for the renovated building for resistant TB-infected inmates, all residential buildings are in need of repairs; sanitary and hygienic conditions there are poor. They are heated by means of electronic heaters. There is a new building built at the premises of the establishment, scheduled to come into service in 2012. Despite recent repair works, sanitary and hygienic conditions in the shower room of the residential building for resistant TB-infected inmates are poor.

### ***Gldani N18 Establishment***

On a positive note, quarantine cells at the establishment N8 underwent cosmetic repairs in January 2012 – thick mattresses were provided for beds, water system was renovated, cells were furnished with new tables, chairs and bunk-beds (four bunk-beds per cell). Three new quarantine rooms were added.

### ***Rustavi N16 Establishment***

Some of Public Defender's recommendations with regard to the establishment have been fulfilled – the building where quarantine and solitary confinement cells are has been renovated. There used to be complete anti-sanitary and inadequate conditions in these cells throughout past years.

Buildings A and B have adequate infrastructure and cells holding 6 inmates. As for the building C, there are barrack-type cells with the capacity of 50-52 inmates each and some other cells with the capacity of inmates ranging from 14 to 40, which certainly fails to ensure adequate conditions of placement. Generally, most of the cells in the noted building are in need of renovation. Building C does not have a stadium.

### ***Tbilisi N7 Establishment***

Most of the cells in the establishment are in need of repair works. The key problem at the establishment is inadequate natural lighting and air conditioning of cells, which is particularly true for 1<sup>st</sup> and 2<sup>nd</sup> floors.



Therefore, small windows located close to the ceiling, facing the year, are covered with several layers of grating.

It is noteworthy that 12-13 sq.m. walking areas (yards) at the establishment have not been furnished with stools or any other equipment. Due to the size of these areas, inmates' right to walk has not been adequately secured.

**RECOMMENDATION FOR THE MINISTER OF CORRECTIONS  
AND LEGAL ASSISTANCE OF GEORGIA:**

- **Ensure due renovation of all aforementioned establishment, liquidation of the so-called barrack-style system and move to the system of cells;**
- **Ensure adequate natural and artificial lighting, air conditioning and heating in all cells.**

***Personal Hygiene***

Both according to international standards as well as under the national legislation, prisoners must be provided with conditions to protect observe personal hygiene. Under subparagraph "a.a" of Article 14 of the Code of Imprisonment, a defendant and a convict have the right to be provided with personal hygiene. Under Article 21 of the same law, an accused/convict shall have an opportunity to satisfy his/her natural physiological needs and exercise his/her personal hygiene without abuse of honor and human dignity."

"As a rule, an accused/convict shall be provided an opportunity of shower twice a week and barber service at least once a month..."

Despite the legal requirement, none of the closed establishments allow prisoners and convicts to have a shower once a week. At Tbilisi N8 establishment, prisoners take showers once a week but they also report that they only have maximum of 10 minutes for a shower. As for semi-open establishments, the situation is more or less improved by having showers in buildings or yards. According to some of the convicts serving time in the so-called "old zone" of the penitentiary establishment, they can bathe every 10-15 days. Some of them do not perceive taking shower as a problem since shower room is located in the yard of the establishment and they can shower as they wish; however, during scheduled monitoring, the preventive group found that the door to the shower room located in the yard was closed and it took 15-20 minutes to get the key.

As for the barber service, prisoners cut each other's hair or a convict who works at the establishment's support unit also takes up the function of a barber.

As it was noted a number of times, toilets in cells of the establishment N1 are semi-open, which fails to live up to any standards. Cells in the establishment N6 have isolated toilets; however, height of toilet doors fails to ensure complete isolation.

Under para. 3 of Article 22 of the Code of Imprisonment, an accused/convict shall have a bed and bed linen for personal use, which shall be delivered to him/her clean and undamaged. The administration of establishment must provide cleanness of the bed linen. The monitoring revealed that prisoners receive linen only upon their admission to the establishment. Linens are systematically changed only by the administration of the establishment N8, if wished by prisoners. According to prisoners at N8 establishment, they prefer to wash themselves their linen that they have purchased at their own expense as they allege that the administration fails to give them back their linen after it has been washed.

***Right enjoy fresh air outside***

Under subparagraph "g", Article 14 of the Code of Imprisonment, a defendant/convict has the right to walk in fresh air for at least one hour a day".

Despite the stipulation, walks at N8 Gldani establishment are usually 20-25 minutes long and 25-39 minutes long at N7 establishment<sup>16</sup>.

In a number of his parliamentary report, the Public Defender provided a recommendation to allow pris-

<sup>16</sup> With an only exception of prisoners held alone in cells. They are allowed to have a one-hour walk outside;

oners in all closed penitentiary establishments to take a one-hour walk in fresh air every day, including on the weekends, which is not practiced in any of the closed establishments.

The CPT recommends that to ensure that all categories of prisoners – persons remanded in custody as well as convicts - are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature<sup>17</sup>.

At some of the semi-open establishments prisoners have only 4-6 hours outside their cells (e.g. Tbilisi N12 and Ksani N15 (new building) establishments). Rustavi N16 penitentiary establishment is a semi-open and closed establishment for deprivation of liberty; however, on Sundays residential buildings are closed and convicts have no opportunity to enjoy fresh air outside. At the penitentiary establishment N5 for women, building A, convicts have only 6 hours outside to enjoy fresh air.

With its Order N97, dated May 30, 2011, the Minister of Corrections and Legal Assistance of Georgia adopted *regulations for establishments for imprisonment, deprivation of liberty, mixed-type of defendants and convicts, medical establishments for defendants and convicts and medical establishments for convicts infected with tuberculosis*. Under paragraph 1, Article 29 of the Order, “a defendant shall walk outside during daytime. Walks are only taken in a yard. Yards will be furnished with benches and shelters from rain. While walking, juveniles will be able to exercise and play sports games.” It is noteworthy that none of the penitentiary establishments have been provided with such yards in compliance with the aforementioned stipulation. Same is true for closed establishments and therefore, prisoners have to spend their time for walk standing on their feet. Therefore, they frequently refused to take walks or get back to their cells soon. Prisoners at N18 medical establishment frequently complain that they can’t exercise their right to walk since the yard has not been properly furnished. Some prisoners report that it is rather difficult for them to stay standing and since there are no benches in the yard, they refrain from going outside for a walk. Prisoners find it difficult to go outside for fresh air in rainy weather and particularly in heat since basically yards none of the establishments have shelters from rain and rays of sun.

Despite a number of recommendations from public defender, the issue has not yet been addressed. Regulations for prisons<sup>18</sup> adopted under 2011 order of the Minister of Corrections and Legal Assistance envision furnishing of yards but in practice none of the requirements were fulfilled by any of the establishments.

#### **RECOMMENDATION FOR THE MINISTER OF CORRECTIONS AND LEGAL ASSISTANCE:**

**Make corresponding amendments in May 30, 2011 order N97 for it to lay out minimum standards for furnishing all types of penitentiary establishments in compliance with the CPT recommendations.**

#### **RECOMMENDATION FOR THE HEAD OF THE PENITENTIARY DEPARTMENT**

- **ensure that any prisoner has access to shower twice a week;**
- **ensure that inmates of all penitentiary establishments are able to spend 8 hours or more enjoying fresh air outside their cells;**
- **ensure daily walk for the duration of one hour for all prisoners at closed penitentiary establishments, including on weekends;**
- **ensure benches and exercise facilities in yards and furnish them in accordance with climatic conditions**

<sup>17</sup> Visit in Georgia on February 5015, 2010 (paragraph 82)

<sup>18</sup> May 30, 2011 order N97 of the Minister of Corrections and Legal Assistance of Georgia adopting regulations for establishments for imprisonment, deprivation of liberty, mixed-type of defendants and convicts, medical establishments for defendants and convicts and medical establishments for convicts infected with tuberculosis, Annex 1, Regulations for a prison establishment

### **Contact with Outside World**

#### **Short-Term Appointment:**

Except for juvenile halls, appointments at all establishments are held in a room with a glass divider, where prisoners lack an opportunity of any physical contact with family members. In some cases, the dividing glass has a metal grating on both sides that does not allow visitors to take a decent look at inmate they are meeting with. The CPT recommended that conditions in the visiting facilities at the penitentiary establishments visited be reviewed so as to allow prisoners to receive visits under less restrictive conditions, based on an individual risk assessment. "The CPT accepts that in certain cases it may be justified, for security-related reasons or to protect the legitimate interests of an investigation, to prevent physical contact between prisoners and their relatives. However, open visits should be the rule and closed visits the exception, for all legal categories of prisoners".<sup>19</sup>

Under paragraph 7, Article 17 of the Code of Imprisonment of Georgia, duration of a short-term appointment may range from one to two hours. Prisoners report that there is an inconsistent practice at various establishments; for instance, appointments at the establishment N8 last 40-45 minutes.

