



**PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA**

**Human Rights in Closed Institutions
Report of National Preventive
Mechanism of Georgia**

2012

NATIONAL PREVENTIVE MECHANISM

Situation at Penitentiary Establishments

Present Report covers the findings of the monitoring of penitentiary establishments, police departments and temporary detention isolators carried out by the Special Preventive Group of the Prevention and Monitoring Department of the Office of Public Defender of Georgia exercising its power within the National Preventive Mechanism mandate in 2012.

Participation of the representatives of the Georgian Young Lawyers' Association (GYLA) together with National Preventive Mechanism team in the monitoring of penitentiary establishments located in Eastern Georgia was ensured within the framework of joint project of PDO and GYLA aiming the support of National Preventive Mechanism. Monitoring of establishments and temporary detentions isolators located in Western Georgia was implemented with the financial support of the European Union.

The monitoring of the penitentiary establishments also involved experts from organizations Empathy - the Psycho – Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact.

During the reporting period the Prevention and Monitoring Department of the Office of Public Defender of Georgia undertook 587 ad hoc (3852 inmates interviewed) and 68 planned visits to penitentiary establishments of Georgia and 84 planned (227 inmates interviewed) and 31 ad hoc (101 inmates interviewed) visits to isolators of temporary detention under the MIA of Georgia.

During the monitoring process, Special Preventive Group of the Prevention and Monitoring Department of the Office of Public Defender of Georgia were allowed to and moved without any impediments within the penitentiary establishments as well as within the temporary detention isolators. They were also able to select meeting points with inmates/ detained persons according to their own consideration and interview them.

In accordance with Article 19, Chapter three of the Organic Law of Georgia on Public Defender, “Meetings of Public Defender/ member of the Special Preventive Group with persons under arrest, detention or any other form of restriction of liberty and convicts, as well as the meetings with persons held in psychiatric institutions, institutions for elderly persons and child care institutions shall be confidential. Any type of interception and surveillance is prohibited”. Despite the requirement of the law, the monitoring, as well as the materials published in the media revealed that secret video surveillance systems were mounted practically in every establishment in order to ensure both visual monitoring and overhearing. Accordingly, we consider that any issues that the Special Preventive Group and inmates discussed were known to the administration of the penitentiary establishments and any other persons who had access to such recordings. The above represents a substantial violation of national, as well as international standards and it questions both safety of inmates and activity of the National Preventive Mechanism.

In the process of the planned monitoring, representatives of Public Defender examined compliance of the existing situation and practice at the establishments with Georgian legislation as well as the international standards. During

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the monitoring process particular attention was paid to the treatment of detained persons/ inmates in each and every establishment.

ILL-TREATMENT AT PENITENTIARY ESTABLISHMENTS

A planned monitoring is conducted by the Special Preventive Group twice annually. During the monitoring conducted in summer of 2012 a series of problematic issues were revealed, including systematic character of ill-treatment that was constantly stressed by the Special Preventive Group of Public Defender in both parliamentary and special reports in previous years. Unfortunately, for years the Georgian Government had been failing to take appropriate and adequate measures to eradicate the aforementioned problems, moreover, complete ignorance of systematic violations identified by Public Defender became a tendency. As a result we have got what was so frequently discussed in the reports of Public Defender – spread of syndrome of impunity – violation of prisoners’ rights, exercising physical and psychological pressure on them. And unfortunately the practice has turned into routine and systematic one.

The above mentioned was evidenced by so-called “prison videos” aired by the media on September 18, 2012 depicting the facts of torture, inhuman and degrading treatment of prisoners.

Starting from September till the end of the year of 2012 several hundred applications and complaints were lodged with Public Defender’s Office by prison inmates, alleging ill-treatment inflicted by prison administration of various penitentiary establishments. All those complaints were forwarded to Chief Prosecutor’s Office of Georgia for relevant reaction. According to an answer from the Chief Prosecutor’s Office an investigation has been launched in respect of every statement.

Penitentiary establishment No 1

Despite the fact that Public Defender’s Office very rarely received statements regarding ill-treatment from this establishment, following September, 2012 part of convicts noted that such facts though infrequently but sometimes still occurred in establishment No 1. Public Defender has constantly stressed that placement of a defendant in the said establishment, due to conditions there, could fairly be described as amounting to inhuman and degrading treatment.

Case of Archil Gh.

On February 28th, 2012 a representative of Public Defender met and interviewed the convict Archil Gh. placed in establishment No 1. In an explanatory note that the convict presented to Public Defender representative, he talked about facts of beating and pressure exercised against him by administration personnel of the establishment. According to the inmate, prison staff asked him to shave off his beard. And as this demand was not fulfilled, on February 27th, 2012 the personnel of the N1 establishment assaulted him physically as well as verbally.

During the visit of the representative of Public Defender a bruise in the inmate’s left eye area was observed. He also had headaches and pains in the chest area.

On February 29th, 2012 Public Defender applied to the Chief Prosecutor’s Office to start preliminary investigation on the abovementioned fact.

On March 5th, 2012 Public Defender’s representative met again and interviewed the convict who stated that his rights were not infringed and denied circumstances indicated in his previous explanatory note. Furthermore, on March 9th, 2012 statement of Archil Gh. was received by Public Defender’s Office, indicating that the explanations provided by him to Public Defender representative did not match the truth.

Case of Zurab N., Paata M. and Mirian V.

On July 1st, 2012 representatives of Public Defender met and interviewed convicts Zurab N., Paata M. and Mirian V., who on June 23rd, 2012 were transferred from establishment No 15 of the Penitentiary Department to establishment No 1. The convicts explained that their transfer to the closed type establishment was related to a collective explanatory note of convicts of establishment N15 where the convicts openly dared to describe treatments inflicted against them. According to Zurab N., Paata M. and Mirian V. they were especially active in their efforts to convince other convicts in the necessity of lodging such a complaint. That became the reason for the administration of the Ksani establishment “to get rid” of them and transfer to establishment No1. This very statement was corroborated by the fact, that subsequently all the convicts of the Ksani establishment refused to submit a formal complaint.

Pursuant to convicts, on June 28th, 2012 they, one by one, were summoned by the director of the N1 establishment and told that if they did not stop complaining first they would be subjected to administrative punishment and afterwards – their sentence would be prolonged in accordance to the procedures of criminal law. According to convict Zurab N., he asked the director what reasoning would be used for prolongation of his sentence to which S. Kekelashvili answered that he was a director and would be the one to decide whether to plant the so-called shtiri (self made knife in prison) in his pocket or cell or accuse him of an attack on an officer.

According to the convicts, they refused to recall the complaint and for that they were subjected to 40 day-long administrative sentence each. All three of them stated that they did not commit a crime for which they had been sentenced by the court decision.

On the same day the representatives of Public Defender met and interviewed 21 convicts placed in cell N30 (the cell where Zurab N. was kept) of the N1 establishment. According to them, on June 23rd, 2012 Zurab N. was brought into their cell. The convict did not violate the regime during his presence in the cell, namely, he did not enter into a conflict with a prison staff and did not communicate with prisoners from other cells. According to the same convicts, Zurab N. always politely addressed the establishment personnel. The convicts noted that on June 29th, 2012 a prison guard warned Zurab N. that on Saturday, June 30th he was supposed to be taken to the court though as they said the prison guard did not specify a reason.

Convicts of other cells refused to give written explanations to Public Defender representatives.

On July 5th, 2012 representatives of Public Defender met and interviewed 11 convicts placed in cell N47 since it was opening of a window of this very cell and attempting to communicate with its inhabitants was what Paata M. was accused of. According to words of the convicts of cell N47, on June 28th, 2012 no inmate opened a window of their cell door. The inmates were saying that they did not know Paata M. and had no conversation had taken place between them.

On the background of all the abovementioned, on June 4th and 5th, 2012 written appeals were sent from Public Defender's Office to the Chief Prosecutor's Office of Georgia which, as it became clear later, were left without a response, since the response to the indicated letters N13/44825 was only received by Public Defender's Office on October 29th, 2012 and it noted that on October 24th, 2012 the Isani-Samgori District Prosecutors' office of the City of Tbilisi launched an investigation on the criminal case N004241012801 regarding the fact of abuse of power by the personnel of the penitentiary establishment N1 pursuant to the paragraph 1 of the Article 333 of the Georgian Criminal Code.

Penitentiary establishment No 2 in Kutaisi

Starting from summer of 2011, after management was replaced at the penitentiary establishment No 2 in Kutaisi, the situation with regards to treatment, which had been improved to a certain degree for the period from autumn 2009 till summer 2011, has noticeably deteriorated. In summer of 2011, the situation in establishment No 2 in Kutaisi in respect of excessively strict regime requirements was similar to that of establishment N8 highlighted in Public Defender's reports. In some cases, treatment of inmates in the establishment N2 in Kutaisi was even worse than at establishment



N8. e.g. for punishment purposes, inmates were kept in quarantine cells with their hands on the head and kneeled for various periods of time, also water mixed with bleach was poured on a cell floor thus to prevent inmates from even lying down on a concrete floor.

Despite the fact that Public Defender repeatedly emphasized inhuman treatment taking place in establishment N2 and noted that inmates were ill-treated, neither the Georgian Ministry of Corrections, Probation and Legal Assistance nor the Chief Prosecutor's Office have taken any effective measures for improvement of the situation.

Case of Nikoloz V.

On September 25th, 2012 representative of Public Defender met and interviewed a convict held in Kutaisi establishment No 2 Nikoloz V. According to the latter he was suffering from psychiatric problems because of which he repeatedly tried to commit a suicide.

The inmate explained that several months ago he inflicted a self-injury and because of this the establishment personnel - Roma Robakidze and Irakli Minashvili took him out of the cell and beat him up first in a hall, and later in a duty unit. Afterwards they asked a nurse to give him an injection and tied him to stairs. According to the inmate, he was left tied to the stairs till the next morning and later on was taken to so-called box (F-102 cell) where he remained for seven days and during this period slept on a concrete floor.

On September 28th, 2012 Public Defender's Office sent an explanatory note of convict Nikoloz V. to the Chief Prosecutor's Office where the convict described the above-mentioned facts. According to a response N 13/43248 from the Chief Prosecutor's Office of Georgia, that was received by Public Defender's Office, on October 15th, 2012 the District Prosecutors' Office of Western Georgia launched an investigation into a criminal case N088151012801 on the fact of inhuman treatment exercised against convict Nikoloz V., pursuant to "b" and "e" sub-paragraphs of the second paragraph of article 144³ of Penal Code of Georgia.

On January 10th, 2013 written appeal was again sent from Public Defender's Office of Georgia to the Chief Prosecutor's Office of Georgia, where we requested detailed information on the ongoing investigation of this criminal case.

The Chief Prosecutor's Office informed us with the response N13/8859 that the case of Nikoloz V. was merged with a criminal case opened in the investigative unit of the Regional Prosecutor's Office of Western Georgia on the fact of torture and inhuman treatment of inmates by certain personnel of penitentiary establishment N2. The same response stated that the investigation on the case was pending.

Penitentiary establishment No 4 in Zugdidi

The establishment is one of those, recommended by Public Defender to be closed due to conditions existing there. We shall note that during the monitoring, inmates held at establishment N4 did not mention ill-treatment towards them. Herewith we shall mention that inmates transferred from Zugdidi establishment N4 to other establishments often noted that in establishment N4 in Zugdidi inhuman and degrading treatment was exercised against them, however they refrained from giving written explanations. The monitoring group remarked inmates tensing at the opening of a cell door - each of them immediately standing up with their hands at the back, lining at the window and unanimously answering questions of the monitoring group and stating that everything was well at the establishment and they had no problems.

Conditions and treatment in the establishment N4 in Zugdidi were also mentioned in the 2011 Parliamentary Report of Public Defender, however due to the above-mentioned reasons no specific facts were indicated.

Despite the fact that following to September 2012 inmates held in all establishments openly talked about ill-treatment

carried out against them in the past, inmates of Zugdidi N4 establishment continue to refrain from giving explanations regarding ill-treatment against them. A part of inmates noted that their treatment improved significantly, though another part says that they did not suffer any ill-treatment in the past.

Penitentiary establishment No 8

In recent years, during the conducted monitoring inmates refrained from writing explanatory notes with regards to ill-treatment towards them, often not even talking about this, while those who spoke in details about facts of torture and ill-treatment inflicted on them or towards any other inmates, very often used to name specific persons called Ango, Khonski and Beka Mzhavanadze. During the monitoring held in 2011 they spoke about some blonde, blue-eyed worker named Oleg¹. More often during the monitoring in other establishments the Preventive Group was told about inhuman treatment exercised toward inmates in Gldani N8 establishment but even then they refrained from making the facts publicly known. A large part of problems described in reports of Public Defender was based on results of observations of the Preventive Group. Tense atmosphere and a factor of fear were always felt among inmates in N8 establishment. The above was very apparent for the Preventive Group although during interviews inmates maintained that they felt very well and they did not have any particular problem in the establishment. And this was happening at the time when they were under unjustified restrictions, namely: they were prohibited from lying down or sleeping on their beds in cells during a day, but at 10pm they were definitely supposed to be in beds and asleep; they could not smoke a cigarette in a cell and were allowed only to do so in a cell toilet where several inmates used to go together to smoke in the confinement of 1 square meter; at any kind of noise of a cell door be it opening of a small window on a cell door or that of an observation one all inmates without exception should have stand up and form a line near beds; prison guards used to compel inmates to keep duty which meant that one inmate was responsible for behaviour of other inmates in his cell and even a small slip committed by his cellmates could have led to his punishment; inmates were prohibited from approaching a cell window and looking out of it; they were prohibited from talking in a normal voice and they just whispered between each other; they were banned from hanging their laundry in a cell and had to keep their wet clothes and bed linen in cupboards; they were not allowed to laugh; they were not allowed to listen to a radio on a normal volume and only allowed to listen to it with radio device close to their ears; upon admission to the establishment prisoners were made to sign an agreement on cooperation which was later successfully used to blackmail them; always an uncommon silence for such a crowded establishment (some 4 000 prisoners) reigned in the prisoner accommodation blocks.

And in case of not taking into consideration all the aforementioned and many other restrictions and bans inmates were tortured, treated inhumanly, beaten up, left shut in shower rooms and punished in other ways, including transferring to a solitary cell or a quarantine for punishment. Also Public Defender has repeatedly focused his attention on poor conditions in this establishment when simultaneously dozens of prisoners had to stay for weeks in a quarantine cell designed to hold 8 persons and where there was no possibility to keep basic hygiene. There were not enough plates and dishes, anti sanitary was blossoming and the cell was constantly overcrowded. People were usually punished with sending to a solitary cell or a quarantine cell for such violations as “making noise” which implied speaking in a normal voice or even laughing. Sometimes a request for a doctor too considered to be a “noise” and could have become a cause for punishment.

From the outset penitentiary establishment No 8 in Gldani was known for abundance of facts of negligence and violation of inmate rights. Public Defender pointed to facts of torture, inhuman and degrading treatment in Gldani N8 prison in his numerous reports. Though, unfortunately, all these facts were mainly left without appropriate response on the part of both investigative agencies and high-rank officials of the Penitentiary Department. Many recommendations that referred to transfer of inmates to other establishments for the purpose of their protection from possible retribution, were not fulfilled by the department. All these recommendations had the same standard response on the part of the chairman of the penitentiary department stating that “safety of a prisoner is ensured and there is no need to transfer him to another establishment”.