#### **Long-term Appointments:**

Amendment to the Code of Imprisonment entitling some prisoners to the right of a long-term appointment is a positive step. To this end, there were rooms similar to hotel were built at Rustavi N6, N16, N17 establishments and the establishment for juveniles N11. In 2011 total of 3369 prisoners were able to exercise this right. There are no facilities for long-term appointments at establishments N15 and N5.

Nevertheless, convicts that are in most need for a additional means of contact with their families due to the measure of punishment that they have been sentenced to lack the right to long term appointments. Under paragraph 6, Article 17<sup>2</sup> of the Code of Imprisonment of Georgia, "a convict serving time at a closed establishment for deprivation of liberty is not entitled to a long-term appointment ,except for convicts serving life sentence as well as convicts under a quarantine, have been imposed to disciplinary punishment or/and have been sentenced to administrative imprisonment".

A long-term appointment first and foremost, serves as the best way to re-socialize and keep close contact with relatives, which is particularly necessary for convicts serving time at closed establishments. Therefore, the Public Defender believes that subsequent amendments must be made to the Code of Imprisonment so as to convicts serving time at closed establishments are also entitled to the right of an appointment. The amendment will be another step forward, promoting re-socialization of convicts.

#### **Video Appointment:**

Another positive step is granting the right of video appointment to prisoners. Under Article 17<sup>1</sup> of the Code of Imprisonment<sup>20</sup>, "convicts serving time at an establishment for deprivation of liberty, except for individuals who have been convicted for a particularly dangerous crime and those envisaged by subparagraph "f", paragraph 1 of Article 50 of this Code, have the right to a video appointment (direct sound and visual TV conference) with any individual".

During a reporting period, facilities for video appointments were in service at the establishment for juveniles N11 and Ksani N11 establishment. Throughout 2011 total of 517 convicts were able to realize their right to video appointment, including 13 convicts at N11 establishment and 504 convicts at N15 establishment.

Similar to long-term appointments, granting the right to video-appointments to all categories of convicts would have been a positive step and would have greatly contributed to re-socialization of convicts; moreover, not only family but friends and relatives as well are able to use video appointments. The stipulation of the Code of Imprisonment prohibiting video-appointments to certain category of convicts serves as an additional punishment and is thus unjustified since any prohibition and limitation must be decided case-by-case basis and be duly substantiated for any individual case.

<sup>19</sup> Visit in Georgia on March 21-April 2, 1007, paragraph 91

<sup>20</sup> has been in effect since January 1, 2011

**RECOMMENDATION FOR PARLIAMENT OF GEORGIA**

- **Make corresponding amendments and supplements to the Code of Imprisonment of Georgia so as to ensure right of all categories of convicts to long-term appointments;**
- **Make corresponding amendments and supplements to the Code of Imprisonment so as to ensure right of all categories of convicts to video appointments,**

**RECOMMENDATION FOR THE MINISTER OF CORRECTIONS AND LEGAL ASSISTANCE OF GEORGIA:**

**build facilities for long-term appointments at Ksani N15 establishment and the establishment for women N5;**

**RECOMMENDATIONS FOR THE CHAIRMAN OF THE PENITENTIARY DEPARTMENT:**

- **Ensure short-term appointments without a glass divider or a metal grating; all exceptions must be substantiated on case by case basis, founded on individual circumstances or personal characteristics of a convict (a visitor);**
- **Strictly control regulation of appointment durations in compliance with law at all establishments**

***Telephone Conversations:***

Under the Code of Imprisonment, convicts at semi-open establishments have the right to three telephone conversations per month at his/her own expense, each with a duration of 15 minutes or less; convicts at close establishments have the right to 2 telephone conversations per month, each with a duration of 15 minutes or less.

Nevertheless, prisoners at Gldani N8 establishment have the right to two telephone conversations per month, directed to a single telephone number and for the duration of 3-5 minutes.

With new telephone cards convicts are able to have a telephone conversation for the duration of 15 minutes by making calls to only two numbers. If a convict wants to make several calls, s/he has to purchase several phone cards at an additional cost. At some establishments convicts are able to make calls to three different numbers by using the same card.

**RECOMMENDATION OF THE PENITENTIARY DEPARTMENT:**

- **Ensure full realization of the right of all prisoners to telephone conversations, including by taking into account the interest of individuals whose relatives are abroad;**
- **Ensure production of standard, multiple-use telephone cards for convicts**

***Access to Press, TV and Radio Broadcasting:***

According to the European Prison Rules, “prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case”.<sup>21</sup>

A number of Public Defender’s reports highlights absence of TV sets at closed establishments (except for Ksani N15 establishment, where all closed cells have TV sets). In view of the fact that prisoners spend 23 hours a day or more in their cells and are not engaged in any activities, absence of a TV set is particularly unacceptable. The Public Defender remained hopeful that coming into force of the new Code of Imprisonment, which generally allows for TV sets, would have had a positive impact on the situation; however, the new regulation has not been translated into practice since MCLA believes that TV sets are unnecessary luxury for prisoners.

<sup>21</sup> Principle 24.10

At Rustavi N6 establishment (only convicts serving life imprisonment have the right to TV sets), Gldani N8 establishment and the medical establishment for defendants and prisoners TV sets are prohibited. Instead of TV programs, prisoners at Tbilisi N7 establishment are watching one and the same recording on DVDs.

In its report the CPT<sup>22</sup> recommended the Georgian authorities to allow inmates at Prison N8 in Gldani to have TV sets in their cells<sup>23</sup>; however, similar to the Public Defender's recommendation, the CPT recommendation was also disregarded by the MCLA.

Access to press remains to be a problem in almost all penitentiary establishments. Newspaper *Kviris Palitra*, crossword puzzles and magazines *Sarke*, *Tbiliselebi*, *Gza* and *Reitingi* were the only press periodically available at shops of penitentiary establishments during the reporting period. Russian magazines and crossword puzzles were also available in the shop of Gldani N8 facility for purchase. During the monitoring, The Public Defender of Georgia provided recommendations about availability of press at penitentiary establishments in his parliamentary reports. Nevertheless, sending in printed media in the form of a parcel was prohibited at almost all penitentiary establishments. Furthermore, press is no longer sold in shops of the establishments.

According to the information posted on MCLA's official web-site<sup>24</sup>, "a memorandum of understanding was signed with the Georgian Post on 14 November 2011, under which the Georgian penitentiary system embraced yet another service as part of the ongoing penitentiary reforms. The Georgian Post now offers special discount rates for sending parcels to pre-trial and convicted inmates from any region of Georgia. The new service simplified the parcel delivery procedures saving many families the extra cost involved in this process. A list of permitted items to send to people in prison is visibly displayed in every postal office of Georgia"

According to prisoners, social service employees informed about the new service and told them that sending newspapers by means of post deliveries were also allowed; however, as prisoners report, their family members are verbally informed at post office that sending in of "newspapers of political content" is prohibited. This issue needs to be looked into comprehensively.

Prisoners are allowed to have written correspondence with their family members and prisoners at other penitentiary establishments. They are also allowed to send letters abroad but due to the (GEL 84) they frequently refrain from using the service, even when they need to.

#### RECOMMENDATION FOR THE MINISTER OF CORRECTIONS, PROBATION AND LEGAL ASSISTANCE:

- **Allow inmates of all penitentiary establishments to have TV sets and receive TV broadcasting, notwithstanding type of a penitentiary establishment;**
- **Allow full access to print media in all penitentiary establishments by means of parcels as well as shops and wrappers.**

#### **Parcels:**

Under subparagraph "a.e", paragraph 1, Article 14 of the Code of Imprisonment, a convict/defendant has the right to send and receive parcels. Under paragraph 6, Article 23 of the same law, "At the consent of the Chairman of the Imprisonment and Custodial Department an accused/convict shall have the right to receive additional food and personal items in a form of postal packets".

The May 2, 2012 order of the Minister of Corrections and Legal Assistance of Georgia N32 on *Adoption of Regulations of Establishments for Imprisonment, Deprivation of Liberty, Mixed Type of Defendants and Convicts, Medical Establishments for Defendants and Convicts and Medical Establishments for Convicts Infected with Tuberculosis* amended the May 30, 2011 order N97 of the Minister of Corrections and Legal Assistance of Georgia, laying out the list of essential goods that defendants and convicts have the right to

<sup>22</sup> This recommendations was made for the penitentiary establishment N8 visited by the CPT; however, it applied to all closed penitentiary establishments

<sup>23</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 82

<sup>24</sup> [http://www.mcla.gov.ge/index.php?action=page&p\\_id=670&lang=geo](http://www.mcla.gov.ge/index.php?action=page&p_id=670&lang=geo)

receive by a parcel. Only certain kind of foodstuff, drinks, clothes, linen, hygiene items, certain books and other goods are allowed.

The monitoring group has observed that throughout recent years the Penitentiary Department has been gradually reducing the list of items and produces that can be received in a parcel. Purpose of some of the prohibitions makes no sense. For instance, it is peculiar that while lemons are allowed, other types of citrus fruit – oranges and grapefruit is prohibited. Penitentiary establishment shops are selling honey manufactured in factories, which, according to most of prisoners, is of poor quality and not organic.

As for clothes, it is peculiar that sending jeans, Bermuda pants and shorts is prohibited, which further deteriorates the condition that prisoners are in during summer heat. Under the very same order, essential hygiene items for women are allowed exclusively at the establishment for women N5. The order does not envisage needs of women prisoners who are serving time at other penitentiary establishments.

Furthermore, it is peculiar that prisoners have the right to receive maximum 2 photos. Goal of the prohibition is vague.

Additionally, receiving any kind of clothes or shoes whose inspection requires even the slightest of work by staff is also prohibited: warm coats, thick sole shoes, clothes with lining, jeans, etc. Therefore, frequently clothes of prisoners are inadequate for the weather condition, which is particularly striking in cold winter.

#### RECOMMENDATION FOR THE CHAIRPERSON OF THE PENITENTIARY DEPARTMENT:

- ensure issuance of a new normative act that would tailor the list of commodities allowed to be received in a parcel not only to regime and safety but actual needs of prisoners, and allow seasonal fruit, clothes and essential items of hygiene as well as photos within a reasonable limit.

#### **Complaints and Applications:**

Complaint boxes are installed in all Penitentiary Departments; however, similar to previous years, sending complaints and applications by prisoners to addressees remains to be a problem at certain establishments. Under paragraph 8, Article 16 of the Code of Imprisonment, *“the Administration is prohibited to stop or inspect an application, demand and complaint sent by an accused/convict in the name of the President, Chairman of the Parliament, member of the Parliament, Court, European Court of Human Rights, international organization established based on human rights international treaty ratified by Georgia, the Ministry of Georgia, Department, Public Defender of Georgia, lawyer or prosecutor”*.

Reports of public defender’s National Preventive Mechanism have highlighted violations of prisoners’ right to correspondence on number occasions; however, the problem remains unsolved. Throughout 2011 there were more than 1000 applications and complaints filed by prisoners and their family/lawyers with the department of prevention and monitoring, office of the public defender of Georgia. Most of them had been filed by lawyers and family members of prisoners or personally handed by prisoners to the monitoring group. Administration of penitentiary establishments tries to send to various agencies as few applications and complaints as possible.

Furthermore, even in rare cases when prisoners are allowed to send their applications, these applications are frequently enclosed with a cover page signed by the director, demonstrating that confidentiality is hardly protected (e.g. Tbilisi N1 establishment).

#### RECOMMENDATION FOR THE PENITENTIARY DEPARTMENT:

- Ensure realization of the right that all prisoners are legally entitled to as well as sending of their applications, complaints and various other correspondences to addressees in a timely manner.
- Ensure confidentiality of prisoners’ correspondence as prescribed by law.

## Discipline and Punishment

### *Imposing disciplinary punishments and administrative sanctions*

Under the European Prison Rules, “Disciplinary procedures shall be mechanisms of last resort”<sup>25</sup>. “Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners”<sup>26</sup>. “The severity of any punishment shall be proportionate to the offence”<sup>27</sup>. “Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited”<sup>28</sup>. Furthermore, Punishment shall not include a total prohibition on family contact.<sup>29</sup>

With its January 15, 2011 and February 27, 2012 letters N10/8/2-9487 and N10/8/2-426 correspondingly, the Penitentiary Department responded that in reporting period in 2011 total of 46 convicts were sentenced to administrative imprisonment for gross violation of internal regulations<sup>30</sup>, whereas total of 2856 convicts were placed in solitary confinement. According to the very same letters, none of the individuals ordered to solitary confinement had appealed the director’s decision<sup>31</sup>. When the monitoring group asked about the reason why they decided against appealing, all convicts responded that they saw no point in appealing.

It is noteworthy that the number of punished prisoners was actually more since administration of some of the establishments (Gldani N8 establishment, for instance) resorted to informal and unlawful mechanisms (placement in quarantine) to avoid formal documenting of punishment.

Establishments N1, N11 and N18 do not have any solitary confinement cells.

Duration of punishment for similar offences varies according to penitentiary establishments. This approach would have been positive if administrations resorted to a case by case approach, in consideration of an individual case of a convict and circumstances in which offence was committed.

The monitoring revealed that frequently disciplinary violations committed by prisoners is the result of asking for a doctor – a prisoner is forced to make noise and bang on the door; otherwise, as prisoners report, he won’t be able to see the doctor. It is particularly true for Rustavi N6 and Ksani N15 establishments.

Collective punishments are frequently applied, which is expressly prohibited by national and international standards. As we have noted above, prisoners at Gldani N8 establishment report that when of them commits an offense, all of his cell-mates are punished by taking their radio away, prohibition to take an outside walk or verbally or physically abusing them.

The CPT report clearly highlights that all types of collective punishments must be prohibited.

The CPT notes that “all disciplinary punishments should be imposed in full compliance with the relevant formal procedures”.<sup>32</sup> These procedures are laid out in details in the Code of Imprisonment of Georgia, including in para. 1 of Article 84 of the Code stipulating that “Director or designated by him/her person shall review disciplinary cases. The right to give testimony, present evidence, file motion, make statements in native language and use interpreter’s services, appeal to the resolution on imposition of the disciplinary sanction, and shall be explained to an accused/convict. An accused/convict shall provide explanations on the violation concerned, and in case of refusal to do so, the relevant minutes shall be drawn. The person in question, a witness and a victim shall have a right to submit written testimonies”. Under para. 7 of the same Article, An accused/convict has a right to be represented by a lawyer at the hearing being held on sanctions described in the Article 82 paragraph 1 sub-paragraphs “f” and “g”. Before commencement of

<sup>25</sup> Principle 56.1

<sup>26</sup> Principle 56.2

<sup>27</sup> Principle 60.2

<sup>28</sup> Principle 60.3

<sup>29</sup> Principle 60.4

<sup>30</sup> See *Ill-Treatment* above, discussing circumstances of simultaneously sentencing 26 convicts in Kutaisi N2 establishment to administrative imprisonment. Further, this chapter also describes cases of convicts Olia M. and Giorgi O. in frames of a faulty practice of administrative imprisonment.

<sup>31</sup> This information is requested by the Prevention and Monitoring Department with Public Defender’s Office every six months from every agency.

<sup>32</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par.114;

the hearing, an accused/convict shall be informed about the right to be represented by the lawyer, which, in case of the consent, shall be performed within 3 hours. If the lawyer fails to appear within established time limits, the public lawyer shall be appointed. If an accused/convict refuses to attend the hearing, the written document reflecting such refusal shall be developed and signed by an accused/convict.

Nevertheless, in certain cases (e.g. Rustavi N6 establishment), convicts held in solitary confinement don't have information about duration of their punishment, which is a gross violation. Administration has prisoners sign a resolution before they are placed in solitary confinement, without letting them familiarize with contents. Therefore, some convicts refuse to sign the document.