¹ They mean Oleg Patsatsia

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Even the 2010 Parliamentary Report of Public Defender assessed a situation in Gldani N8 Prison as inhuman and degrading treatment. The report mentioned that inmates were often sent to quarantine and this was used as a punishment measure in Gldani prison. At the same time, this method of punishment is not written in any of the legislative act and thus is illegal.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2010 report says that prisoners placed in establishment N8 in Gldani and medical establishment for defendants and convicts N18 do not confirm ill-treatment, as opposed to inmates in other establishments who talk about ill-treatment exercised against them. At the Gldani establishment inmates were beaten up in the “kartzner” area, the showers for knocking on cell doors, talking loudly or attempting to communicate with prisoners from other cells. They also mentioned an uncommon silence reigned in the prisoner accommodation blocks.

The European Committee for Prevention of Torture (CPT) 2010 report also mentions that “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 “kartzner” 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”.

Case of Vladimer I.

On August 1st, 2012 Public Defender was addressed with N1374-12 statement by a lawyer defending interests of convict Vladimer I. who was kept in establishment N8. The statement mentioned that the convict had Tuberculosis and, despite this, for fourteen days he was kept in a box in the basement of the penitentiary establishment No 8.

On August 2nd, 2012, representatives of Public Defender met and interviewed convict Vladimer I. According to him, around two weeks before that he had a verbal conflict with his cellmate for which a prison personnel of N8 establishment sent him to so-called box for two weeks. There the convict did not have either bed, or a mattress and a blanket and was sleeping on a floor. As the convict said on the course of this period he was not visited by a doctor.

Based on the above, on August 7th, 2012 Public Defender appealed to the Chief Prosecutor of Georgia with a recommendation to start an investigation. With regards to the above recommendation on November 2nd, 2012 Public Defender's Office received the answer N13/45642 which stated that the investigation was launched into the case of Vladimer I. on October 26th, 2012, which once again points to superficial attitude of the Chief Prosecutor's Office towards the investigation of facts of ill-treatment. According to the same response, Tbilisi Gldani-Nazaladevi District Prosecutor's Office conducts investigation into the criminal case N001261012801 pursuant to the first paragraph of the article 144³ of the Penal Code of Georgia.

Cases of Pavle B., Davit T., Guram M. and Guram T.

On August 2nd, 2012 workers of the Special Preventive Group of the Prevention and Monitoring Department of the Office of Public Defender of Georgia met and interviewed convict Pavle B. who was kept in establishment N8. According to the convict, on July 15th, 2012, one of the officers of the establishment was on leave and substituted by Nika Tolordava. According to the inmate, at around 8.30pm together with his two cellmates he was smoking a cigarette (smoking in a cell was prohibited by the administration). According to convict because of smoking, officer Nika Tolordava verbally abused inmates, brought them out of the toilet, as a punishment he made them stand in two rows and kept them in this position for almost two and a half hours.

According to convict Pavle B. the next day, when inmates were taken from a cell to a yard to walk he was walking at a quick pace and not running (as the convict said during the exercise they were compelled to run) because of a leg pain.

As he said, because he could not run officer Nika Tolordava sent the convict together with his cellmates back to the cell and punished them again with the two-hour standing.

With regard to the above representatives of Public Defender met and interviewed inmates of D-63 cell² of the penitentiary establishment N8: Davit T., Guram M. and Guram T. who confirmed the aforementioned facts.

On August 7th, 2012 Public Defender applied to the Chief Prosecutor of Georgia with a request to launch an investigation. On November 9th, 2012, N13/46328 reply was received by Public Defender's Office stating that Tbilisi Gldani-Nazaladevi District Prosecutor's Office launched an investigation into the criminal case N001051112801 pursuant the first paragraph of the article 144³ of the Georgian Criminal Code.

Furthermore, by N13/10196 reply from Georgia's Chief Prosecutor's Office we were informed that cases instituted on the basis of statements by Vladimir I. and Pavle B. were merged with N073110400 criminal case on a fact of inhuman degrading treatment inflicted by personnel of N8 establishment towards convicts pursuant to the first paragraph of article 144³ of Penal Code of Georgia. According to the same reply, at this stage no criminal proceedings were instituted against any specific person.

Case of Lasha J.

On August 14th, 2012 representative of the Prevention and Monitoring Department met and interviewed convict Lasha J. serving sentence at N8 establishment. According to the latter, he had been in the aforementioned penitentiary institution since August 11th, 2011 and during this period he had repeatedly experienced ill-treatment. The convict noted that he refrained from making complaints and thought that inhuman and degrading treatment on the part of personnel of the establishment administration would stop, as he thought, but such actions continued towards him.

According to the convict, on August 5th, 2012 window of his N123 cell was opened by an establishment personnel who shouted at him "why are you looking at me with eyes like that?". Then the prison guard demanded the inmate to come to a door. The inmate obeyed and when he approached the door the officer punched him mercilessly in his face and threatened to all inmates in the cell that if they were to make this known "he would beat them up".

The convict also noted that the establishment officer was threatening him with sentence prolongation. According to him, various prison personnel participate in facts of ill-treatment towards him as well as towards other inmates which he discussed with investigators.

After visual examination a red scar was noted in the upper lip area of the convict which, according to him, appeared on August 5th, 2012 as a result of a punch received from of the administration personnel of N8 establishment.

On August 20th, 2012 Public Defender applied to Georgia's Chief Prosecutor with a request to start a preliminary investigation. As mentioned in the reply N13/38405 received from the Chief Prosecutor's, on September 6th, 2012 Tbilisi Gldani-Nazaladevi District Prosecutor's Office launched an investigation into the criminal case N001060912801 pursuant to sub-paragraph "b" of the second paragraph of article 144³ of Penal Code of Georgia.

By N13/10199 reply, dated January 25th, 2012 we were informed that investigation was ongoing on this case and relevant investigative actions were being implemented. According to the same response, criminal proceedings were not instituted against specific individuals.

Case of Malkhaz A.

On June 22nd, 2012, representatives of Public Defender of Georgia met and interviewed convict Malkhaz A. who was placed in the penitentiary establishment N8. According to him, on February 5th, 2011 he was arrested by a policeman

² Cell of Pavle B.

of the Zugdidi police Ruslan Shomakhia and another policeman whose name he did not know. The convict stated that he was forcibly pushed into car, a sack was put on his head and he was taken to an unknown direction. Then he was taken out of the car, a testimony of some Shota S. was shown to him where the latter stated that Malkhaz A., together with other persons, participated in terrorist acts that had taken place in Zugdidi and nearby territories in the period from 2008 to 2010. Malkhaz A. refused to confess in the above accusation. Subsequently he was physically and verbally assaulted. In particular, as he said, he was sworn at, spit at, threatened with a gun and beaten up with an iron truncheon. The convict said that his beating continued for around 30-40 minutes. After that he was put in a car and taken in the direction of the village of Rukhi where they were met with an investigator who searched him. During the search 1500 GEL, 2 mobile phones, 80 Russian rubles and drugs were confiscated from him. As he explained, he did not have or even seen all the above before but since he was frightened he signed the search protocol. Malkhaz A. explained that after he was transferred to the Zugdidi main police department where upon arriving he was again physically and verbally assaulted in the hall of the second floor of the division. As he stated, policemen Temur Loria alongside with those who detained him participated in his beating. Malkhaz A. lost consciousness because of severe beating in the main police department when he was forcibly given water being diluted with drugs. As the convict said, he did not experience any kind of physical pressure in a temporary detention isolator.

The convict explained that during admission into Zugdidi establishment N4 convoy told the establishment personnel that Malkhaz A. was a drug addict, car dealer and relative of Zviad A., and as the convict explained this led to his being severely beaten up. After the above, for two days he was in a cell and experienced no more assault. And two days later Megis Kardava approached him asking whether he knew wanted Zviad A. According to Malkhaz A., because of a negative answer he was placed in a solitary cell for one day. Next day he was brought out of the cell. They started beating and swearing at him constantly asking him whether he got everything what they have said or not. According to Malkhaz A., afterwards he was transferred to a cell where they burst into around 30-40 minutes later and took him down to a solitary cell while beating him on the way there. The convict noted that he stayed in the solitary cell for around two hours after which he was transferred back to his cell. Until May 19th, 2011 he was placed in establishment N4 and no facts of beating and assault inflicted against him were noted.

On May 19th, 2011 he was transferred to establishment N8 in Tbilisi. According to the convict, on May 20th he was taken up into the director's office where there was Megis Kardava with two other persons. Megis Kardava asked him to write a confession with regards to terrorist acts in Zugdidi. Malkhaz A. replied to him that he had no link to the matter after which, as the convict noted, Kardava ordered his companions to take the inmate to quarantine. Malkhaz A. said that he was being beaten on the way to the quarantine; he was brought to a door of one of the cells and was made to look into the cell where a man was sexually abusing another man. He was told to remember this fact well as the same fate would befall him if he did not give the necessary testimony. He was given a pen and a paper and told to write the testimony. As Malkhaz A. said, to save himself he wrote about terrorist acts that he had heard from the media and said that he participated in those acts. The witness testimony was taken up to Megis Kardava and after that Malkhaz A. himself was taken to the director's office. According to Malkhaz A., as soon as he entered the room Kardava told him that that this was not the testimony they wanted and he should eat the paper the testimony was written on. The convict noted that Kardava's companions made him swallow the paper. After this M. Kardava ordered his companions to take the inmate to the quarantine unit and rape him.

As the convict said he was taken to the cell and the door was shut, during which two masked persons came out of a toilet. They forced the convict to pull the trousers down. The convict noted that when he was thrown down on the floor with his trousers down photos were taken from the so-called "karmushka" on the cell door. As he explained, he was banging his head on the concrete floor when Kardava's companions entered the cell. They held the inmate, one of the masked men touched him with his genitals during which a photo was taken. After this the masked people left the cell and Kardava's companions again told him that if he did not give the testimony they wanted he would be really raped. As he said he was frightened to the extent, that he gave the testimony they have asked.

The convict said that investigator Lasha Kolbaia was present there, and his numerous requests that his lawyer attended the questioning have not been met.

The convict noted that around 4-5 times during night time he was transferred to N18 medical establishment where a meeting was arranged with inmates Mamuka A. and Shota S. According to Malkhaz A., during this meeting Shota S. was stressing that he took part in the terrorist acts. The convict noted that he met these persons in the beginning of August, 2010 and thus he could not have taken part in the terrorist acts in 2008-2009.

On June 22nd, 2011 during the meeting of the convict with representatives of Public Defender two small scars were noted in the forehead area, as well as two scars - on a right calf and two scars on his hands that, as later was revealed, was a result of self-injury.

The next day the representative of Public Defender again visited convict Malkhaz A. who stated that he no longer wanted further reaction to be followed to his explanatory notes and noted that he was afraid of requital. He also noted that after the visit of Public Defender representatives his rights have not been violated. After the above convict Malkhaz A. was visited several times by representatives of Public Defender though he did not want to make his explanations public and send them to law enforcement agencies.

On September 26th, 2012, following to the request of Malkhaz A.'s lawyer the convict was again visited by representatives of Public Defender. Malkhaz A. stated that he refused to get response to his statements of June 22nd, 2011 because on the same day he was taken to the quarantine of the establishment where he saw director of the establishment Alexander Mukhadze, head of security department Victor Kacheishvili and personnel of the same establishment Besik Meladze. They severely beat him up and warned him that if he did not refuse his statements and say that he lied they would arrest his family members and his lawyer and rape them in front of him. According to the convict, before every visit of representatives of Public Defender, the Red Cross, the lawyer, a priest and family members he was met by personnel of the establishment Oleg Patsatsia or Victor Kacheishvili and warned that if he did not obey their demands and say something he would be raped.

The convict noted that his lawyer came to him and he told him everything. After the lawyer left he was taken down to Victor Kacheishvili's office where the director of the establishment Alexander Mukhadze also came and told him that 3200 people worked in the system and he and his lawyer could not go against them. Also, as the convict said, Mukhadze told him "every week 4-5 people die in a prison, some themselves and some with our help". As the convict said, he refused to repudiate his lawyer after which Mukhadze telephoned Megis Kardava and told him that the convict was refusing to comply with their demand. After the phone call, as the convict stated, Alexander Mukhadze told him that if he consented to this demand and confessed the crime that he had not committed, a lawyer would have been brought to him and minimum sentence given, while in case of refusal they would simply kill him. The convict said that he was returned to his cell where he was visited by Victor Kacheishvili who explained that if he refused their demand they would let the entire prison think as if he was raped. Kacheishvili gave him time till morning to think it over. According to the convict, next morning he was beaten up in a shower room and he was forced to write statement towards repudiation of his lawyer.

According to Malkhaz A., several days later he was approached by investigator Lasha Kolbaia who demanded signing of the testimony from him which, as the convict said, he refused to do. After this Alexander Mukhadze entered the room, hit him with a portable transmitter in his nose and told him to obey their demands. As the convict said, he again refused to sign the testimony. He noted that Lasha Kolbaia called Alexander Mukhadze and Victor Kacheishvili whom he told the inmate did not intend to sign. After this, according to the convict, three times he was taken down to a quarantine where he was severely dealt with and was forced to obey their demands.

The convict mentioned that he was frequently transferred to N18 medical establishment where he met with Gaga Mkurnalidze, Megis Kardava and some Koba. According to him, he was cross examined with someone called Mamuka A. whom he had just seen once before. The prison personnel demanded for the convicts to confess in committing of crimes unknown to them. According to the convict, Lasha Kolbaia, Gaga Mkurnalidze, Megis Kardava and Koba severely beat him up and demanded to point to some Lasha A. and Zviad A. whom he did not even know. According to him, when he denied any kind of contact to those people Megis Kardava took a gun, put it to his forehead and threatened to kill him. As the prisoner said M. Kardava was saying to him that neither Public Defender nor his lawyer

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would help him. According to the convict, Megis Kardava told investigator Kolbaia that “if he did not finish this matter on time he would kill the defendant”.

As Malkhaz A. spoke, in February, 2012 he was taken to the director’s office where there were Director Davit Khuchua, Deputy Director Victor Kacheishvili and Deputy Head of the Penitentiary Department Gaga Mkurnalidze. The latter told Malkhaz A. that if he did not tell an investigator that he gave false explanations to Public Defender he would be raped. And Davit Khuchua and Victor Kacheishvili were charged with this task. While if he refused the explanations he would be released as they knew that he was innocent. The convict noted that a week later he was visited by investigator Nugzar Mgebrishvili to whom he, hoping that he would be released, did not confirm the explanations given to Public Defender. According to the convict, the investigator also told him that knew about his innocence and his release was complicated due to the fact that he had given a confession regarding drugs.

In accordance with N13/11544 response from Georgia’s Chief Prosecutor’s Office dated June 30th, 2013 Investigative Department of Tbilisi Prosecutor’s Office an investigation was launched into the criminal case N010118112 on the fact of exceeding official powers by personnel of N8 establishment towards Malkhaz A. The investigation is pending and relevant investigation actions are carried out. According to the same response, criminal proceedings against particular persons have not been instituted.