Under para. 2 of Article 88 of the Code of Imprisonment, "an accused/convict, placed in the solitary confinement cell shall be deprived of the right to short and long-term appointments, telephone conversations, purchase of food". The CPT recommended the Georgian authorities to "take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts".<sup>33</sup>

The Public Defender believes that right to contact with outside world must be viewed as their inalienable right and its prohibition may not be used as a form of punishment. Further, by increasing incentives and using punishment mechanisms in an objective manner, it is possible to keep stability in prison, whereas unfair and unlawful treatment of prisoners may trigger a clash of prisoners with administration or, in an event of collective punishments – with each other, which may result in a grave and unacceptable result.

#### **RECOMMENDATION FOR PARLIAMENT OF GEORGIA:**

**Amend the Code of Imprisonment so as to ensure contact of individuals in solitary confinement with outside world.**

#### **RECOMMENDATION FOR THE CHAIRPERSON OF THE PENITENTIARY DEPARTMENT:**

- **Pay a particular attention to informal methods of punishment and identification and elimination of collective punishments in the process of exercising his official control.**
- **Allow all convicts to familiarize with decisions about punishment (director's resolution) upon their placement in solitary confinement and inform them of mechanisms and terms for appealing.**

#### ***Logbooks for registering individuals placed in solitary confinement***

Thorough and regular maintenance of solitary confinement logbooks is imperative for monitoring prisoners' disciplinary punishment trends, violations and existing practice. It is important for the logbook to indicate not only duration of punishments, dates convicts have been placed and released but also an individual type of offence committed by prisoners concerned.

The inspection revealed that at a number of establishments logbooks are maintained in an incomplete and inadequate manner. More specifically, some indicate only the type of punishment – "violated internal regulations of the establishment", "violated regime requirements", "violated regime of the establishment" (e.g. Rustavi N7 and N12 establishments), convict has been placed "under the order of the director of the establishment N..." (Rustavi N16 establishment), whereas they fail to indicate individual actions committed by the prisoner concerned. Such logbooks lack information and make it impossible to determine the specific reason for placement of a prisoner in solitary confinement.

Indication of the aforementioned information is of no use for providing complete information about a specific type of violation since it is already clear that prisoners are placed in solitary confinement for violation of regime requirements or internal regulations or under a resolution of penitentiary establishment's director. In certain cases corresponding articles of the Code of Imprisonment are cited but it says nothing about individual violations or part of a logbook indicates concrete violations while the other part contains general comments (e.g. Rustavi N7 establishment).

<sup>33</sup> Ibid, para. 115



The monitoring revealed that “a logbook for registration of individuals held in solitary confinement” is not maintained by Ksani N13 establishment but rather, the information is obtained from a normative logbook (for resolutions) of the Penitentiary Department which does not contain entries about violations.

The fact that some establishments maintain concrete, clear and unambiguous reports about violations committed is a positive step. These establishments are Rustavi N6, N5 establishment for women and Tbilisi N9 and Gldani N8 establishments. However, recordings made in the logbook of the establishment N8 demonstrate that the most common violation is “making noise in a cell”. As it was noted previously, the monitoring revealed that the administration of the establishment has a very peculiar perception of noise and deems even the slightest increase in voice timbre, listening to radio at a regular volume, etc. as noise. Therefore, there is a one-step distance between a convict and violation of the regime requirements at the establishment.

At the medical establishment for convicts and defendants N8, “reprimands” were used as a form of punishment during the reporting period. In several instances, offenders were sentenced to administrative imprisonment for the duration of 20 or 30 days and nights.

There were several instances of punishment by imposing disciplinary sanctions at the establishment N12 where throughout 2011 there were total of 66 convicts placed in a solitary confinement, including 20 in the second half of 2011.

Throughout 2011 total of 8 convicts were placed in solitary confinement in the establishment N19.

Based on the 2011 data, recordings in logbooks maintained by establishments, as well as interviews, it is safe to conclude that individual approach introduced in Rustavi N17 establishment with regard to solitary confinement is a positive step – gravity of offense and individual characteristics of an offender are taken into account in every individual case. Other establishments should follow the example of Rustavi N17 prison.

There is a positive trend at Rustavi N6 establishment as well – early release from solitary confinement based on medical report.

A positive trend was revealed at Rustavi N6 establishment in during the second half of 2011: total of 15 prisoners were granted early release based on medical report, which amounts to 13,3% of total number of convicts held in solitary confinement (113 people).

Uniform punishments are applied at Rustavi N16 establishment, the establishment for women N5 and Gldani N8 establishment. Duration of solitary confinement usually ranges from 5, 10 or 20 days and nights.

The most common types of offence that result in disciplinary punishment of prisoners are: noise, shouting at one another, fighting, verbally insulting staff or other inmate, disobeying to staff orders, being late or absent when names are called out for inspection, littering the territory.

Further, it is noteworthy that in the second half of 2011 instances of punishment increased at certain establishments in comparison with the first half of 2011. It is particularly true for larger establishments, such as Ksani N13 (from 363 to 502), Tbilisi N8 (from 226 to 303) and Rustavi N6 (from 40 to 113) establishments.

**RECOMMENDATION FOR THE CHAIRPERSON OF THE  
PENITENTIARY DEPARTMENT:**

**Administrations of penitentiary establishments must be ordered to maintain records of prisoners held in solitary confinement in a uniform manner by providing factual description of offence, dating and numerating logbooks.**

**RECOMMENDATION FOR THE ADMINISTRATION  
OF KSANI N15 ESTABLISHMENT:**

**Maintain a logbook for registering/recording information about individuals held in solitary confinement.**

### ***Conditions in Solitary Confinement Cells***

Under Article 88 of the Code of Imprisonment, convicts/defendants in solitary confinement have the right to a 1-hour walk outside every day. Further, “the solitary confinement cell shall be lightened, provided with ventilation; the accused/convict shall have a chair and a bed. He/she shall be entitled to receiving reading materials if so requested”.

### ***Establishment for women N5***

There are two solitary confinement cells in the establishment with 6 beds in each. During the monitoring there were two prisoners at the solitary establishment. Area of each cell in 18.15 square km. Beds have mattresses, beddings and linens. Cells have both natural and artificial lighting as well as central system for heating, natural and central system for air conditioning. There are isolated toilets in solitary confinement cells. Toilets are air conditioned naturally and by means of a central system. The lighting is artificial and adequate. There is a washing stand in the toilet. Sanitary and hygienic conditions of the cells are adequate.

During an interview with a person held in solitary confinement we found out that he is allowed to have a 1-hour walk every day, take a shower, use a library and buy print media at the shop of the establishment. According to the prisoner, he sees a doctor only when he requests to.

### ***Rustavi N6 Establishment***

There are 11 solitary confinement cells in the establishment with one bed in each. Area of each cell is 7 square meters. Beds in those cells where prisoners were held had mattresses and pillows. Each cell has two windows, each 0,5 sq. m. Windows are covered with double granting. Solitary confinement cells have sufficient lighting both by natural and artificial way, a central system of heating as well as an air conditioning system. A toilet is isolated from the cell with a wall; however, it does not have a door. There is a washing-stand in the cell; it has painted walls and ceilings and a mosaic floor.

During interviews with individuals held in solitary confinement we learned that they are not allowed to take outside walks or to use service of the shop in the establishment. The only time they receive water is when meals are distributed. They also report that they are not allowed to shower. Prisoners had access to print press. According to them, doctor examined them upon admission in solitary confinement. Prisoners in solitary confinement cells also noted that they had to take their own dishes and toilet paper from their cells.

### ***Tbilisi N7 Establishment***

There is a single 7.1. sq.m. solitary confinement cell in the establishment. During the monitoring, there were no prisoners in the cell. There is a single bunk-bed with a veneer and a mattress, a table and a chair. The cell has one 0.23 sq.m. window with double granting. Therefore, the cell has no natural lighting, while artificial lighting is inadequate. There is a central heating; air conditioning is provided by means of a vent. Toilet is isolated; there is a washing stand in the cell. Walls are painted and the floor is covered by linoleum.

### ***Gldani N8 Establishment***

There are 36 solitary confinement cells in the establishment with only 27 functioning cells. 9 solitary confinement cells lack adequate conditions for placement of prisoners due to water leaking, damp walls and ceilings that are peeling off. There are 27 folding beds in solitary confinement cells. Eight of the cells are 8.6 sq.m. while the rest 36 are 8.4 sq.m. Each cell has a 0.6 sq.m. window. A list of obligations and prohibitions for prisoners is posted on the door of each cell. Cells are provided with adequate artificial and natural lighting, heated by a central heating system and naturally air conditioned. Toilets are partly isolated and divided from cells with a 1.66 m wall.

During interviews with persons held at solitary confinement cells we found out that they are not allowed to walk outside or use service of the shop, take a shower, access library and print media. They have a cup, a bowl and a plastic spoon, and the administration provides them with soap only; they have to use news-

papers and magazines as toilet paper. During the summer monitoring, one of the individuals in solitary confinement noted that he had not been informed about the duration of his solitary confinement. He also said that he was afraid he would be placed in quarantine again after his release from solitary confinement. The prisoner also noted that staff beat prisoners for any noise.

### ***Tbilisi N12 Establishment***

There are two solitary confinement cells at the establishment; one with area of 18 sq.m and another - 15 sq.m. There are two bunk-beds in each cell, with a foam sponge mattress and bedding, as well as one table and one chair. There are no artificial AS systems in cells and they are not air conditioned naturally either since windows may not be opened. Floor is concrete, ceilings and walls are painted; toilet is isolated in part with a 1.6 m wall. During the monitoring there were no prisoners in the cell.

### ***Ksani N15 Establishment***

There are 16 solitary confinement cells in the establishment; fifteen of them are functioning and one is used as a storage room. 10 out of the fifteen cells have the capacity of one prisoner each and the remaining five have the capacity of two people each. There are a table, a chair and a dresser in these cells. Each cell has the earea of 18 sq.m. and regular beds with mattresses. All cells have a 0.5 sq.m. window. Adequate lighting is provided both by artificial as well as natural means; heating is provided by means of a central heating system, air conditioning – by means of a vent. Toilets are isolated in part. There is a tap/washing stand in each cell. Cells have mosaic floors and painted ceilings and walls. General sanitary and hygienic conditions of cells are adequate.

During an interview with prisoners in solitary confinement, we found out that they are not allowed to take walks outside or take showers. Library is not available only for prisoners in solitary confinement. They were allowed to read only prayers and psalms; they had not requested access to print media. Prisoners in solitary confinement clarify that doctor visited them on a daily basis. The administration provides them with soap and a toilet paper upon admission.

### ***Rustavi N16 Establishment***

There are 9 solitary confinement cells in the establishment (with capacity ranging from 4 to 10 people). Cells with the capacity of 4 people are 14.6 sq.m. each and cells with the capacity of 10 people are 19.45 sq.m. each. Cells have adequate artificial and natural lighting, central system of heating and an air conditioner installed on the wall. Toilet is isolated in part with a 1.46m wall. There is a washing stand in the toilet. Sanitary and hygienic condition of cells is adequate. There is a table, a chair and a drawer is adequate. There are mattresses, beddings and pillows on beds. Prisoners in solitary confinement have a shampoo, soap, a toilet paper and a sponge for washing dishes.

During the interview with prisoners in solitary confinement, we found out that some of them were unaware of the duration of their confinement.

### ***Rustavi N17 Establishment***

There are 16 solitary confinement cells in the establishment with only 8 functioning cells, including 1 used as a quarantine cell and the remaining seven used as cells for isolation.

<b>№</b>	<b>Cell №</b>	<b>Number of Beds</b>	<b>Area</b>
<b>1</b>	N6	4	16.65sq.m.
<b>2</b>	N8	8	19.24sq.m.
<b>3</b>	N4	4	17sq.m.

Beds have mattresses; all cells have a 0.72 sq.m. window, adequate artificial and natural lighting, central heating, air conditioning naturally and by central system, and taps. Toilets are isolated. Cells are in need of repair works.

During interviews with prisoners in Karzer we found out that they are not allowed to take walks outside, to use service of the shop or to take a shower. They are supplied with water according to a fixed schedule and have no access to library or press. They are not visited by a doctor on a daily basis.

### ***Medical Establishment for TB-Infected Convicts N19***

There are only 9 solitary cells in the establishment with only 5 cells functioning. Three of the five cells are used for quarantine. During the monitoring, there were 20 prisoners in solitary confinement, including 1 by self-isolation. The rest had been brought in from various establishments and were held in quarantine cells before distribution.

There are total of 12 single beds in solitary confinement cells. Each has a 0.3 sq.m. window with no window-glass, and artificial and natural lighting; however, due to the small size of windows natural lighting is inadequate. There are no central heating or air conditioning systems. Toilet is isolated but conditions are anti-sanitary, there is no toilet-flusher. Water is supplied according to a fixed schedule. Toilets have washing stands that are out of order. Walls and ceilings are damp and peeling off. Concrete floor has been thrown out in chunks. The administration notes that solitary confinement cells are no longer used, which is also confirmed by convicts as well as the logbook of persons held in solitary confinements cells of the establishment N19.

#### **RECOMMENDATION FOR THE MINISTER OF JUSTICE, PROBATION AND LEGAL ASSISTANCE OF GEORGIA:**

- **Ensure all rights that prisoners in solitary confinement are legally entitled to, including the right to walk, bathe, buy items of hygiene and access library.**
- **Renovate solitary confinement cells in establishments N12, N17 and N19.**

### **Various Matters of Interest for the National Preventive Mechanism**

#### ***Personnel of Penitentiary Establishment***

Under Standard Minimum Rules for the Treatment of Prisoners<sup>34</sup>, “The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends”<sup>35</sup>.

For normal functioning of penitentiary system, for successful re-socialization of prisoners and in order for imprisonment measures applied against offenders to justify ends of punishment, in addition to other components, personnel of penitentiary establishments, their professionalism, personal characteristics and their attitude towards individuals deprived of liberty must be paid particular attention. The prison personnel must be aware of Georgian legislation and international standards.

Personnel of penitentiary establishments must be given clear and comprehensible instructions about scope of their competence and how to act upon a complicated incident as well as how to behave under certain specific circumstances. Frequently, administration “justifies” facts of ill-treatment of prisoners by rude and insulting actions on the end of prisoners. It means that personnel of the penitentiary system lack professional training to be ready to handle similar situations and respond to aggression or provocation by a prisoner in an adequate manner. Further, it goes without saying that in certain instances violations by prisoners are deliberately or accidentally triggered by rude and degrading treatment of personnel, followed by punishment of prisoners involved while personnel who also committed a violation get away without any liability. Clearly, identification of facts of ill-treatment and taking adequate further actions as well as dismissing personnel involved from the system due to their misconduct will have a positive impact on correct and adequate functioning of the system and will make the ongoing reforms more effective and worthwhile. Current approach fails to live up to the international and European standards of treatment of prisoners. Under the existing circumstances, it is hard to discuss full elimination of torture and inhuman treatment.

<sup>34</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

<sup>35</sup> § 46;

Effective and proper management of the penitentiary system depends on prison personnel to a certain extent. Qualified, experienced and duly trained personnel are one of the important factors for elimination of torture and inhumane treatment at penitentiary establishments. Regrettably, the penitentiary system has not yet reached the point where it is clear that prison personnel who is in day to day contact with prisoners requires specific training and education. A number of facts that we witnessed during the monitoring reveal that despite the efforts of the training center and trainings that have been organized, goals have not yet been achieved. It is also noteworthy that recruitment is further complicated by hard working conditions of penitentiary system personnel: low salaries, working frequent shifts, amortized technical equipment and lack of social guarantees. Administration of penitentiary establishments frequently highlight that they lack employees and therefore, they are unable to ensure realization of rights that prisoners are entitled under the Code of Imprisonment – taking shower twice a week and daily walks outside, for instance. This is particularly true for closed establishments. Due to the same reason, semi-open establishment of Rustavi N16 cell door is locked on Sundays.

It is imperative for MCLA to pay a particular attention to the aforementioned, since low social status and lack of material incentive discourage recruitment of qualified personnel at penitentiary establishments, which has a damaging effect on prisoners.

The Public Defender recommended recruitment of qualities personnel and improvement of their social and labor guarantees in a number of his parliamentary reports; nevertheless, despite increase of the MCLA budget, the problem remains unsolved.