Case of Malkhaz B.

On December 29th, 2012 representatives of the Preventive and Monitoring Department of Public Defender Office met and interviewed inmate Malkhaz B. who was placed in N18 medical establishment for defendants and convicts. According to the inmate, during his stay at N8 establishment many times he was beaten up and tortured as a result of which his health has deteriorated.

According to the convict, on March 23rd, 2011 he was settled into N8 establishment of the penitentiary department. Administration personnel of the establishment Vladimir Bedukadze asked him the crime he was arrested for and whether he was beaten up by him earlier, during his stay at N8 establishment. As the convict says at this time they were approached by the head of the establishment security department Victor Kacheishvili who told Bedukadze “to push” him into so-called “fux”.

As Malkhaz B. said, around one hour later he was approached by establishment personnel Oleg Patsatsia, Victor Kacheishvili and, also someone called “Kosa” (named Malkhaz) who got the inmate out of the “fux” and took him into the court quarantine where Oleg Patsatsia asked him what type of robbery he was accused of. The convict said that he did not rob anybody. Malkhaz (aka Kosa) offered cooperation with the administration. The convict refused this offer which led to Kacheishvili verbally abusing him and then once again offering cooperation. After the second negative response O. Patsatsia and V. Kacheishvili charged some “Beshkena” (Beshkenadze) and Kosa with supervision of the inmates. After this Malkhaz B. was transferred to cell N88 of the accommodation building from where 2-3 days later he was again taken to a shower room and beaten up there. According to the convict, he was beaten up by Khonski, officer at the establishment, and other two administration personnel after which he was taken to a solitary cell where he was kept for 10 days. And after the solitary cell he was transferred to cell N4 of the building A where he was kept for a month.

According to the convict, on specific day (he did not remember exact date), at around 11am Oleg Patsatsia and one of the workers entered his cell. Oleg Patsatsia took the inmate to a shower room and tasked so-called Kosa and another officer with beating him up with plastic bottles for wearing shorts. After this he was again taken down to the solitary cell where he was left for 16 days. From the solitary cell the convict was moved to so-called fux and put there for 2 days. According to Malkhaz B., afterwards he was transferred to a quarantine cell where some “Basti” and several officers again beat him up, tied him to a heating unit pipe and left him in this condition for 12 hours. After this he was transferred to a quarantine cell where the convict was once again beaten up by establishment personnel. And Malkhaz B. said Bedukadze filmed all the actions. As the convict said, during the beating he was stripped down, made to lie on

a floor and cold water was poured on him. As Malkhaz B. says this time they were visited by a representative of the penitentiary department who ordered establishment officers to have other two inmates to be taken up to a cell and Malkhaz B. to be left in quarantine.

According to the convict during one week O. Patsatsia, Kacheishvili and other officers demanded from him confession on a criminal case and verbal assault for so called “thieves in law”. According to the convict he was severely beaten alongside other four prisoners after which he could not get up and they managed to sit him on a chair only after some help from inmates. When he was left alone, “Basti” opened the cell door and asked whether he was still alive, and verbally assaulted him. After this he took off his shirt and started beating him first with hands and after – with a rubbish bin.

As the convict explained, soon he was transferred to a quarantine cell where there are beds, he was striped down and told to swear at so-called “thieves” which he refused to do. Because of the refusal, as he said, he was ordered to stand naked and warned not to put on his clothes. According to the convict, “Ango”, “Beshkena” and some Vakho entered the cell. As he said, he was raped after which around an hour and a half later “Kosa”, and “Beshkena” again came into the cell and again asked for cooperation otherwise threatened him that they would rape him with a truncheon. According to the convict, he agreed and promised that when investigator and prosecutor were to come he would confess. According to him, next day the investigator and the prosecutor came to him and he signed a plea agreement.

According to the convict, his rape and beating was implemented on the basis of tacit agreement between the investigator and the prison personnel.

On December 31st, 2012 Public Defender suggested to the Chief Prosecutor of Georgia to start an investigation. Public Defender’s Office did not receive a response to the aforementioned letter though during the monitoring it became clear that the convict was questioned with regard to the above facts.

Special juvenile establishment N11

On August 8th, 2012 at night Public Defender was informed about the riot at juvenile establishment in N11 of the penitentiary department. Representatives of the Prevention and Monitoring Department of Public Defender’s Office immediately visited the juvenile establishment. As a result of the visit it became apparent that by that time 60 of registered 120 convicts had been transferred to N16 establishment in Rustavi and 47 convicts to - establishment N17 in Rustavi, while 15 convicts remained at the institution.

The representatives of Public Defender interviewed juveniles, left at the establishment, the establishment administration and examined accommodation building of the institution. The examination showed that at the time the accommodation building was not suitable and was in need of immediate refurbishment.

The same night workers of the Preventive and Monitoring Department carried out visits to penitentiary establishments N16 and N17 in Rustavi during which they saw all juvenile convicts except for those several ones who at the time of the visit of the representatives of Public Defender were asleep. According to them, the protest was caused by excessive strictness, various types of retractions and in some cases, even verbal abuse and physical requital recently inflicted by the administration. As the juveniles explained, lately abuse of family members that were coming for a visit became frequent, namely, searches were carried out in an unacceptable manner, prison personnel treated their family members roughly and depreciatingly.

According to the juveniles, the administration prohibited them to swim in an establishment pool without trousers and a vest. They were not allowed to send a statement or a complaint and in case of willing so, prison personnel verbally abused them and used to tear up their correspondence in front of their eyes.

As the convicts explained, personnel of N11 establishment administration prohibited inmates to inform representatives of Public Defender’s Office about the above facts and in case of disobedience they threatened them with transfer to another establishment.

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According to the article 37 of the United Nations Convention on the Rights of the Child, the convention member state undertake to ensure that no child falls victim of torture, cruel, inhuman and degrading treatment or punishment. The article 19 of the convention states that Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment.

Therefore these two norms of the child rights convention defines margins of state obligations with the view of children protection from violence and ill-treatment and is based on the necessity of protection of legal interests and rights of the child.

According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family (rule 1.1).

We believe that for normal functioning of the penitentiary system, return of convicts as fully fledged members of the society and application of a prison sentence towards a criminal to take effect, alongside other components special importance shall be attached to personnel of a penitentiary establishment, their professionalism, personal qualities and attitude toward persons deprived of liberty.

On August 14th, 2012 Public Defender appealed with a request to Georgia's Chief Prosecutor's Office and demanded a launch of a preliminary investigation into the above-mentioned facts described in statements of juveniles.

On August 31st, 2012 through N13/36601 official reply, we were informed that in the anti-corruption department of the Chief Prosecutor's Office of Georgia an investigation was launched pursuant to the paragraph 1 of the article 378 of the Penal Code of Georgia on the fact of interference and disorganization of activities of N11 juvenile special establishment. According to the same reply a possible fact of violations on behalf of representatives of the penitentiary department would have been studied within the framework of the above-mentioned criminal case; Also, on August 21st, 2012 11 juveniles were sentenced pursuant to the first paragraph of article 378 of the Penal Code of Georgia and, the sub-paragraph "g" of the article 4, the paragraph 5, the paragraph 2 of the article 187 and by the court decision of the judge of criminal panel of Tbilisi city court was given the sentence in the form of a prison sentence. 10 accused person confessed to a crime.

Penitentiary establishment No 15 in Ksani

Convicts placed in Ksani N15 establishment have applied to Public Defender numerous time, citing beatings and inhuman treatment, with even collective complaints in several cases. But no recommendation of Public Defender was followed by an adequate reaction from investigative bodies. Instead, in response to information received from the Chief Prosecutor's office, the administration of the establishment conducted "negotiations" with inmates and in exchange of various promises or threats made them retract their complaint, while particularly disobedient inmates were transferred to closed-type establishments. It shall be noted that for years the Preventive Group paid particular attention to N15 establishment. Inmates incarcerated in the closed part of the above establishment addressed numerous complaints and statements to Public Defender. As a rule, convicts' complaints referred to physical requital but also there were cases when they complained about degrading and humiliating treatment on the part of the establishment personnel.

Collective statement of convicts placed in a new building of establishment N15 in Ksani

On June 22, 2012 representatives of Public Defender met several hundreds of inmates of the Ksani establishment who talked about facts of violation of their rights. The convicts said that verbal abuse and beating with truncheons and kicking were often used towards them. The most frequent abuse and degrading treatment were exercised upon admission into the establishment and before placing in a solitary cell, illegal methods were frequently used even in case

of minor mistakes. In addition, convicts stated that telephone was often out of order at the establishment, the press was not available to inmates and they did not have a radio receiver.

Inmates named several persons who according to them were involved in acts of violations of their rights, namely chief of the establishment Shota Tolordava, his deputy, as well as Dima Chkhaidze, Levan Lezhava, Gela Iosava and someone called Ucha.

A statement sent to Public Defender was signed by 693 inmates.

It shall be noted that convicts placed at N15 Ksani establishment often applied to Public Defender even in 2010 with individual or collective complaints that described facts of physical abuse and assault inflicted by the prison personnel. The above was mentioned in the 2010 Public Defender Parliamentary Report and investigation was launched on numerous similar facts. The convicts more often named several officers of the establishment, among them, Levan Lezhava and Gela Iosava, whom distinguished particular cruelty.

On June 25th, 2012 Public Defender of Georgia, pursuant to Organic Law of Georgia “on Public Defender of Georgia” addressed the Chief Prosecutor’s Office of Georgia to start an investigation into mass-exercised facts of ill-treatment of inmates in establishment N15 in Ksani.

Cases of Jemal S., Guram S., Lasha V., Paata M. and Besik G.

On June 25th, 2012 representatives of the Prevention and Monitoring Department of Public Defender Office met and interviewed convicts transferred from establishment N15 in Ksani to establishment N1 in Tbilisi. The convicts addressed explanatory notes to Public Defender, providing detailed description of their admission into establishment N15.

According to convict Jemal S., on May 11th, 2012 he was transferred from establishment N8 to establishment N15 together with other convicts (around 77 inmates). He said that upon arrival to the establishment they were informed about the list of their rights and obligations. Afterwards, as the convict described, inmates were taken to shower rooms located in the new part of N15 establishment. There were around 30-35 inmates alongside him. According to Jemal S. they stayed in the showers for several hours after which personnel started to take the convicts one by one to an opposite changing room where he was seen by personnel of the administration: Levan Lezhava, Dima Chkhaidze and other two persons. They asked the convict to write that he would cooperate with prison administration which the convict refused. According to the latter, because of the refusal he was beaten and Levan Lezhava put an electric shocker to his body several times. Also, as the convict stated, his head was shaved forcibly. Jemal S. explained that because of his refusal to cooperate with the administration he and four other inmates were left in the shower room for six days. As he stated they did not have beds, no items of hygiene and no toilet paper.

According to convict Guram S., at the end of July, 2012 he, together with other convicts, was transferred from N8 establishment to N15 establishment where he was informed about the list of their rights and obligations. After this, as the convict said, they were brought into shower room of the accommodation block A where they were held for 2 days. According to him, during this period they were given only bread. The convict noted that on the third day he was taken to a cell next to the shower rooms where he was met by workers of the establishment Dima Chkhaidze and Levan Lezhava, who started beating him without any explanations. The convict said that the above persons treated other convicts in similar way.

According to explanations of convict Lasha V., in March 2012, he left his cell and wanted to enter another cell when the prison personnel verbally abused him and told him to get back to his accommodation cell. As the prisoner said, he asked the prison guard why he was insulting him and for this he was taken to one of the rooms of the administration building where three guards of the establishment beat him and used an electric shocker twice.

According to Paata M., on April 20th, 2012 he was sent from establishment N8 to establishment N15. As the convict said, upon admission to the institution he was placed in a shower rooms where there was no bed, no toilet paper, soap

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and towel. According to him, he remained in the shower rooms for 3-4 days after which he was taken to a room next to the showers for the purpose of shaving his head. According to convict, he was told to kneel, however he refused, justified his refusal with a meniscus problem he had, and sat on the floor. Because of this the establishment personnel (as the convict said there were 7-8 workers in the room) verbally and physically assaulted him, namely, he was kicked and beaten with water pipes. As the convict said, the very same night he again was brought to one of the cells where he met the establishment personnel Dima with two other others. He was asked to cooperate with them and to confirm this in writing. According to convict, he refused and for this reason the establishment personnel Dima wrapped a plastic pipe around his neck. As the convict explained, such treatment inflicted towards newly-incarcerated inmates by N15 establishment personnel had a regular character.

Convict Paata M. explained, that after his transfer to N15 establishment he was twice placed in a solitary confinement cell. After leaving the solitary cell he was taken at the duty room and placed near the window. This took place on February 3rd and it was cold so he asked to close the window but instead of closing the window officer Dato opened another one which was protested by the convict. According to the convict, the officer verbally assaulted him. After this he was taken to the second floor of the administration building and brought into a room where 7-8 guards entered, among them, Levan Lezhava, who was told by the guards that Paata M. was not obeying prison guards. Levan Lezhava verbally assaulted the convict and slapped him in the face and after this other guards, who were present there, also started beating him. According to the convict, as a result of the beating, he suffered a damaged ankle. Subsequently, Levan Lezhava asked the guards to bring handcuffs and the convict was tied to a so-called turnstile. The inmate explained that he was left in this state for 4-5 hours. He also explained that Levan Lezhava sent the guards for an electric shocker and pressed it on his arms and neck. After this, according to the convict, he was transferred to a solitary confinement cell for 20 days. Following to the convict's statement, he did not told anyone, since he was threatened with prolongation of sentence in case anyone obtained information about the said fact .

According to convict Besik G. he was sent to N15 establishment in June, 2011 where upon arrival administration personnel of the establishment verbally and physically abused him. In his words, after he was taken to shower room where he was asked to cooperate with the administration and shave his head. According to the convict such actions had a permanent character at establishment N15.

On June 28th, 2012 Public Defender applied to the Chief Persecutor of Georgia with a request to launch a preliminary investigation.

Through N13/32175 reply dated July 28th, 2012, the Chief Prosecutor's Office of Georgia informed us that on July 10th, 2012 the investigative unit of the Shida Karti and Mtskheta-Mtianeti District Prosecutor's Office launched an investigation into the criminal case N082100712801, on the fact of exceeding official powers by officers of Ksani N15 establishment of the penitentiary department, pursuant to the first paragraph of article 333 of the Penal Code of Georgia. The investigation on the said criminal case is still pending and the monitoring held in winter by Public Defenders Office revealed that representatives of the Prosecutor's Office were conducting questionings of inmates.

Case of Irakli M.

On March 10th, 2012 representatives of Public Defender met and interviewed convict Irakli M. placed in N15 establishment and identified injuries of various kind during the meeting. According to the convict on March 5th, 2012 he was severely beaten up by personnel of the establishment. The convict noted that he was taken into a room located in the administrative building of the establishment where Director of the establishment Shota Tolordava, his deputy Bacho Rukhaia, officers Dima Chkhaidze, someone called Lasha, head of the social department Mamuka Shalamberidze and another officer were present. According to Irakli M. as soon as he entered the room he was thrown down and everybody together started beating him. The convict noted that Dima Chkhaidze was choking him and spitting in the mouth. Simultaneously, Shota Tolordava was kicking him in the chest. After this one of them brought a basin full of water in the room and forcibly dunk his head in it. The convict also noted that Dima Chkhaidze was holding a "Borjomi" bottle and threatened to rape him.

On March 12th, 2012 after the convict's request, the representatives of Public Defender again met and interviewed him. This time Irakli M. asked for his explanatory note to be followed up at that stage and asked for confidentiality of the explanatory note to be maintained.

On September 21st, 2012 representatives of Public Defender again met and interviewed convict Irakli M. who asked for the explanatory note written by him on March 10th, 2012 to be sent to the Prosecutor's Office.

Following his consent, the acting Public Defender of Georgia applied to the Chief Prosecutor of Georgia on September 28th, 2012.

With N13/41785 reply dated October 10th, 2012 the Chief Prosecutor's Office of Georgia informed us that on October 5th, 2012 the investigative unit of the Shida Karti and Mtskheta-Mtianeti District Prosecutor's Office launched an investigation into the fact of torture of Irakli M. by personnel of N15 establishment pursuant to subparagraph "b" of the second paragraph of the article 144¹ of the Georgian Criminal Code.

On January 8th, 2013 Public Defender's Office again sent a written request where we asked for information regarding the progress of the aforementioned criminal case. The Chief Prosecutor's Office of Georgia responded with N13/10195 response that the criminal case on torture of Irakli M. was merged with criminal case N082100712801 on the fact of exceeding official powers by personnel of penitentiary establishment N 15. According to the same response letter, criminal proceedings against concrete individuals have not been instituted at this stage.

Medical establishment for accused and convicts No N18

The Parliamentary or special reports of Public Defender have frequently referred to the facts of torture and inhuman treatment at N18 medical establishment. It shall be noted that majority of convicts categorically refused to be transferred to the medical establishment or used to appeal to the administration of N18 establishment with a request to transfer them back to their place of serving sentence, because of treatment of inmates at N18 establishment.

In summer 2012 during the scheduled monitoring carried out by the Preventive Group at N18 establishment, convicts noted that their treatment has significantly improved. Despite this, the monitoring group met with several inmates who noted that they were inadequately treated though refrained from giving a written explanation.

Case of Papuna K.

On July 23rd, 2012 representatives of Public Defender met and interviewed convict placed in N18 medical establishment of the penitentiary department Papuna K. According to the convict, on April 19th, 2012 at around 5pm 4 or 5 establishment officers entered his accommodation cell, among them were Zviad, Malkhaz and Alexander Tolordava. They asked convicts to leave the cell to which Papuna K. responded that he would finish hygiene procedures and then leave the cell. According to convict, Alexander Tolordava verbally abused him and ordered inmate to bring a wheelchair in which Papuna K. was taken down to the ground floor. According to the convict in a room where he was taken, Deputy Director of the establishment Maizer Gvichiani was present joined by Alexander Tolordava after 5 minutes, who were verbally and physically assaulting him, namely, he was punched in his face. According to the convict, he entered into verbal conflict with Alexander Tolordava, resulting Tolordava to throw him from the wheelchair and starting kicking him. As Papuna K. said his beating continued for 10-15 minutes.

According to the convict, several minutes later the director of the establishment entered the room. In front of him the convict and Tolordava again had a verbal conflict for which the Director kicked Papuna K. in his head. According to convict, after this the director of the establishment wrapped a towel around his neck and told him that he could kill him any time he wanted and no one would know.

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The convict explained that he remained in the room for around 4 hours. Subsequently deputy directors approached him and told him not to complain about this. According to convict after his return to the cell he asked for a doctor but when the doctor came he refused to record injuries of the convict. The same day at around 11pm the convict met the director of the establishment in his office where the latter promised that if the convict did not complain he would help him in postponement of the sentence due to his illness and fulfill all requests during his stay in establishment N18.

On July 25th, 2012 a written appeal was sent from Public Defender's Office to the Chief Prosecutor's Office of Georgia. According to the reply N13/35874 received from the Chief Prosecutor's Office, on August 15th, 2012 anticorruption investigative unit of the Tbilisi Prosecutor's Office launched investigation into the criminal case N010150812801 on the fact of exceeding official powers by personnel of N18 medical establishment for accused and convicts of the penitentiary department pursuant to the first paragraph of article 333 of the Penal Code of Georgia.

Case of Ramaz P. met

On July 20th, 2012 representatives of the Prevention and Monitoring Department met and interviewed convict Ramaz P. placed in the N17 establishment. According to the convict, on July 12th, 2012 he was transferred to N18 medical establishment for accused and convicts. According to him, on July 3rd, 2012 when he was returning from the exercise with cellmate Papuna K. deputy director of the establishment brought them to one of the rooms and asked them to recall applications sent to the European Court for Human Rights otherwise he threatened them with prolongation of their sentences. According to the convict he categorically refused and said that he did not intend to recall the complaint. According to Ramaz P. during the conversation, the Director of the establishment entered the room, who also threatened that if they did not recall their applications, their sentences would be prolonged. As Ramaz P. said the Director was trying to provoke them to start a fight but they did not fall to this provocation.

As Ramaz P. noted on July 16th, 2012 he addressed the statement to Public Defender and the Minister of Corrections, Probation and Legal Assistance. According to him, in the letter addressed to the Minister he described in details the fact of pressure and threats exercised on him and referred that in December 2009 while in N2 Kutaisi establishment, ill-treatment was inflicted against him. At that time Z. Rukhaia was the Director of the establishment and according to the convict this was the reason why he demanded the recall of an application from the European Court for Human Rights.

The convict noted that he dropped the above statements in a complaints box, though despite numerous requests he was not given registration numbers.

On July 23rd, 2012 representatives of Public Defender met with and interviewed convict Papuna K. placed in the N18 medical establishment who confirmed the narrative of Ramaz P. and noted that during the above meeting the director of the establishment several times tried to punch convict Ramaz P.

Given the above, on July 23rd, 2012 Public Defender requested institution of a preliminary investigation from the Chief Prosecutor of Georgia. Relevant response to the above letter has not been received by Public Defender's Office yet.

SPECIAL MONITORING OF THE SPECIAL PREVENTIVE GROUP IN SEPTEMBER 2012

In September 2012 various media outlets disseminated video recordings shot at the Tbilisi establishment N8 of the penitentiary system identifying the facts of torture and ill-treatment inflicted on inmates – inter alia physical and mental pressure in which were involved not only prison guards but high rank officials of the penitentiary department. Among them specific persons, who were identified and named in numerous previous reports and press releases of Public Defender as officials responsible for inflicting ill-treatment. Despite this, same persons continued to be employed at the penitentiary system and the spread of impunity syndrome aggravated the content of the crime they had committed even further.

Georgian TV channels disseminated first secret recording in the evening, on September 18th, 2012. The video was recorded at N8 establishment and it depicted the situation in the quarantine unit of the establishment, where high-rank officials of the establishment and ordinary officers beat inmates during their stay in quarantine as well as their transfer from the quarantine unit to a cell (so-called process of quarantine-breaking). It shall be noted that Director of N8 establishment Davit Khuchua and his deputy Victor Kacheishvili as well as chief of the regime department of N8 establishment Oleg Patsatsia³ and other personnel of this establishment participated in the beating of inmates. In addition to the above-mentioned persons, members of the Special Preventive Group identified personnel of N8 establishment - certain Giorgi Avsajanishvili who worked at N18 establishment for a brief period of time and many times inmates addressed Public Defender regarding facts of ill-treatment⁴ inflicted on them by Avsajanishvili. In his turn, Public Defender applied regarding various cases to the Chief Prosecutor's Office of Georgia with a request to launch an investigation and punish those responsible but every time those efforts were in vain – investigation as always, was limited to a formal inquiry with regard to the said cases and no specific result was achieved.

Apart from this, the videos clearly showed that Deputy Head of the Penitentiary Department Gaga Mkurnalidze participated in beatings of inmates. This is the very Mkurnalidze who has been named in the recommendation sent by Public Defender to the Chief Prosecutor of Georgia on March 19th, 2010 requesting the launch an investigation into facts of inhuman and degrading treatment inflicted by the personnel of the penitentiary department and lead by Mkurnalidze at the penitentiary establishment N8 in Geguti (now establishment N14. An investigation was launched on the case, however no specific result has been achieved.⁵

The same evening of September 18th, 2012 other videos were shown that depicted small size cells - so-called “boxes” in the quarantine unit of establishment N8. The numerous reports of Public Defender described these “boxes” as around 2-3 square meter cells with no beds, or a chair and having bars instead of a door. And these boxes featured in the video recordings which showed that an inmate had a broom between his thighs, a special helmet on his head which was used so that no damage showed later, an inmate was tied to a door bar while guards were insulting him, laughing at him and harassing him. Other records also show an inmate in the “box” who was tied to a bar and despite his repeated requests and demands no one paying any attention to him. The disseminated videos clearly show that chief of the regime department of the establishment Oleg Patsatsia was particularly cruel and aggressive towards inmates. He personally tortured and verbally insulted an inmate, sexually harassed him and literally spitted in the face. Also, other disseminated videos show how an inmate is disrobed in a quarantine unit by officers of the establishment and make him to stick a lighted cigarette up into his anus with his own hands and stand in a bent position until guards tell him to take the cigarette out and smoke the same cigarette and afterwards put it into the anus again. The disseminated recordings show how one of the inmates who supposedly is a juvenile is tortured and beaten. Prison guards threatened him with rape and physically assault him, imitate his rape with a condom-wrapped truncheon and force him to swear at so-called thieves-in-law. Despite repeated requests of the inmate to stop these actions the officers of the establishment did not stop this cruelty and continued their criminal actions. These prison videos caused sharp disgrace in the society and families of prisoners. Numerous protest rallies were held, inter alia in front of N8 establishment. Participants of the rally demanded immediate punishment of those responsible and protection of prisoners' rights.

The situation became even more aggravated as the Parliamentary elections of October 1, 2012 approached.

On September 18th, 2012, the Ministry of Internal Affairs disseminated the statement according to which it had launched an investigation into facts of inhuman and degrading treatment of prisoners by certain personnel of the Penitentiary Department on the basis of operative information received from the Gldani Prison No. 8.

On September 18th, 2012 the Public Defender's Office of Georgia issued the following statement: Public Defender believes that the response of the investigatory bodies is a step forward and addresses the Chief Prosecutor with a demand to take the appropriate measures to identify all persons who are guilty and hold them criminally responsible in a

3 Many prisoners informed the Preventive Group about cruelty of this person, but none of them expressed a wish to apply to investigatory bodies. Despite this, the name of Oleg Patsatsia, alongside the names of other prison workers, is indicated in the Special Report of the National Preventive Mechanism of the first half of 2011 and the 2011 Parliamentary Report of Public Defender.

4 i.e. the case of Kakhaber Baratashvili, the case of Giorgi Okropiridze, the 2011 Parliamentary Report of Public Defender

5 The said case is included in the 2010 Parliamentary Report of Public Defender.

timely manner. At the same time, he calls the Penitentiary Department to suspend the authority of all the senior officials who worked at Establishment No. 8 at the time when the crime was committed and continue to work in the system. We believe that such actions are committed with the tacit consent of senior officials of the establishment, which must also make the senior officials themselves liable for them.

It should be noted that, in most cases, investigatory bodies only launched formal investigations into facts of alleged inhuman and/or degrading treatment that we informed them about, and, apart from a few exceptional cases, the aforementioned facts were never followed by proper response, which, to some extent, served to encourage similar crimes”.

Starting from September 18th, 2012 Public Defender’s Office operates a hotline for members of prisoners’ families. In accordance with the calls we received, we have already checked the condition of dozens of convicts and given information to the corresponding persons.

On September 19th, 2012 the Special Preventive Group continued monitoring of Zugdidi N8, Batumi N3, Kutaisi N2 and N18 medical establishments. By that time media outlets issued information according to which the windows of prisoners’ cells were closed up. In response to this and based on the results of the monitoring, Public Defender issued a statement saying that this information did not correspond with the truth and called on every citizen and concerned person to keep quiet in this extraordinary situation, so that the penal establishments would not get destabilized, which would, first of all, go against prisoners’ interests. On the same day, the Preventive Group visited Rustavi N16, N17, N5 women and N6 penal establishments, namely, all buildings, solitary and quarantine cells, as well as accommodation cells of the aforementioned establishments were examined, all inmates placed there were interviewed. By that time situation at the establishment has normalized, inmates did not refer to any type of violence; they had access to telephone and ad hoc visits by their relatives. On the same day, news agencies disseminated information that three beaten prisoners had been transferred to the Gori Military Hospital. In the night hours of September 19th, representatives of Public Defender’s Office went to the Gori Military Hospital to verify the information, where it was determined that the information did not correspond the truth and the hospital denied the fact of transfer of prisoners to the Military Hospital.

On September 20th, 21st, 22nd, 23rd and 24th, 2012 representatives of Public Defender’s Office were conducting continuous monitoring of different penal establishments on the territory of both Eastern and Western Georgia. During these days, Public Defender’s Office representatives visited establishments in Gldani (No. 8), Kutaisi (No. 2), Batumi (No. 3), Zugdidi (No. 4), Geguti (No. 14), Rustavi (No. 6, 16, and 17), Ksani (No. 15), and Tbilisi (No. 1), as well as Women Establishment No. 5 Monitoring Department of the Public Defender’s Office of Georgia continued daily monitoring up to the beginning of November.

In those days special attention was paid to Gldani establishment N8 where many visits were carried out and large part of the prison population was visited. According to those prisoners, no pressure was exercised against them in the recent past. On September 22nd, the management of the penitentiary system started to distribute mattresses. A small part of prisoners in Establishment No. 8 was on a hunger strike; they protested against the facts of ill-treatment they had been subjected to in recent years and declared solidarity to prisoners who had become victims of ill-treatment.

For the same reasons, the group of 11 prisoners went on a hunger strike in penitentiary establishment No. 3 in Batumi. A group of convicts also declared a hunger strike in the Rustavi establishment No. 17, though they emphasized that this measure did not relate to the treatment towards them and was not directed against the administration and employees of the establishment, and did not have a political character. A small part of convicts in establishment No. 15 in Ksani and establishment No. 6 in Rustavi also went on hunger strike.

The prisoners in all the aforementioned establishments emphasized serious facts of ill-treatment that had taken place in the past and handed collective applications and complaints to Public Defender’s representatives, demanding relevant reaction. Public Defender’s Office started to study these applications immediately. It should be noted that in all the aforementioned cases the prisoners noted that treatment towards them had sharply improved during the recent days and expressed satisfaction with this fact, though they also demanded the punishment of those responsible for past ill-treatment.

It must be emphasized that in all the aforementioned penitentiary establishments, prisoners kept quiet and there were no incidents in relation to the administration or among themselves. At the time, the situation in all establishments was normal and under control, and the establishments operated as usual. It should also be mentioned that none of the penitentiary establishments introduced any kind of additional restrictions or bans at the time.

It was especially important for prisoners held at establishment No. 8 and their families that, during that period, visits of family members were allowed under a 24-hour regime. In addition, a big part of the prisoners had the opportunity to make phone calls to their families and inform them about their state of being.