During that time this report was prepared, on March 16, 2012, the MCLA presented the strategy for the development of its training center in 2012-2015, which is a positive development. Together with other issues, the strategy offers a detailed description of the teaching and training programs that employees of the MCLA, including personnel of the Penitentiary Department must undergo. The Public Defender remains hopeful that the novelty will have a positive influence on personnel of the penitentiary system.

**RECOMMENDATION FOR THE MINISTER OF CORRECTIONS  
AND LEGAL ASSISTANCE:**

**Ensure recruitment of qualified personnel, as well as provide incentives for skilled employees and improve their social and labor guarantees.**

***Admission and Placement of Prisoners***

Under the European Prison Rules<sup>36</sup>, “at admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison”.<sup>37</sup> “Prisoners shall be allowed to keep in their possession a written version of the information they are given”.<sup>38</sup>

In cells of Gldani N8 establishment obligations of only prisoners are posted, which further highlights strict regime requirements at the establishment. Prisoners are informed in written form, which is confirmed by their signatures on the list of rights and obligations included in their case files, which is only formal in nature and frequently prisoners are not allowed to have the list of their rights and obligations.

Under the European Prison Rules, “In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain: a. untried prisoners separately from sentenced prisoners”.<sup>39</sup> Paragraph 2, Article 9 of the Code of Imprisonment of Georgia stipulates the same principle. Nevertheless, defendants and convicts are place din same cells at Gldani N8 establishment.

Pre-trial imprisonment frequently means finding oneself in a new, unusual environment. Therefore, admission procedures not only must fulfill Georgian legislation but also envision due protection of human dignity, which is not usually the case in quarantine units of the establishment N8 (see *Ill-Treatment*).

<sup>36</sup> Recommendation Rec(2006)2 of the Committee of Ministers to member states

<sup>37</sup> Principle 30.1

<sup>38</sup> Principle 30.2

<sup>39</sup> Principle 18.1

Under paragraph 3, Article 46 of the Code of Imprisonment, “A convict shall serve his/her sentence in a custodial establishment located in the nearest proximity to the place of residence of his/her family members or a person with whom he/she lived, except for the cases, when the aforementioned deems impossible by reason of overcrowding of the establishment concerned. In exceptional cases a convict may be transferred to other custodial establishment due to his/her health status, personal security or/and with his/her consent”.

Frequently, prisoners and their family members apply to the Public Defender requesting assistance for placement of a convict concerned in a penitentiary establishment located in a close proximity of the place of his/her residence. Frequently prisoners residing in eastern Georgia are placed in a penitentiary establishment located in western Georgian and visa versa. Public Defender’s office has sent a number of letters to the Penitentiary Department, requesting placement of prisoners in penitentiary establishments located in a close proximity to places of their residence. During a certain period of time we received standard responses that noted that a prisoner concerned had been placed in a specific type of penitentiary establishment as prescribed by law or that the request will be into account at the time of relocation of the prisoner. Recently several requests of the Public Defender’s Office have been met and convicts have been transferred to a penitentiary establishment locate din a close proximity to the place of their residence or in a specific type of establishment as prescribed by law. The MCLA should pay more attention to compliance with the rule laid out by paragraph 3, Article 46 of the Code of Imprisonment: “A convict shall serve his/her sentence in a custodial establishment located in the nearest proximity to the place of residence of his/her family members or a person with whom he/she lived, except for the cases, when the aforementioned deems impossible by reason of overcrowding of the establishment concerned”.

#### **RECOMMENDATION FOR THE CHAIRPERSON OF THE PENITENTIARY DEPARTMENT:**

- **In the process of admission and accommodation of prisoners, particular attention must be paid to compliance with procedures prescribed by law, which will prevent violation of prisoners’ rights**
- **Provide the list of their rights and obligations in written to prisoner suppon their admission**
- **Place defendants and convicts separately at penitentiary establishments**
- **Take into account the place of residence of a convict concerned or his/her close relative in deciding to accommodate him/her**

#### ***Closed Regime of Serving Sentence***

While the law on imprisonment was in effect, maximum term holding convicts under a high security regime was one year and prisoners were illegally held under a high security regime (currently a closed regime). The Public Defender recommended elimination of the unlawful practice to the chairperson of the Penitentiary Department on a number of occasions.

Coming into force of the Code of Imprisonment<sup>40</sup> did not improve the situation but further deteriorated it – the unlawful practice that had been used for years was legalized by the Code. Under the Code there are several types of penitentiary establishments<sup>41</sup>. As a rule, a person convicted for the first time for committing particularly grave crimes of forethought and sentenced by the court to deprivation of liberty for the term of more than 10 years serve a sentence in the closed type custodial establishment.<sup>42</sup> Correspondingly, the law no longer provides for a maximum term for placement under a closed regime and the chairperson of the Penitentiary Debarment is able to decide under which regime to place a prisoner concerned, which is a step backwards since the decision is in effect for an indefinite period of time and

<sup>40</sup> October 1, 2010

<sup>41</sup> Under paragraph 2, Article 10 of the Code of Imprisonment, these are the following types of establishments for deprivation of freedom:

- a) Semi-open type penitentiary establishment;
- b) Closed type penitentiary establishment;
- c) Special custodial penitentiary for juveniles;
- d) Special custodial penitentiary for women

<sup>42</sup> Para. 1, Article 64 of the Code of Imprisonment

the Code does not provide for an obligation of its periodic revision.<sup>43</sup>

The Public Defender has noted a negative impact of placement under a closed establishment on physical and mental health of a convict on a number of occasions. The CPT recommendation also notes that a prisoner must be placed under a strict regime for the shortest term possible and his case must be reviewed at least three times a month.<sup>44</sup>

With its letter N10/8/2-9497 dated July 28, 2011, the Penitentiary Department responded that as of June 30, 2011, total of 8820 convicts had been assigned to a semi-open penitentiary establishment, 12959 convicts had been assigned to closed establishments and determination of type of punishment was pending for 617 convicts. These statistics were requested again together with other information on January 4, 2012, but with its February 27, 2012 letter of response N10/8/2-426 the Penitentiary Department never responded to the question.

Thus, as of July 27, 2011, most of convicts had been ordered to serve time at closed establishments.

The problem is further deteriorated by the fact that based on the monitoring results individuals who had not been assigned to a closed regime are mostly found at closed penitentiary establishments: most prisoners at Gldani establishments are convicts who have been assigned to a semi-open establishment both under law and the Penitentiary Department's order. Presumably the practice is encouraged by overcrowding of semi-open establishments and to tackle the problem convicts are transferred to closed establishments.

#### **RECOMMENDATION FOR THE PARLIAMENT OF GEORGIA:**

**Subsequent amendments must be made to the Code of Imprisonment, determining placement in a closed establishment as a particular measure of a limited length, based on an individual threat posed by a convict and his personal characteristics.**

#### **RECOMMENDATION FOR THE CHAIRPERSON OF THE PENITENTIARY DEPARTMENT:**

**Ensure elimination of the vicious practice of placing convicts who have been assigned to semi-open penitentiary establishments in closed establishments for serving whole or part of their sentence.**

### **Conditions for People with Special Needs at Penitentiary Establishments**

Under paragraph 5, Article 15 of the Code of Imprisonment, Pregnant and nursing women, juveniles, ill convicts, persons with obvious and identifiable disabilities and aged persons (females from 60 and males from 65) shall be provided with better living conditions compared to other accused/convicts".

On September 15, 2011, Public Defender's Office applied to the chairperson of the Penitentiary Department with a letter requesting information about how infrastructure and living conditions at penitentiary establishments are adapted to needs of persons with disabilities. With its October 27, 2011 letter N10/8/2-12887, the department informed us that infrastructure and living conditions at penitentiary establishments are not adapted to needs of persons with disabilities. As of December 31, 2011, there were total of 184 prisoners with disabilities at penitentiary establishments, including 9 women.

The monitoring revealed that despite the requirement of the law pregnant women, females from the age of 60 and males from the age of 65 are under same conditions as other convicts/defendants. Same applies to prisoners that are ill. Frequently persons with disabilities who are unable to move independently and require special care are held in ordinary establishments, reliant on care from other prisoners, including for satisfying their natural needs and exercising personal hygiene.