By September 23rd, 2012 new mattresses were taken into the quarantine cell of the penitentiary establishment N3 in Batumi. The situation in Batumi establishment was quiet and no incidents took place there. Furthermore, during that period, penitentiary establishments N1 and N8 in Tbilisi were also provided with new mattresses.

Penitentiary establishment N8 in Gldani

On September 18th, 2012 after broadcasting of notorious video footages, representatives of the Prevention and Monitoring Department of Public Defenders' Office paid a special visit to Gldani N8 penitentiary establishment to study the situation there. By the time the situation at establishment N8 in Gldani was calm and no new incident had taken place. Most of the prisoners were asleep.

The video footages broadcasted by the media outlets on September 18th, 2012 caused the disgrace among inmates, their family members and the public. Practically, immediately after their release of those video footages, family members of prisoners blocked the central gate of the penitentiary establishment N8 and organized a demonstration. They demanded immediate access to prisoners to visit them. This time the Georgian Ministry of Corrections, Probation and Legal Assistance allowed an exception and during several days unplanned visits were allowed at all penitentiary establishments when all family members were allowed to visit a prisoner under a 24-hour regime, though assemblies, stir and demonstrations continued for several days in front of the gate of establishment N8 and fence around the establishment. This fact once again demonstrated disadvantage of placement of two institutions on one territory, namely, it was practically impossible to transfer prisoners from establishment N18 to places of their sentence-serving or to city hospitals. Movement of any type of vehicles on the territory of the establishment further aggravated the situation since information was being disseminated that beaten, and sometimes even deceased prisoners, were transported from the territory. The Special Preventive Group carried out an additional visit to penal establishment N8 to study the situation on the ground. The ground for the visit became entry of 2 ambulance cars to the territory of the establishment which further aggravated the situation and caused the concern of persons on the area adjacent to the prison. As a result of the monitoring, it was found that the ambulance vehicle had carried a defendant who was transferred from Tbilisi Republic Hospital. He had been detained by the police on September 16th, 2012, for a crime pursuant under the article 353 of the Penal Code. Public Defender's representatives met the defendant personally and got acquainted with the documents on his detention. As the defendant also confirmed, he was detained by the police on September 16th, 2012, when he sustained a gunshot wound in the leg area. After detention, the prisoner was transferred to a civilian sector hospital where he was operated, and the same night he was transferred to the prison's medical unit in an ambulance car. Accordingly, the cause of the entry of the ambulance car into the penitentiary establishment was to transfer of the aforementioned prisoner.

From September 19th, 2012 the situation at the Gldani establishment N8 aggravated even more after prisoners learned from the radio about the footage disseminated by TV channels the night before and members of prisoners' families and activists of different political forces gathered near the prison. They were trying to communicate with prisoners. Journalists also gathered near the prison. Latter requested to be allowed into the territory of the establishment and have direct contact with prisoners. Such reaction from the public instigated more noise and emotions among prisoners. At the given moment representatives of the Prevention and Monitoring Department were in the establishment. Noise and protests were heard from every cell of every accommodation blocks of the establishment. The PD representatives

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called on prisoners to stay calm, listened to their demands and were trying to keep the situation under control that was successfully achieved.

The Preventive Group assessed the situation at the establishment as natural, since for years prisoners were not allowed to utter a word in this establishment and hurt and protests had been accumulating in response to the experienced violence and degrading treatment. The prisoners were expressing verbal protests against the prison staff, directly involved in their mistreatment, and against those who were still employed at the establishment. The prisoners would whistle and shout the moment they would see these officers, but they did not commit any serious violence or other incidents.

To defuse the situation and avoid dissemination of false information, the Ministry of Corrections, Probation and Legal Assistance of Georgia decided to allow the human rights NGOs and journalists to enter the establishment, let them see the situation on spot and speak with prisoners. These people entered the establishment while Public Defender representatives were in the establishment; they studied the situation and left the institution.

On the night of September 19th, two ambulance cars entered the penitentiary establishment N8 to transfer 2 convicts from medical establishment N18 to city hospitals. But it became a problem, since a security car that was supposed to escort the ambulances could not enter the prison territory because of the protesters at the gate who did not allow the cars to enter. After they have thought of the way for the ambulance cars to leave the territory, another problem appeared. Namely, the citizens outside the gates claimed that the ambulance was transporting beaten prisoners and would not allow them to leave the area. The ambulances managed to leave the prison territory only after involvement of the Special Preventive Group.

Penitentiary establishment N15 in Ksani

On September 20th, 2012 some media outlets disseminated information on the special rapid reaction unit's alleged entrance into Ksani Establishment N15. According to PDO monitoring results no special rapid reaction unit entered the establishment and the situation there was quite.

Certain media sources were disseminating false information all day long on alleged destabilization, dead and beaten prisoners being at various establishments. The Prevention and Monitoring Department of the PDO was continuously monitoring the penitentiary establishments. At the time the situation in all the establishments was quite and under control. The National Preventive Mechanism of the PDO once again encouraged citizens to avoid disinformation that could lead to disorders in establishments and, first of all, harm prisoners' interests.

On September 21st, 2012 the Special Preventive Group of Public Defender's Office undertook a special monitoring in Ksani Establishment N15 where the group members interviewed prisoners from the all the parts of the establishment.

Convicts held in the so-called "old zone" of the Ksani Establishment wrote a collective explanatory note addressed to Public Defender which was signed by 526 convicts. The explanatory note dealt with unacceptable, inhuman, and degrading treatment of convicts inflicted in the past by the administration and employees of the Ksani Establishment N15.

The explanatory note mentioned regular tortures, physical and verbal abuse. It stated that convicts were punished for every small mistake, sometimes even without a reason. Before transferring to a solitary cell a convict was taken to an exercise room in the administrative building where he was beaten, tied to a heating system pipe. Sometimes even electric shock was used; he was threatened with a rape. Upon admission of new convicts and prior to their settlement in cells they were taken to the shower room where they were left for several days. They were forced to stand on their knees, their heads been shaven and verbally assaulted.

According to convicts from shower room one by one they were taken to the administrative building or cell and made to sign a cooperation agreement. Otherwise the one who dared to refuse cooperation, would be beaten, threatened with prolongation of the sentence and exerting pressure on his family.

The explanatory notes provided by inmates, made it clear, that living conditions of the convicts in the Ksani Establishment were unbearable. They were not even allowed to eat in a normal manner. Namely, the employees made them hurry and did not allow them to finish their meal; they punished them for talking in the dining hall. Regardless of the weather, prison officers made convicts to stand in the yard for hours during the daily check-ups and delayed to start it on purpose to make them stand in the rain or heat as long as possible. According to the convicts, the following employees were involved in beatings and different types of ill-treatments against them: Director Shota Tolordava, Deputy Director Bacho Rukhaia, George Parjanadze, Mamuka Shalamberidze, Levan Lezhava, Dima Chkhaidze, Nukri Kopaliani, a person called Ambrosi, Raji, Akaki Kirkitadze, Akaki nicknamed “Chepe”, Sandro, Vitali nicknamed “Adamich”, Roman, Jambul Bairamov, Ilo, Tamazi nicknamed “Chelentano”, Parna, and brothers Badri and Nukri. In addition, the convicts stated that this list was not comprehensive and they don’t know names of other employees, though they could recognize their faces.

As it was mentioned above, in August 2012 the convicts from the other part of the same establishment handed the explanatory note signed by over 700 convicts to the Special Preventive Group. The note described facts of physical and other types of pressure inflicted on them and named the same prison staff. Regardless of that, the Prosecutor’s Office has not responded to these facts up to present. The same applies to the collective complaint of 161 convicts of the same establishment that was forwarded to the Prosecutor’s Office by Public Defender in 2010. All the convicts were ready to provide detailed testimony to the investigation. The Special Preventive Group of Public Defender of Georgia submitted the aforementioned explanatory note to the Chief Prosecutor’s Office. Meanwhile, the PDO addressed the Prosecutor’s Office to dully and effectively investigate all the above mentioned facts of ill-treatment of convicts taking place in the Establishment N15.

Penitentiary establishment No 16 in Rustavi

On 23 September, 2012, the Special Preventive Group of Public Defender undertook a special monitoring in the Rustavi Establishment N16 and interviewed majority of prisoners held in the establishment.

The monitoring revealed that during the first half of the day the situation in the establishment was rather tense. The convicts were expressing peaceful protest against the ongoing events and were demanding the punishment of several staff members working in the Establishment N16. They were also demanding the meeting with representatives of Public Defender. The convicts handed 336 individual complaints and a collective explanatory note signed by 416 prisoners to the staff of the Prevention and Monitoring Department of Public Defender. It should be noted that the process of handing the explanatory notes and complaints proceeded quietly and in an organized manner. The convicts ensured the signing of the explanatory note themselves and then handed it to Public Defender’s representatives.

According to the convicts, under the old administration of the Rustavi Establishment N16, they were constantly subjected to ill-treatment which was manifested in physical and verbal abuse and punishment without a cause.

According to the convicts, the administration department staff regularly entered the cells and threw their clothes, icons, and other items to the floor; they used to take the convicts to the solitary cells just to prevent them from exercising the right to receive long-term visitors. The convicts also claimed that the staff members destroyed their supplies of water during the checks and then turned off the running water in the cells for several days, whereas the running water was available as usual on the rest of the establishment’s territory. In the case of a guest’s visit to the establishment, they closed the windows, turned off the ventilation, and left them in a stuffy cell for a certain period of time.

The convicts stated that the administration would switch off the phone connection for several days, and frequently even for several weeks.

The convicts also mentioned that the conditions became especially unbearable after the appointment of the former director, Vazha Tskhvediani, who was personally beating the prisoners held in the disciplinary cell together with the deputy director, Davit Mumladze, and the head of the security service, Ilo Lutidze, while other staff members were recording the process with cell phone cameras.

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In addition to the aforementioned persons, the convicts would also name the following employees: George Jgarkava, the regime officer and the officer Temur Korshia. They mentioned that this list was not comprehensive.

Penitentiary establishment No 6 in Rustavi

On September 23, 2012, the Special Preventive Group of Public Defender of Georgia carried out a special monitoring at Rustavi Establishment N6.

According to the convicts held in the cell N84 of the Establishment N6, they had been on a hunger strike since September 23rd. The convicts were demanding the investigation of the facts of physical assault that had taken place against them at different times in the past in the Ksani Establishment N15 (the former Establishment N7), the Rustavi Establishment N16, and the Kutaisi Medical Establishments N2 and N18.

In addition to the hunger strike, the aforementioned convicts also resorted to another form of protest. Specifically, on September 22nd, 2012, two convicts sewed themselves to each other with upper limbs with a sewing thread, while the remaining four convicts sewed their upper limbs to their bunks with a sewing thread.

According to the convicts, no facts of ill-treatment or other types of pressure against them on the part of the administration of the establishment had taken place during those days.

The convicts were demanding a meeting with the representatives of the Prosecutor's Office and punishment of the former employees of Penitentiary Department - Davit Chakua, Robert Arakelov, Aleko Mukhadze, Goga Butliashvili, Levan Lezhava, Giorgi Kokhreidze, Vazha Tskhvediani, Davit Mumladze, Dato Narsia, Roma Robakidze (Tura), Aladashvili, and persons called Aleksa, Khonski, and Ilo.

PENITENTIARY ESTABLISHMENTS IN THE WEST OF GEORGIA

Early morning of September 19th, 2012, the special monitoring started in the Zugdidi Establishment N4. In more details, two visits were carried out to the Zugdidi Establishment N 4 on September 19th, 2012 – one of them very early in the morning when majority of the prisoners were asleep, though those who were awake were interviewed. According to them, the administration has not undertaken any pressure against them during those days. In addition, none of the prisoners had been placed in the solitary confinement cell. The prisoners made the same statement the same day, on 19 September during the second visit of Public Defender representative.

The next visit to the Zugdidi Establishment N 4 was undertaken on 20 September 2012 and the situation inside the establishment was normal and the Establishment was operating in a normal regime. Additional visit to the above mentioned establishment was undertaken on September 22nd, 2012. During the visit, the group of inmates handed Public Defender representative a written statement listing all the Establishment staff involved in their ill-treatment in the past.

According to the prisoners, the following staff members displayed special cruelty against the prisoners: Amiran Janashia – director of the Establishment, Dimitri Jichonaia – former deputy director, other staff members – Romeo Rogava, Koba Antia, Gogita Gabisonia, Temur Gogoli, Levan Kodua, Papuna Kiria, Guram Kvaratskhelia, Onise (they didn't know his family name) and some Iosava (they didn't know his first name), as well as some Zaza who was the driver of the Director. The statement was signed by 7 convicts.

On September 23rd, 2012, the visit was undertaken to the Establishment N4 and the person who had handed over the written statement the previous day was visited. The convicts reported that they have not been subjected to any type of pressure and expressed their satisfaction with the treatment from the side of the administration that has considerably improved.

In general, the situation in the Establishment N4 was quite during the monitoring days and no incident has taken place. The prisoners were allowed to use the right of visits and phone calls on week-ends as well.

Visits to the Geguti Establishment N14 were undertaken on September 18th and 20th, 2012, where the general situation was normal. On September 18th, the convicts declared, that they were restricted of the right to use the phone and the TV from the second half of that day. These rights were fully restored on September 20th. In addition, some of the convicts requested to supply the establishment shop with newspapers and magazines, as well as to provide additional phones.

On September 19th, 21st and 24th, 2012, the representatives of Public Defender visited the Kutaisi Establishment N2 and interviewed majority of the prisoners. As a result, they have found out, that the prisoners in the Kutaisi Establishment N2 were restricted of the right to use media sources from the morning of September 19th. This restriction lasted only for a day – up to September 20th.

On September 21st, 2012, several prisoners of the Kutaisi Establishment N2 went on a hunger strike. Their basic demand was to fire about 20 staff members of the mentioned Establishment, who displayed degrading and aggressive treatment towards the prisoners in the past. Most frequently the following persons were involved in inflicting of ill treatment: Dimitri Jichonaia – former director of the Establishment and the staff members – Gaga Liparteliani and Irakli Jishkariani.

In general, situation at the establishment was calm on September 21st, 2012 and no incidents have occurred.

The prisoners also pointed out, they were facing various problems related with the receipt of parcels and the right of phone calls. Majority of convicts stopped hunger strike by the end of September 24th, 2012. Several prisoners continued hunger strike with a demand to be transferred to the partially open type establishment. They were demanding to be transferred to the establishment located in the East Georgia.

The prisoners also named the Establishment employees that were ill-treating them in the past. In response, Public Defender Office addressed the Ministry of Corrections, Probation and Legal Assistance with a request to undertake relevant measures to avoid facts of ill-treatment in the penitentiary system in the future.

The prisoners expressed their satisfaction towards the fact, that unfair and excessive strict regime requirements being practiced during the recent period and continuously outlined by Public Defender in his reports, were abolished.

In general, the situation at Kutaisi Establishment N2 and Geguti Establishment N4 was calm and no cases of incidents have been identified. According to the prisoners, the establishment staff has not undertaken any pressure against them during the abovementioned days. The establishment was operating in a normal manner and no restriction has been applied.

Medical Establishment N19 for TB Convicts

On September 27th, 2012 the Special Preventive Group of Public Defender visited the Medical Establishment N19 for TB convicts and interviewed the inmates of the Establishment. On September 25th, 2012, about 30 convicts went on a hunger strike with a major demand to receive improved medical service, to make and exercise more effective mechanisms of early conditional release, as well as sentence postponement or releasing from the sentence for healthcare reasons. Some of the convicts refused to take medicines in solidarity with those being on hunger strike.

On November 2nd, 2012, the staff of the Prevention and Monitoring Department of Public Defender's Office visited the Medical Establishment N19 for TB convicts. The situation inside the establishment was peaceful at the moment of the visit, though the convicts expressed their dissatisfaction about the poor conditions inside the establishment. Prisoners complained that they were not provided with proper healthcare, relevant medications and equipment for the protection of liver and other organs needed during the TB treatment.

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The convicts declared, that Otar Trapaidze, chief doctor of the Establishment N19 was not fulfilling his duties and responsibilities – in more details, he would not take any care of the state of the patients, would not recommend the persons with critical health problems to go through forensic expertise in order to postpone the sentence, or release them from the sentence on purpose. When prisoner was undergoing the forensic expertise at his own expense, Mr. Trapaidze was persuading the court that he managed to treat the prisoner at the Establishment N19. The statement listed the names of 9 convicts who died in the penitentiary system as a result of similar negligence and it was noted that this list was not comprehensive.

In addition, convicts in the Establishment N19 were stating, that the food has become considerably worse recently. Prisoners were not provided with the food containing relevant calories, diet and diabetic ingredients. This gap was filled with the products received by the patients through personal parcels, though recently they were not in position to receive additional food products any more. These products could not have been purchased at the shop either. In addition, they were not allowed to receive warm clothes via parcels and this was clearly visible during the interviews taking place at the Establishment yard.

The convicts expressed their dissatisfaction on the poor living and hygiene conditions that had a negative impact on their health.

The convicts handed the collective letter to the representatives of Public Defender signed by 507 prisoners. The National Preventive Mechanism of Public Defender addressed the Ministry of Corrections, Probation and Legal Assistance with the request to study the facts outlined in the statement of the TB prisoners and provide due and relevant response.

Penitentiary establishment No12

On September 28th, 2012 the representative of Public Defender visited and interviewed the convict Irakli Kereselidze in the Establishment N12. The explanatory note handed to Public Defender representative by Mr. Kereselidze describes the facts of beating and pressure inflicted against him by Gocha Baghatrishvili, the director of the Establishment N 12.

The prisoner outlined, that on September 22nd, 2012 he addressed Gocha Baghatrishvili, director of the Establishment N 12 with in a written manner that made the director angry. As a result, the director assaulted him verbally and physically in his own office and threatened to “make him eat the papers and prolong his sentence” if he would dare to write another letter.

On October 2nd, 2012 we addressed the Prosecutor’s Office and the Ministry of Corrections, Probation and Legal Assistance on the abovementioned fact with a letter N 3836/03-5/1864-12.

On October 12th, 2012 Public Defender’s Office received a letter N13/41917 from the Prosecutor’s Office notifying, that Tbilisi Isani-Samgori district Prosecutor’s office has initiated an investigation on the criminal case N 004091012801 on 9 October, 2012. The investigation was launched on the case of exceeding power by the employee of the Establishment N 12 and committing of a crime envisaged under the subparagraph “b”, part 3 of the Article 333 of the Penal Code of Georgia. Investigation on the case is pending.

A special visit was paid to the same Establishment on October 22nd, 2012 on the fact that the convict Sergo Merabishvili climbed to the roof of the establishment and was threatening to jump from there unless he was given the chance to meet with Public Defender, members of the Monitoring group and other NGOs. After arrival of Public Defender representatives, the convict left the roof and had a normal conversation with them.

According to the convict, he climbed the roof after being subjected to pressure and threatening by establishment director. S. Merabishvili declared that the purpose of the pressure was to force the convict Irakli Kereselidze stop complaining.

During the same conversation, S. Merabishvili declared, that former high-rank officials of the Penitentiary Department,

including Bachana Akhalaia and Gaga Mkurnalidze were forcing him to cooperate with them and commit various illegal actions including false testimonies against various persons.

The convict also claimed that he was forced to rehabilitate the infrastructure of the establishment on his own expense.

The explanatory note written during the abovementioned conversation was sent by Public Defender's Office to the Chief Prosecutor's Office on October 23rd. On November 2nd, in reply to the said letter Public Defender's Office received a letter notifying that the investigation was launched on October 31st, 2012.

Penitentiary establishment No 17 in Rustavi

On September 26th, 2012, the Special Preventive Group of Public Defender visited the Establishment N 17 and interviewed the convicts. 13 of the convicts considered themselves to be political prisoners and were planning to go on a hunger strike from September 26 till October 1.

They addressed Public Defender's Office with complaint pointing that they would start hunger strike on September 26th to October 1st to express their solidarity and protest against publicly known facts of torture and to demand fair elections.

The prisoners were also demanding to apply the "Must Carry" principle in their establishment N 17 in Rustavi including the period following the elections.

INVESTIGATION OF FACTS OF TORTURE AND INHUMAN TREATMENT

Results of monitoring conducted in closed-type regime institutions, analysis of applications and complaints received at Public Defender's Office and "prison video footage" disseminated by TV channels in September 2012 revealed that ill-treatment is one of the gravest problems at penitentiary establishments and the police. Legal reaction on the facts of torture and inhuman treatment, disclosure and punishment of those responsible is a prerogative of the Chief Prosecutor's Office of Georgia. And to eradicate torture and inhuman treatments it is necessary to investigate every such fact effectively and to overcome the impunity syndrome that constitutes a serious problem nowadays. Public Defender addressed the Chief Prosecutor on numerous similar facts but, in most cases, investigation has been delayed.

During the past years inaction and ineffectiveness of investigation bodies created the impunity syndrome among law enforcement officials. Furthermore, the majority of the victims expressed distrust towards the investigation and the latter further promoted practice of ill-treatment at closed-type regime institutions. As a rule, the Prosecutor's Office was inclined to exercise superficial approach to the question of investigation of actions involving assault or torture of detained persons and cases containing such criminal acts. And as it was mentioned, frequently such facts were qualified not as criminal acts of torture or degrading and inhuman treatment but as acts of exceeding official power or physical assault. The investigation of similar cases always was of a formal character and often ended in termination of the case or its delay for years. The most noteworthy is that investigation of such cases were always stopped on the basis of testimonies of policemen and as a rule, the victim denied explanatory notes given to Public Defender and gave testimonies in favor of law enforcers. In some cases, forensic medical examination was appointed for the time when no damages were noticeable on victims any more - several weeks, or, maybe even, several months later.

In 2010 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Georgia it is noted that : "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 Article 144¹ of the Criminal Code, but rather under Article 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".⁶

Herewith we shall note that one of the main problems related to the investigation of the facts of ill-treatment is incorrect qualification – in some cases investigation is initiated pursuant not to articles referring to torture or body injuries but under the clause of abuse of power which represents a disciplinary crime and envisages significantly lighter sanction. A clear example of this is cases of Petre O. and Malkhaz A.

Case of Petre O.

The convict noted that in February 2012 he was raped and tortured by employees of the penitentiary establishment N15 in Ksani. On November 26th, 2012 the written demand N1091/03-4 was sent from Public Defender's Office to the Chief Prosecutor of Georgia in which we requested information regarding the following: when the investigation into the above fact has started; what investigative actions have been taken so far; and whether criminal proceedings have been instituted against specific person/persons. According to the reply N13/54152 received from the Chief Prosecutor's Office of Georgia on December 11th, 2012, on July 10th, 2012 the investigation unit of the Shida Kartli and Mtskheta-Mtianeti District Prosecutor's Office, on the basis of a joint application of convicts of the Ksani N15 establishment, initiated investigation into the criminal case on the fact of abuse of power by personnel of the penitentiary establishment N15 in Ksani pursuant to the paragraph 1 of the Article 333⁷ of Penal Code of Georgia. The same response stated that testimonies were received from Petre O. and other convicts regarding the above case and forensic medical examinations were also carried out. And that at the time criminal proceedings against a specific individual had not been initiated and investigation was ongoing.

* * *

Public Defender's Office of Georgia sent written requests to the Chief Prosecutor's Office of Georgia in which we have requested information regarding the following in 2012:

1. How many preliminary investigation into criminal case pursuant to the Articles 332-333, as well as Article 144¹-144²-144³ of the Penal Code of Georgia (separately) were initiated;
2. Criminal proceedings against how many individuals have been initiated; How many of them were public servants (with indication of the agency);
3. How many of the above mentioned criminal cases were submitted to common law courts for essential consideration;
4. Number them procedural agreements being drawn up; furthermore how many criminal cases were terminated pursuant to the above-mentioned Article and what was the basis for termination.

According to reply received from the Chief Prosecutor's Office of Georgia, for the period from January 1 to June 30, 2012:

1. Investigation was initiated under the Article 332 of the Penal Code of Georgia on 24 facts; Investigation was initiated under Article 333 of the Penal Code of Georgia on 37 facts; Investigation was initiated under Article 144³ of the Penal Code of Georgia on 1 fact; No investigation was initiated under Articles 144¹-144² of the Penal Code of Georgia.

6 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 (PCIT). par. 17.

7 Abuse of power. "Punishable with a fine or deprivation of liberty for the period up to three years, deprivation of right to occupy a high position or activity for the period up to three years".

2. Criminal proceedings were initiated against 24 individuals pursuant to Article 332 of the Penal Code of Georgia; Criminal proceedings were initiated against 10 individuals pursuant to the Article 333 of the Georgian Criminal Code; Criminal proceeding was initiated against 2 individuals pursuant to Article 144¹ of the Penal Code of Georgia; No criminal proceeding was initiated against any individual pursuant to Article 144² of the Penal Code of Georgia; Criminal proceedings were initiated against 1 individual pursuant to Article 144³ of the Penal Code of Georgia.
3. Criminal proceedings were initiated against 76 individuals under Article 332 of the Penal Code of Georgia; Criminal proceedings were initiated against 5 individuals under Article 333 of the Penal Code of Georgia; Criminal proceedings were initiated against 2 individuals under the Article 144¹ of the Penal Code of Georgia; No criminal proceedings were initiated against any individual under Article 144²-144³ of the Penal Code of Georgia;
4. Investigation was terminated on 15 facts under the Article 332 of the Penal Code of Georgia, 13 out of which were pursuant to the Subparagraph “a” of the Paragraph 1 of Article 105 of the Penal Code of Georgia, and the remaining 2 facts - under the Subparagraph “e” of the Paragraph 1 of Article 105 of the Penal Code of Georgia. Investigation was terminated on 22 facts pursuant to Article 333 of the Penal Code of Georgia, under Subparagraph “a” of the Paragraph 1 of Article 105 of the Penal Code of Georgia. Investigation was terminated on 8 facts under Article 144¹ of the Penal Code of Georgia, under Subparagraph “a” of Paragraph 1 of Article 105 of the Penal Code of Georgia. Investigation was terminated on 4 facts pursuant to Article 144³ of the Penal Code of Georgia, pursuant to the Subparagraph “a” of the Paragraph 1 of the Article 105 of the Penal Code of Georgia. No investigation on any fact was terminated under Article 144² of the Penal Code of Georgia.

According to rept received from the Chief Prosecutor’s Office of Georgia for the period from July 1st to December 31st, 2012:

1. Investigation was initiated on 85 facts under Article 332 of the Penal Code of Georgia; Investigation was initiated on 134 facts under Article 333 of the Penal Code of Georgia; Investigation was initiated on 23 facts under Article 144¹ of the Penal Code of Georgia; Investigation was initiated 105 facts under Article 144³ of the Penal Code of Georgia on; No investigation was initiated under Article 144² of the Penal Code of Georgia;
2. Criminal proceedings were initiated against 20 individuals pursuant to the Article 332 of the Penal Code of Georgia; Criminal proceedings were initiated against 26 individuals pursuant to Article 333 of the Penal Code of Georgia; Criminal proceedings were initiated against 15 individuals pursuant to Article 144¹ of the Penal Code of Georgia; Criminal proceedings were initiated against 21 individuals pursuant to Article 144³ of the Penal Code of Georgia; No criminal proceedings were initiated against any individual pursuant to Article 144² of the Penal Code of Georgia;
3. Our question as to how many of these criminal cases were submitted to common law courts for essential consideration was left unanswered.
4. Investigation was terminated on 22 facts under Article 332 of the Penal Code of Georgia, 15 out of which - under the Subparagraph “a” of the Paragraph 1 of the Article 105 of the Penal Code of Georgia, on 2 facts - under the subparagraph “e”, on 4 facts - under the Subparagraph “i” and on 1 fact – under the Subparagraph “h”. Under Article 333 of the Penal Code of Georgia investigation was terminated on 22 facts, pursuant to the Subparagraph “a” of the Paragraph 1 of the Article 105 of the Penal Code of Georgia. Under Article 144¹ of the Penal Code of Georgia investigation was terminated on 1 fact, under the Subparagraph “a” of the Paragraph 1 of the Article 105 of the Penal Code of Georgia. Under Article 144³ of the Penal Code of Georgia investigation was terminated on 1 fact, under the Subparagraph “a” of the Paragraph 1 of Article 105 of the Penal Code of Georgia. No criminal investigation was terminated under Article 144² of the Penal Code of Georgia.

2012

Despite the fact that in 2011 Public Defender addressed numerous recommendations to the Chief Prosecutor's Office of Georgia requesting the launch of investigation, to our knowledge no relevant procedures have been implemented. We express hope that investigation will be more effective and it will promptly react to the facts of ill-treatment and torture. We believe that effective investigation should be conducted in a prompt and effective manner in order to punish those responsible for torture and ill treatment of detainees. Furthermore, the investigation should be independent and effective in order to combat the impunity syndrome. On this background, state authorities should take specific steps to reveal and effectively investigate facts of torture and inhuman treatment.

Recommendation for the Chief Prosecutor

- **To personally observe and take under control investigation of all facts of ill-treatment that have taken place at penitentiary establishments and temporary detention isolators in order to ensure smooth conduct of prompt and effective investigation;**
- **to ensure implementation of relevant measures aiming timely identification and institution of criminal proceedings against all those responsible;**

STEPS UNDERTAKEN AT THE PENITENTIARY SYSTEM

Following the events of September 18th, 2012, all the directors of the Penitentiary establishments were suspended and new prison governors were appointed. In addition, in a few days, almost all the officers named as abusers by the prisoners were ousted from their positions. Some of them resigned on their own will.

Simultaneously, criminal prosecution has been initiated against 20 personnel of Penitentiary department and relevant establishments.

On September 20th, 2012, George Tugushi, the former Public Defender of Georgia has been appointed as the Minister of Corrections and Legal Assistance of Georgia. It was followed with a number of positive changes that to some extent was the follow-up of the recommendations issued by Public Defender during past years.

For example, prisoners at closed type establishments (Kutaisi N2, Gldani N8 and 18, Rustavi N6) were allowed to purchase TV sets at the prison shop, some meaningless parcel restriction were partially abolished (for example: prohibition on denim), newspapers became available, bed equipment was replaced in some of the establishments where needed, prisoners of the Kutaisi N2, Gldani N8 and N18 Establishments are no longer reluctant to exercise their right to walk in the open air.