It is noteworthy that grades are only at the entrance of the establishment N18 and the exit of its yard; however, it is doubtful whether they are adapted to the needs of prisoners in wheelchair.

As it was noted above<sup>45</sup>, according to the ECHR case law, whenever authorities decide to place and main-

<sup>43</sup> Article 61 of the Code of Imprisonment

<sup>44</sup> Ibid, para. 132

<sup>45</sup> *Il-Treatment*, the case of Murman K.

tain a seriously ill person in detention, they must demonstrate special care in guaranteeing such conditions of detention as correspond to his special needs resulting from his illness. Failure to do so will result in violation of Article 2 (right to life) <sup>46</sup> and/or Article 3 (prohibition of torture) <sup>47</sup> of the Convention.

Consequently, all cases where people with disabilities are under an inadequate care can be viewed as a degrading and inhuman treatment.

Release from imprisonment due to health condition fall under the competence of a permanent joint commission with the MCLA and the Ministry of Labor, Health and Social Affairs (MOH) <sup>48</sup>, whereas the right to apply to the joint commission is reserved for convicts, his/her legal representative or director of a Penitentiary Department<sup>49</sup>. As far as the special preventive group is aware, directors of penitentiary establishments have never exercised this right.

As for the efficiency of the work of the commission, it needs to be examined thoroughly as a separate issue; however, it is noteworthy that the order N179-N427 fails to determine frequency of the commission's meetings or the timeframe for examining a case after application has been filed. Further, the number of complaints about inefficiency of the commission filed by convicts and their legal representatives with the Public Defender's Office is increasing.

#### **RECOMMENDATION FOR THE PENITENTIARY DEPARTMENT OF THE MCLA:**

- **Adapt an environment to needs of people with disabilities at establishments where there are such prisoners or place them in other establishment with adequate conditions.**
- **Issue corresponding instructions for directors of Penitentiary Departments in order for them to apply to the joint permanent commission of MCLA and MOH for reprieve of convicts with disabilities or their release from punishment.**

## **MONITORING OF AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA**

### **Police**

The essential role of the police is to protect public order and safety in the state. It must fulfill its legal obligations in order to prevent any unlawful actions. Further, law enforcement officers must respect and protect human dignity and human rights while carrying out their official obligations.

Forms, methods and means for carrying out activities of a police officer are determined by the Georgian legislation.

Under the law of Georgia on Police, while carrying out its tasks the police is obligated to protect legal rights of citizens and provide appropriate assistance to other governmental agencies and citizens within its competence and strictly observe norms of official ethics in relations with citizens.

Regrettably, in a number of cases human rights are violated by police officers themselves.

Under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>50</sup>, "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person".

During the monitoring, the preventive group devotes a particular attention to treatment of detainees by the police both during and after the detention.

According to written information obtained by the National Preventive Mechanism from corresponding agencies of MIA, there were total of 21603 individuals held at temporary detention isolators, including 466 individuals with bodily injuries and 71 of them, who suffered injuries during or following detention,

<sup>46</sup> Sikharulidze and Makharadze v Georgia, November 22, 2011

<sup>47</sup> see Farbtuhs v Latvia, June 6, 2005; Isayev v. Ukraine, August 28, 2009

<sup>48</sup> A joint order N179-427 of the Ministry of Corrections and Legal Assistance of Georgia and the Ministry of Labor, Health and Social Affairs on the establishment of a joint permanent commission of the Ministry of Corrections and Legal Assistance of Georgia and the Ministry of Labor, Health and Social Affairs

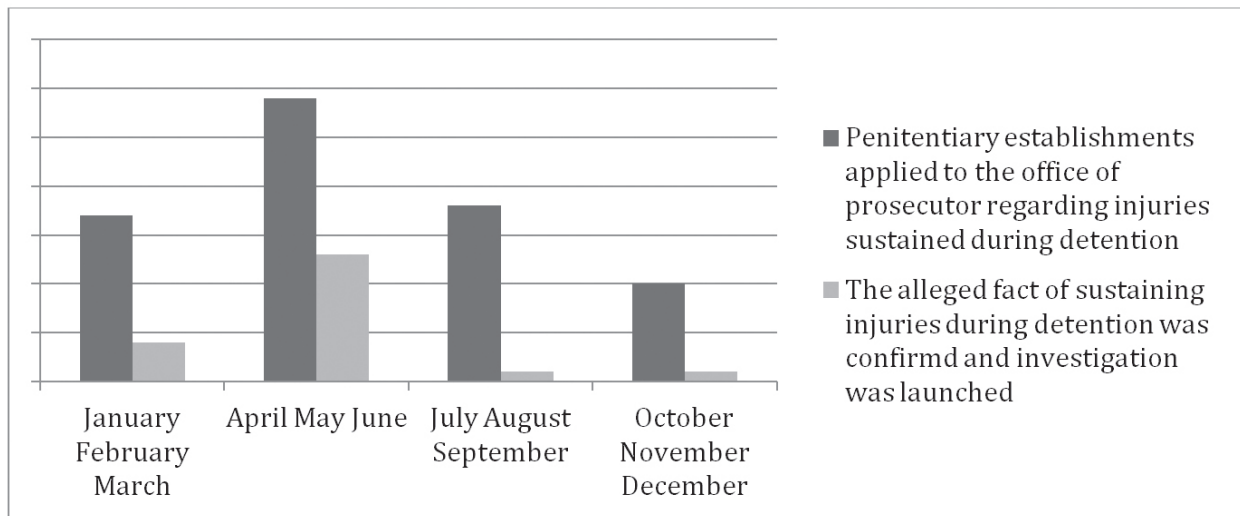
<sup>49</sup> Para 3, Article 5 of the Order

<sup>50</sup> Adopted under the UN General Assembly Resolution 43/173, dated December 9, 1988



had complaints against the police. With its letters N950480 and N73165 dated August 5, 2011 and January 18, 2012 correspondingly, the Ministry of Internal Affairs of Georgia informed the Public Defender's Office that throughout 2011 total of 19283 individuals were held at temporary detention isolators. In 2011 total of 260 individuals had bodily injuries upon admission to isolators, including 69 individuals who had complaints against police officers. In 2010 15.2% of detained individuals displayed bodily injuries, while the rate of such detainees in 2011 was 26.5%. In 2010 only 2.2% of individuals admitted with injuries filed claims, while in 2011 the rate of such detainees was 1.3%.

According to the information solicited from the Penitentiary Department, total of 977 individuals with bodily injuries were admitted to penitentiary establishments in 2011, including 74 who noted that they sustained injuries during detention. The Penitentiary Department informed corresponding regional office of the prosecutor about the allegations. Pre-trial investigation was launched into 19 cases. Rest of the prisoners did not confirm commission of any unlawful actions against them by detaining officers.



The Special Preventive Group examined reports of external injuries of detainees in all temporary detention isolators. In several instances an individual concerned did not express any complaints against the police but note that injuries were sustained during detention. Further, there were instances when an individual did not express any complaints but the degree and gravity of injuries described made us think that he had been subject to ill-treatment. In some instances individuals detained collectively had bodily injuries. Some of them stated they had suffered the injuries during detention and expressed complaints against police who subjected them to a physical abuse, while others maintained that they had sustained the injuries prior to the detention.

Members of the monitoring group visited some of the individuals with suspicious bodily injuries. Some verbally stated that police had subjected them to physical and verbal abuse but refrained from confirming these facts officially and giving a statement. Frequently individuals refer to facts of ill-treatment by the police but clarify that they did not complain about it upon admission to a temporary detention isolator or at the Penitentiary Department since they believed that it would have had a negative impact on proceedings.

## TEMPORARY DETENTION ISOLATORS UNDER THE MAIN DIVISION OF HUMAN RIGHTS PROTECTION AND MONITORING OF THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

### Treatment

We welcome the fact that similar to previous years, none of the individuals in temporary detention isolators expressed any complaints about any kind of ill-treatment by isolator personnel. Same is true for prisoners held at penitentiary establishments. As it was noted above, they mostly allege violence by the police and also note that isolator personnel treat them in a corrective manner and take their needs into account as much as possible.

Several instances of ill-treatment are a regrettable exception where individuals detained following the May 26, 2011 developments were involved.

The Public Defender remains hopeful that personnel of temporary detention isolators will continue to practice forms of treatment of prisoners/detainees as prescribed by the law.