At the same period, based on the decision adopted by the Prime Minister, the Patrol Police temporarily entered the establishment to assist the prison staff and to avoid the facts of ill-treatment and destabilization in the Establishments where there was an obvious lack of staff. In addition, it should be noted, that the police officers stayed in the penitentiary establishments for about a week. Prisoners accepted this temporary change positively and were not aggressive towards the police officers. The members of the Preventive Group were also interviewing the police officers on daily bases. The police stated that prisoners were not aggressive towards them and they did not encounter any problems while working at the Establishments.

Meanwhile, it should be also noted, that majority of new prison governors made contacts with the prisoners quite quickly and effectively which helped to prevent further disorder and destabilization and supported the normal functioning of establishments. Administration of the Ksani N15 and Rustavi N16 establishments were particularly successful in this

regard. They successfully managed to study the specifics of the new activities in these Establishments in a shortest period and managed to generate trust among prisoners.⁸

The same does not apply to the new management of Rustavi N17 and N6 Establishments. As it turns out it was more difficult for them to deal with the new tasks and communicate with prisoners since they were under the influence of old staff. It was proved by the above mentioned incident that took place at the Establishment N6.

In the middle of October 2012, the MCLA disseminated the information about the approval of the list of persons who were granted the right to enter the prisons/places of restriction functioning under the Penitentiary Department without any special permission.

The National Preventive Mechanism of Public Defender of Georgia approved this decision and meanwhile believed that the transparency of the penitentiary system and increase of the public accessibility was of crucial importance for the system improvement and prevention of ill-treatment and other human rights violations. Furthermore, authorities were encouraged to define the specific competences of members of public commission in the shortest possible period, mechanisms for of obtaining information and providing relevant replies. On this background the public monitoring system has been temporarily developed as an equal alternative of the national preventive Mechanism of Public Defender.

During special monitoring, representatives of Public Defender Office paid special attention to the Parliamentary Elections process taking place on October 1st, 2012. Therefore the visits were undertaken to the Establishments with the polling stations as well as places where the voting was process took place through mobile ballot boxes, immediately on 1 October. Monitoring results proved that the voting process at penitentiary establishments went smoothly, the administration has not exercised any pressure towards prisoners with voting rights and prisoners were free to make their choice. The convicts considering themselves as political prisoners declared the same.

Notwithstanding, the shortcomings of social services at the penitentiary system, being continuously pointed out by Public Defender in his reports, were once again revealed in 2012. Considerable number of convicts was unable to vote because of the lack of IDs. The social service responsible for taking care of such problems failed to register prisoners without IDs and undertake relevant procedures needed to make the IDs. Prisoners in some establishments declared that they were not aware of their right to vote with a defendant status. Information of the prisoners on the given issues also falls under the competence of social services.

Parliamentary elections of 1 October, 2012 resulted in the complete replacement of the cabinet of ministers. On October 19th, the former Public Defender, Sozar Subar was appointed as the Minister of MCLA. Simultaneously, authorities were replaced in several other institutions. In general, the process was undertaken in a peaceful manner.

The only unfortunate exception was Rustavi Establishment N16, where the director was once again changed on October 29th. This change triggered dissatisfaction of prisoners. On October 31st, the representatives of the Preventive and Monitoring Mechanism of Public Defender's Office visited and interviewed majority of the convicts at Establishment N16. The convicts handed collective letters of complaints signed by hundreds of prisoners to Public Defender representatives. According to prisoners, a new director was appointed in the mentioned Establishment on October 29th, 2012.

The new director started to exercise the old methods from the very first day of his appointment.

Some unfair restrictions were applied – they were not allowed to: go to church, dry their clothes in the cells even though there was no special place allocated for this purpose. According to convicts, the new director was threatening prisoners with the sentence prolongation and calling forces of special destination. They admitted to be punished and transferred to the solitary confinement cells without grounds.

In addition to all the above referred, the convicts noted that the new director, Levan Aburjania has beaten and “slipped drugs in the pockets” of some of the prisoners at Establishment N16 while working as a police officer. According

⁸ Although after the change in the Ministry leadership the said directors left positions.

to the convicts, after appointment of the new director, the old staff distinguished with special cruelty during the governance of Vaja Tskvediani, started to appear again.

On October 31st, 2012 information about beaten prisoners was disseminated, though the convicts did not confirm such case with the representatives of Public Defender. The convicts were declaring to refuse to use the rights of visits as a form of protest. Also, they clearly stated that there has not been any disagreement among prisoners and information about the alleged confrontation between the convicts of the Establishment N16 was false. By the time of monitoring, there were 5 prisoners on hunger strike. Two of them were protesting against being placed in the solitary confinement cell and remaining 3 were protesting against their cellmates being placed in the solitary confinement cell.

National Preventive Mechanism of Public Defender recommended the Minister of Corrections, Probation and Legal Assistance to carry out the detailed study of the abovementioned facts and make relevant decisions. In addition, the statement of the prisoners was sent to the Chief Prosecutor's office for follow-up. Based on the reply of the Ministry of Corrections, Probation and Legal Assistance received on November 16th, Levan Aburjania, the director was suspended from the given position on 2 November.

In general, as a result of the events taking place in September, in some of the establishments certain convicts tried to abuse the bit lenient regime. Number of self-injuries with different demands on behalf of prisoners has increased. Majority of the demands related to medical service that continues to be a problem in the penitentiary system.

Number of cases of insult of the medical staff by prisoners has also increased and as a result almost all the doctors in the Rustavi Establishment N6 refused to work in those conditions and resigned from their positions. The situation was critical. Also, on October 23rd, 2012 a collective statement was received at Public Defender's Office that was signed by medical personnel of the establishment N18. The statement stated that inmates were calling them executioners and murderers. The same statement said that there were numerous facts of prisoners threatening doctors with inflicting wounds. Prisoners self-harmed themselves and demanded high doses of psychotropic and sleeping drugs to be prescribed, otherwise they threatened with self harm.

APPLICATION OF DISCIPLINARY SENTENCES AND ADMINISTRATIVE SANCTIONS

During the monitoring of 2012 procedures of application of disciplinary sentences and administrative sanctions and regularity in different penitentiary institutions was examined.

According to the European Prison Rules, "Disciplinary procedures shall be mechanisms of last resort"⁹ "Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners"¹⁰ "The severity of any punishment shall be proportionate to the offence"¹¹ "Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited."¹² "Punishment shall not include a total prohibition on family contact"¹³.

According to information received from the Penitentiary Department of Ministry of Corrections, Probation and Legal Assistance of Georgia, for the period from January 1st, 2012 to December 31st, 2012 administrative sentence was applied to 13 prisoners in the penal establishments, out of which only 1 prisoner appealed against the application of the disciplinary sentence. For the period from January 1st, 2012 to June 30th, 2012, 1709 prisoners were placed in solitary confinement cells, and only 1 prisoner out of those appealed against the decision. From July 1st, 2012 to December 31st, 2012, 921 prisoners were placed in solitary confinement cells – only one appeal took place was instituted.¹⁴

9 Rule 56.1

10 Rule 56.2

11 Rule 60.2

12 Rule 60.3

13 Rule 60.4

14 Letters N10/8/2-8847 dated July 29, 2013; 10/8/2-12485 dated October 31, 2012 and N11076/10 dated February 12, 2013.

A question of the monitoring group why the order of the prison director on their placement in solitary confinement cells was not appealed was answered in similar manner by all prisoners - that in their opinion appeals was meaningless.

We should herewith state that the real figure of prisoners penalized in the reporting period was even higher than in several other establishments, e.g. in the Gldani establishment N8 and Kutaisi establishment N2 unofficial and illegal mechanisms of punishment of prisoners were in place (for example, placement in a quarantine unit or so-called box), that were used in cases when the administration, for various reasons, did not want to give even formal grounds for the punishment. Also, use of methods of collective punishment was registered in penitentiary establishments N15 and N16.

Neither national legislation nor international standards allow collective punishment. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) stressed in its 2010 report on Georgia with regards to the Georgian authorities that “any form of collective punishment is unacceptable”.

Penitentiary establishment No 15

On June 29th, 2012 representatives of Public Defender visited the new block of establishment N15 where it became known that the administration deprived prisoners placed there of TV sets, ventilators, items of hygiene and basins. According to convicts, the above retractions were caused by collective complaint written several days before in the name of Public Defender (see above “ill-treatment”), that described ill-treatment exercised against them and the grave situation at the establishment. Though majority of the convicts refrained from citing the reason for removal of things. Part of them explained that the reason for not having TV sets was that high voltage electricity rendered TV sets out of order while they could not find an answer to not having of personal hygiene items and basins.

Penitentiary establishment No 16

On June 27th representatives of Public Defender visited establishment N16 during which they found out that from June 23rd, 2012 various rights of convicts placed in blocks A and B of the establishment N16 were restricted, including right of free movement on the territory of the establishment (they were in cells and could not go out in the establishment yard), right to use a telephone and visits. TV sets had been removed from every cell and convicts could only purchase cigarettes, matches and personal hygiene items.

In conversations with convicts and the administration it became apparent that restrictions applied to all convicts placed in blocks A and B. According to the verbal statement of the administration, restrictions were caused by ongoing security measures, but the conducted monitoring revealed that the restrictions had the nature of collective punishment. Based on the above, on June 28th, 2012 Public Defender’s Office addressed a letter to the chairman of the penitentiary department and demanded information on the reasons and duration of this form of punishment. Also, we have demanded acts setting the aforementioned restrictions.

On June 29, 2012 the Preventive Group carried out another visit in the Rustavi establishment N16 again, during which it was revealed that starting from the morning convicts could go to the establishment yard and use the establishment shop, though they did not have TV sets and telephones in the establishment were out of order. Also, they could not have visits. But the aforementioned restrictions also were removed several days later.

Despite the fact that the preventive Group witnessed the above-mentioned situation on the place on July 13th, 2012 Public Defender’s Office received an absolutely inadequate response where it was stated that allegedly the administrative control department of the headquarters of the penitentiary department had examined facts stated in the letter and “decided“ that the convicts exercised rights they were entitled under legislation in force. According to the same response, “disciplinary measures against convicts are exercised individually, in accordance with legislation in force”.

2012

PLACEMENT IN SOLITARY CONFINEMENT CELL

During the conducted monitoring the Special Preventive Group of Public Defender's Office paid special attention to the situation in solitary confinement cells of the establishments, spoke with all convicts placed there at the time of the monitoring period, examined procedures of their placement there through both interviewing them and studying documentation.

No solitary cells exist in penitentiary establishments N1, N11 and N18.

Duration of punishment for similar violations is defined differently in different penitentiary establishments. The above approach can only be assessed positively only if individual approach is exercised and characteristics of a convict as well as circumstances in which he committed these violations are taken into consideration.

As a result of the monitoring it was revealed that often disciplinary violations follow the demand for a doctor expressed by convict – a convict is compelled to make noise and bang on the cell door, otherwise, in the words of prisoners, they are not in position to see the doctor. The above is relevant to penitentiary establishments in Kutaisi N2 and in Rustavi N6.

It shall be noted that during the reporting period placement in the solitary cells were rarely used in Zugdidi N4, Batumi N3 and N12 and Rustavi N17 establishments.

According to the second paragraph of the Article 88 of the Imprisonment Code, "An accused/convict, placed in the solitary confinement cell shall be deprived of the right to visits, telephone conversations, purchase of food." CPT recommends that the Georgian authorities take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts.^[29] Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts".¹⁵

We believe that the right of an inmate to have contacts with the outside world shall be considered as their right and deprivation of such contact shall not be used as a form of punishment. Also, through increase of forms of encouragement and objective use of punishment mechanism it is possible to maintain stability of a prison, while unjust and illegal treatment of inmates may lead to confrontation between the majority of them and the administration or, in case of collective punishment, among prisoners that may result in grave and unacceptable consequences.

Suggestion to the Georgian Parliament: To introduce relevant amendments in the Prison Code to ensure contact of persons placed in solitary confinement cells with the outside world.

Recommendation to the Chairman of the Penitentiary Department:

- **During the administrative control carried out by the Penitentiary Department to pay special attention to disclosure and elimination of methods of unofficial punishment and cases of collective punishment.**

REGISTRATION JOURNALS OF PERSONS PLACED IN SOLITARY CONFINEMENT CELLS

Up to May 2012 old registration journals of persons placed in a solitary confinement cell were in place in all establishments. They were later replaced by new 365-page journal which weights 8 kilos. The journal, because of its volume is completely unsuitable for practical use, for example, it is hard (on the spot in establishments – even impossible) to make a copy of a note made there. The journal has 12 columns:

¹⁵ Same, par. 115

1. Registration number
2. First name, surname and parental name of a person in custody
3. Date and number of issue of an order
4. Providing defendant /convict with order information. N4 column itself has two sub sections – 1. Signature of personnel in charge 2. Signature of an inmate.
5. Disciplinary violation. N5 column is also divided into two subsections – 1. Relevant paragraph of the Imprisonment Code and the establishment charter and 2. Content of a disciplinary violation.
6. Place of the placement (block and cell number)
7. Duration of placement in a cell
8. Date and Time of placement in a solitary confinement cell
9. Signature of personnel responsible for placement of an inmate
10. Time and date of release from a solitary cell
11. Signature of a person responsible for release from a solitary cell
12. Note

Accurate and regular keeping of solitary confinement cell journals is of utmost importance for the purpose of monitoring the tendencies of disciplinary punishment, violations and existing practice. It is important that not only the duration of punishment, dates of placement and release of an inmate but type of a specific violation be indicated in the journal.

The most common violation leading to disciplinary punishment of an inmate at penitentiary establishment are: noise, communication with inmates in other cells, fight, verbal abuse of a prison personnel or another inmate, disobedience against demand of prison personnel, being late for or non-attendance of list check-up, littering of the territory.

It shall be noted that as a result of the monitoring carried out by the Preventive Group in summer 2012 and recommendations issued, in several establishments clear and concrete notes are made in registration journals of persons placed in solitary cells from which it is clear for which violation was a person punished.

As opposed to the aforementioned, notes made in N1 journal for “registration and keeping of placement in Karzer/ solitary cells” and N8 journal for “records of convicts placed in solitary cells” of N17 establishment it becomes clear that mostly feature “violation of regime requirements” and disobedience to personnel’s order”. These notes are very general and do not specify information on concrete violations. Also, several notes in the journal of N2 establishment are vague, such as: “violation of regime regulations” and “disobedience to regime requirements” where it is not specified which specific actions are considered violation though in N2 establishment such violations are rare.

We shall give a positive assessment to practice established in Geguti N14 establishment, namely, notes made in the solitary cell journal make it clear that during 2012 out of 294 convicts placed in solitary cell 128 inmates were released from the solitary cell before the due time on the basis of a note from a doctor which constitutes 43.5 %.

Penitentiary establishment No 1

As it was noted above, N1 establishment does not have solitary confinement cells and forms of punishment included giving “warning”, and restrictions of various rights. In 2012 warning was given to 130 convicts while 1 convict was restricted from the right to use telephone for a certain period of time.