### **Administrative Imprisonment**

We welcome the fact that the Ministry of Internal Affairs of Georgia considered some of the recommendations from the Public Defender's parliamentary reports and on December 28, 2011, under the Order N1074 of the Minister of Interior Affairs of Georgia *on adoption of a typical regulation of temporary detention isolators of the Ministry of Internal Affairs of Georgia, internal regulation of isolators and an additional instruction for regulating the work of isolators*, amendments were made to the February 1, 2010 Order N108 of the Minister of Internal Affairs of Georgia. The amendments determined conditions of administrative imprisonment – an area allocated for an individual sentenced to administrative imprisonment must be 3 sq.m. or more, a place of administrative imprisonment must have window providing natural lighting and air conditioning and must be heated according to the season requirements. A person sentenced to administrative imprisonment must be provided with a bed, a mattress, a blanket and linens that correspond to the requirements of health and normal living conditions and must be allowed to receive a parcel, food and clothes. Individuals who have been sentenced to administrative imprisonments for more than 7 days and nights and in an event of a juvenile – for more than one day and night, must be allowed to take a shower twice a week and to take a one hour walk outside. In isolators that lack a special yard for walking outside, prisoners must take walks near or on the area surrounding the administrative building of an internal affairs agency of Georgia. Further, detained persons must be allowed to satisfy their natural needs corresponding to sanitary and hygienic norms and must have a 24-hour access to the facility. A toilet must be equipped with sanitary supplements. Individuals sentenced to more than 30 days of administrative imprisonment must be provided with barber's service upon their request. At the place of fulfillment of administrative imprisonment, administration is prohibited from demanding an administrative prisoner to completely shave his head, unless such request is imposed by the doctor or hygienic necessity. Individuals who have been sentenced to more than 30 days of administrative imprisonment and juveniles who have been sentenced to more than 15 days of imprisonment must have the right to two appointments a month and a 10-minute long telephone conversation per month. Administrative prisoners must also be allowed to subscribe to and/or receive literature, magazines and newspaper, send complains and applications as well as letters at his/her own expense. Under the Order, an administrative prisoner has the right to register for taking admission exams (unified national exams) to a university in compliance with the rule determined by the Ministry of Education and Science and by submitting a written application. Further, an administrative prisoner must be provided with all the conditions so as to s/he does not fall behind a higher education program.

The Public Defender welcomes these changes as they will undoubtedly improve conditions of administrative imprisonment; however, he believes that some dispositions do not correspond with recommendation of the Public Defender and applicable European standards.

In his number of parliamentary reports, the Public Defender has noted that infrastructure of temporary detention isolators are unsuited for individuals sentenced to administrative imprisonment and therefore, he has applied to the Georgian authorities with a recommendation to create establishments specially for individuals sentenced to administrative imprisonment in view of the principle of regions, modified for lengthy placement of such individuals. As of today, the recommendation has not yet been taken into account and administrative prisoners are still placed at temporary detention isolators.

During the reporting period, the Group of the National Preventive Mechanism found a number of violations in terms of placement of and conditions under which administrative prisoners are kept. The group applied to the Interior Ministry with a number of subsequent recommendations.

### **Conditions for Living**

Under the European Prison Rules, "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation".<sup>51</sup>

<sup>51</sup> Principle 18.1

Some temporary detention isolators have no central heating system (e.g. the temporary detention isolator), cells remain unheated and detainees/prisoners have to stay in cold.

Most of the temporary detention isolators have adequate lighting and ventilation but some have windows that are small to an extent that they fail to ensure natural ventilation and lighting (temporary detention isolators of Tetri Tskaro, Gardabani and Tbilisi N2).

It is noteworthy that in 2010-2011 a number of temporary detention isolators were built and renovated but regrettably, their infrastructure still fails to provide adequate natural ventilation and lighting in cells/

Under the European Prison Rules, “prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy”.<sup>52</sup>

In-cell toilets are not isolated. Public Defender applied to MIA with recommendation to isolate toilets but the recommendation has not yet been fulfilled.

Except for some of the cells in Tbilisi N1 temporary detention isolator, areas per inmate fail to live up to the standard of 4 square meters at pre-detention isolators. In his number of parliamentary reports, the Public Defender recommended allocation of 4 square meters per individual in cells. The CPT recommended the same. As for cells that accommodate one inmate, their area must be at least 7 square meters.<sup>53</sup>

Despite the Public Defender’s recommendation, some temporary detention isolators, such as isolators in Akhalkalaki, Gardabani, Tsalka, Tbilisi N2 (some cells) and Kvemo Kartli regional temporary detention isolators still use wooden boards as beds.

On a number of occasions Public Defender recommended that individuals detained for more than 24 hours must be allowed to take a daily walk for at least an hour but most of the temporary detention isolators lack yards – Dusheti, Tetrtskaro, Tsalka, Signagi, Sagarejo, Kaspi, Zestaponi, Samtredia, Terjola, Ambrolauri, Lentekhi, Borjomi, Kobuleti, Zugdidi, Poti, Khobi, Chkhorotsku temporary detention isolators as well as in Samtskhe-Javakheti, Imereti, Racha-Lechkhumi and Kvemo Svaneti, Samegrelo-Zemo Svaneti regional temporary detention isolators. We welcome the fact that in cases where temporary detention isolators do not have yards, prisoners held for more than 7 days are taken to the surrounding areas of the isolator for an outside walk prior to which they sign warning sheets stating liabilities for escaping prisoners.

At some recently built temporary detention isolators, administration uses corridors for an outside walk, which is completely unjustified (for instance, Tbilisi N1 temporary detention isolator).

Under the Order N108 of the Minister of Interior Affairs of Georgia *adoption of a typical regulation of temporary detention isolators of the Ministry of Internal Affairs of Georgia, internal regulation of isolators and an additional instruction for regulating the work of isolators*, which applied during the reporting period, only those individuals who have been sentenced to at least 16 days of imprisonment by court have the right to a daily outside walk.

Cleanliness and personal hygiene are important factors to observe for maintaining health and dignity of prisoners. Therefore, administration must to its best to allow all prisoners to take showers and be clean. The monitoring revealed that at temporary detention isolators where there are shower rooms, prisoners are allowed to take a shower once a week however, those temporary detention isolators where there are no shower rooms remain problematic – Dusheti, Samtredia, Lentekhi, Akhalkalaki and Mestia temporary detention isolators. We welcome the fact that cells in temporary detention isolators are cleaned by personnel two times a day.

In all temporary detention isolators detainees are provided with standard food – bread, canned pate and instant soup. The food is unhealthy, which is particularly alarming in view of the fact that an individual may have to stay at a temporary detention isolator for as long as three months, without having relatives to send him additional food.

Tbilisi N1 and N2 temporary detention isolators are the only exception. There inmates are provided with much more nutritious and diverse meals from a local diner.

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<sup>52</sup> Principle 19.3

<sup>53</sup> CPT Report to the Government of Georgia, para 117

**RECOMMENDATION OF THE GEORGIAN AUTHORITIES:**

**Establish facilities especially for individuals sentenced to administrative imprisonment, in view of the principle of regions, modified in order to fit the needs of inmates when they are held for a lengthy period of time.**

**RECOMMENDATIONS FOR THE MINISTER OF INTERIOR AFFAIRS OF GEORGIA:**

**Make the following amendments to the Order N108 so as to ensure:**

- **Allow all detainees/prisoners held for more than 24 hours to take daily walk outside in fresh air, on a specially designated place, as well as to have showers at sufficient frequency**
- **Provide 4 square meters per inmate in collective cells and at least 7 square meters for cells that accommodate one inmate.**

**RECOMMENDATIONS FOR THE HEAD OF THE MAIN DIVISION OF HUMAN RIGHTS PROTECTION AND MONITORING, MINISTRY OF INTERIOR AFFAIRS OF GEORGIA:**

- **Eliminate wooden boards in all temporary detention isolators and provide all inmates with individual beds instead;**
- **Install central heating in all temporary detention isolators and ensure adequate lighting and ventilation of cells, including by natural means;**
- **Liquidate isolators where it is impossible to create adequate conditions in consideration of characteristics of their infrastructure;**
- **Isolate toilets in all pre-trial isolators;**
- **Provide all inmates at temporary detention isolators with nutritious food three times a day.**