2012

Penitentiary establishment No 2

The “Journal for records and registration of placement in karzer” N320 and “Journal for records of convicts placed in solitary cells” N 129 were examined. Notes made in the journals reveal that in 2012 400 inmates were placed in solitary cell 248 out of which - in the first half of the year and 152 – in the second half of the year. In 2012 83 inmates were warned, short-term visits were restricted for 55 inmates, right to use telephone was limited for 283 prisoners, 157 inmates were restricted to use personal items and 1 inmate was restricted the right to write letters.

The most common type of violations are “noise in a cell”, “communication with inmates in other cells”, “passing something to another cell”, “making so-called kabura” (digging out a wall into another cell). We shall note that apart from a few exceptions all violations are quite concretely and clearly explained in the relevant journal. Though rarely still we encounter citing as a violation of getting a tattoo and damaging one’s own clothes and it is absolutely incomprehensible why this is considered a violation.

Penitentiary establishment No 3

In 2012, 26 prisoners were placed in a solitary cell, out of which 15 inmates - in the first part of the year and 11 inmates - in the second part of the year. In 2012 warning were given to 9 prisoners while 1 prisoner was prohibited from the right to send and receive a parcel for a certain period of time. The most common violations are fight and verbal abuse.

Penitentiary establishment No 4

In 2012, 22 inmates were placed in solitary cell, out of which 12 inmates in the first part of the year and 10 inmates - in the second part of the year. And the most common violation was: noise in a cell’.

Penitentiary establishment No 5

In 2012, 65 prisoners were punished and placed in solitary cell, out of which 45 inmates - in the first part of the year and 20 inmates - in the second part of the year. The most common violations were “verbal abuse of another inmate”, “verbal abuse of personnel”, “did not comply with the regime regulations and made noise in a cell”, during examination refused to enter the cell”, “verbal abuse of a doctor”, “did not comply with the lawful demand of the regime regulations”. In addition, in 2012 warning was given to 1 inmate while 2 inmates were transferred to a cell-type place.

Penitentiary establishment No 6

In 2012, for the purpose of punishment 144 inmates were placed in solitary cells, 92 inmates during first 6 months and 52 inmates in the second part of the year. Also, in 2012, 29 prisoners received warning, 1 inmate was given strict warning, 4 inmates were restricted the right to use establishment shop as 8 prisoners were restricted the right to use telephone.

Penitentiary establishment No 7

In 2012 no prisoner was placed in a solitary cell. During the reporting period 5 inmates were given warning, 8 convicts were restricted the right to use telephone, 7 inmates were restricted the right to receive visits and 1 inmate was restricted to conduct correspondence.

Penitentiary establishment No 8

In 2012, for the purpose of punishment 703 inmates were placed in a solitary cell, 458 out of which - in the first half of the year and 245 - in the second half of the year. In 2012, 16 prisoners were given warning, 327 were restricted the right to use telephone, 133 inmates were restricted to use a short visit, 407 prisoners were restricted the use of the establishment shop.

In the journal we see a note where a prisoner noted “I was listening to a radio on a high volume, I have not taken into account my cellmate’s request to reduce the sound and loud conversation occurred”. The most common violation in N8 establishment was “noise in a cell” (see treatment). In the second half of 2012 5 cases of release from a solitary cell on the grounds of doctor-registered aggravation of health was recorded.

Penitentiary establishment No 9

In 2012, 11 inmates were placed in a solitary cell, out of which 62 inmates were - in the first half of the year and 49 - in the second half of the year. In 2012, 85 convicts were given warning.

Most common violations for sending prisoner in solitary confinement, include “abuse of another inmates” and “non-attendance of list check-up”. At the same time, types of violations are quite concretely specified. As to punishments, punishments are small and none of them exceeded 5 24-hour spells/ days that shall be given positive assessment.

N11 Juvenile Special establishment

There are no solitary cells in the N11 establishment and are used such forms of disciplinary punishment as warning. Strict warning, restrictions of different rights for a certain period of time. In 2012, 11 persons were given such disciplinary measures. In addition, in August, 2012 after an incident that occurred at N11 establishment all convicts were transferred to Rustavi N16 an N17 establishment as well as some time later juveniles placed in N16 establishment were transferred also to N17 establishment. As to the disorder that occurred in the establishment and its consequences, criminal investigation was launched against 11 juveniles that were described above in details. The aforementioned 11 prisoners were transferred to N8 establishment.

Penitentiary establishment No 12

In 2012, 25 inmates were placed in a solitary cell out of which 20 prisoners were placed in the first half of the year and 5 - in the second half of the year. In addition, in 2012 21 prisoners were warned for violation of prison internal rules. Generally, use of solitary cells is rare in the above mentioned establishment.

Penitentiary establishment No 14

In 2012, 294 prisoners were placed in solitary cells, out of them 158 inmates were placed in the first half of the year while 136 – in the second half. In 2012 14 convicts were warned. The most common violations are “noise in a dormitory”, “noise in a dormitory block” and “littering a living space”.

Penitentiary establishment No 15

In 2012, for the purpose of punishment 529 prisoners were placed in a solitary cell, out of which 265 were placed in the first half of the year, and 164 - in the second half of the year. In 2012 warning were given to 164 inmates, out of

2012

which 132 received it in the first half of the year and 32 – in the second half of the year. In addition, 2 convicts were strictly warned.

“Journal of normative records” N14 does not specify type of violations. With regards to the above, after the monitoring conducted in the first half of 2012 the prevention and monitoring department of Public Defender’s Office issued recommendation to the administration of the establishment to accurately record and register persons placed in solitary cells which was rectified in the second half of 2012 when new journals were opened. There we can see reasons for imposition of disciplinary sanctions, namely, relevant column indicating the specific violation committed by the prisoner for which he was placed in a solitary cell. The most common violations are “made noise in a cell, upon attend the check-up of convicts”. In additions, we see other types of violations, described in details and of various type: “did not allow personal check-examination”, “during supper caused noise, negatively reacted to remarks”, “making noise during the check”, “was talking to a prisoner placed in a solitary cell”, “did not allow to conduct check and examination of the cell”, “dropped remains of the food brought from diner near the entrance door”, “was smoking in the hall of living block of convicts and expressed displeasure at the personnel’s remark”, “littering the living territory and block”, “communication from a cell to a yard”, “threw a stone and broke a window glass of the duty building”, “During the recommendation handing of dinner was moving against the flow of the convicts and tried to attract another convict’s attention”, “started noise when talking on the telephone and tried to attract attention of other inmates”, “approached a fence near the duty building and tried to climb it”, “Standing in a walking yard was talking loudly to inmates placed in medical part”, “during stay in a solitary cell tried to communicate with other inmates”, “was cutting his hair in dormitory, in the accommodation block and thus soiling beds of others”, “while in the accommodation block was communicating using hand gestures to people that came there for a visit”.

We emphasize that in the period from October to December, 2012 solitary confinement cells were used for the purpose of punishment far less, namely in the above-mentioned months only 2 convicts were placed in a solitary cell while the lowest figure of inmates placed in solitary cell penitentiary establishment N15 in Ksani was recorded in September and February of 2012, 34 and 44 respectively.

Penitentiary establishment No 16

In 2012 for the purpose of punishment, 324 inmates were placed in a solitary cell, 215 out of which - in the first half of the year and 109 - in the second half of the year. 1 inmate was given administrative sentence.

The most common violations include “violent and insolent behavior during check” and “disobedience to a duty officer and aggression”.

According to notes made in the above-mentioned journal, in the first half of 2012, 7 cases of release from solitary confinement cell was based on aggravation of health recorded by doctor. We shall note that from October 30th, 2012 to January 1st, 2013 no inmate was placed in a solitary cell while in the month of October 3 convicts were punished with placement in a solitary cell.

Penitentiary establishment No 17

In 2012, 110 inmates were placed in a solitary cell, 84 out of which - in the first half of the year and 26 - in the second half of the year. Types of violations were: violation of regime requirements, non-attendance of list check-up, disobedience to a personnel member order.

With regards to this establishment it is noteworthy, that During October, November and December no inmates were punished with placement in a solitary cell.

Medical establishment No 18

Types of disciplinary sentence used in the establishment are mainly warning, as well as restriction on use of phone and shop and denying access to other rights stipulated in the law. In 2012 warnings were given to 23 inmates, the right to use of telephone as was restricted as a disciplinary sentence for 9 prisoners, while 2 inmates were restricted to exercise the right to receive visits. The most common violations constitute opposition to personnel, verbal abuse, shouting, communication with shouting and listening to a radio on a high volume.

N19 Tuberculosis medical and rehabilitation Centre

In 2012, for the purpose of punishment 6 inmates were placed in a solitary cell while 10 prisoners were warned.

Recommendation to the Chairman of the Penitentiary Establishment:

- To pay attention to use of equal forms of disciplinary punishment in all penitentiary establishments;
- To charge the administration of penitentiary establishments with keeping of registration journals of persons placed in solitary cells with factual description of violation;
- To elaborate functionally established and practical form of registration journals of solitary confinement cells.

ACCOMMODATION CONDITIONS

In accordance to 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 ventilation¹⁶.

“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”¹⁷.

According to the case law of the European Court of Human Rights, apart from inhuman or degrading treatment, prison conditions could also infringe Article 3 of the European convention.

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

On February 25th, 2013 N1 establishment was closed which is undeniably a step forward. At that there are establishments where, in the opinion of the Preventive Group, placement of inmates is equal to inhuman treatment:

¹⁶ 18.1 rule

¹⁷ 18.2 rule

The reports of Public Defender repeatedly issued recommendations requesting the shut down of Batumi N3¹⁸, Zugdidi N4 establishments. Placement of an inmate in conditions existing in the aforementioned establishments can be equalized to inhuman and degrading treatment. Recommendations on closing are issued with regards to establishments that do not comply with any standards with the view of space allocated per prisoner, nor its lightning, ventilation or hygiene. Infrastructure is so old that it will hardly be subject to refurbishment.

Despite the fact that N12 establishment represents a semi-open type establishment and convicts can spend certain period of a day outside, conditions there are not acceptable for placement of a prisoner there. The abovementioned building shall either be subjected to major refurbishment works or to be closed.

Penitentiary establishment No 6 in Rustavi

Ventilation of cells of the new accommodation block of N6 establishment is problematic due to the lack of ventilation system. There is a lack of sufficient artificial lighting in the establishments as bulbs of not enough power - so-called energy saving eclectic bulbs are mounted in cells that do not provide appropriate lighting. Also, refurbishment is needed for water supply system of the first floor of the same block which tends to fail frequently.

Major refurbishment is needed for the first floor of the new living block where also there are inappropriate conditions and dampness. The aforementioned cells have a small-size windows, inappropriate lighting, walls are shabby and the water supply system is out of order. Based on all the above it is impossible to maintain cleanliness in the aforementioned cells.

Penitentiary establishment No 7

Conditions in the establishments are not adapted to long-term placement - cells are very small, they do not have proper-size windows and do not provide natural lighting and ventilation of the cell. During the monitoring, several cells of the establishments where prisoners were placed did not have tables and chairs.

Walking yards are very small (there are 4 walking yards in the establishment that measure as follows: 1 – 12.4 sq.m; 2 – 12.8 sq.m; 3 – 12. sq.m; 4 – 12.7 sq.m.) and their location and protective equipment further restricts walking.

Convicts are placed and spend years at N7 establishment. According to them, the above constitutes the main problem for them since conditions in the establishments are not adapted to long-term placement. All the above has a negative effect on the state of their health. Convicts express desire to be transferred to establishments where there will be better living conditions and the risk of aggravation of their health conditions will be reduced.

*Penitentiary establishment No 9 in Tbilisi*¹⁹

The open part of the establishment has barrack-type accommodation blocks. Due to non-existence of ventilation in the relatively new living block water drops are dripping from the ceiling. That led to convicts pulling cellophane under the ceiling. Conditions in the aforementioned block do not comply with national and international standards. Lighting is not enough, heating comes from electric heaters and beds are separated from each other with blankets. Also, bathroom units located in the open unit needs refurbishment because of sanitary-hygiene situation there.

18 During the reporting period, in March 2013, refurbishment works started in Batumi N3 establishment.

19 During the reporting period, in March 2013, refurbishment works started in establishment No 9.

Penitentiary establishment No 14 in Geguti

5 barrack-type accommodation blocks operate in the establishment. On average 200 to 250 convicts can be placed in each accommodation blocks. In the opinion of Public Defender barrack-type accommodation blocks in every establishment should be refurbished into cells and that in the opinion of the European Committee for the Prevention of Torture is also appropriate in respect to security purposes.²⁰ In winter during the monitoring it became clear that 4 accommodation blocks were free.

Penitentiary establishment No 16 in Rustavi

Infrastructure of blocks A and B of the establishment is normal. There are six-place cells while as to block C of the establishment still has several barrack-type cells of 50-52 places while other cells are for 10-14 persons which in itself does not provide normal condition of placement. Generally, majority of cells of the above block needs refurbishment. Block G of the establishment has no a stadium while a yard is covered with iron grid that gives an impression of a cage.

Penitentiary establishment No 17 in Rustavi

Sanitary-hygiene situation in cells of blocks I, II and III of the establishment do not meet relevant standards and substantial refurbishment is needed. Lighting of the above-mentioned block is artificial as the size of windows do not provide for natural lighting. Walls are shabby in several places; ventilation is natural albeit not satisfactory to meet relevant standards. Taps in several cells are out of order; some cells do not have bulbs. Cells are heated by the central heating.

It shall be noted that bathroom facilities in so-called new zone of the establishment have no ventilation due to which convicts are compelled to leave the bathroom doors open.

N19 Tuberculosis medical and rehabilitation center

On January 18th, 2013 a new four-story building of the N19 establishment was opened. It would provide significantly improved conditions for convicts suffering from Tuberculosis. In addition, during the monitoring it became clear that all cells and halls in the new block have concrete flooring due to which there is constant dust everywhere, including cells. Also, ventilation system is out of order in some cells, in some of them only cold air flow is present and in some cells – only hot air flow.

For treatment of prisoners, suffering with Tuberculosis, together with medication treatment decisive importance is attached to appropriate conditions. According to convicts, due to dust rising from the concrete floor they experience breathing problems and cannot maintain cleanliness, which puts a pressure on their health.

Inmates placed in N19 establishment handed a collective statement signed by 272 prisoners to representatives of Public Defender.

On February 4th, 2013 Public Defender's office issued recommendations to the Minister of Corrections, Probation and Legal Assistance to ensure settlement of the above matter.

On February 20th, Ministry of Corrections, Probation and Legal Assistance replied to Public Defender's Office and stated that "in a newly-opened block of the N19 Tuberculosis medical and rehabilitation Centre company Clean World conducted major cleaning works, and also using local resources cleaning is being carried out in order to maintain

²⁰ 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 (PCIT) on February 5-15, 2010. Parag.77.

conditions stipulated in sanitary-hygiene norms”. According to the same response, the problem of dust and specific smell caused by construction works has almost been eliminated in the establishment. We were also informed that a special team of Project – 21 LTD is carrying out works to regulate operation of the ventilation system, which in the near future will be fully installed.

We believe that there should not be concrete floor not just in medical and rehabilitation centre but even in ordinary establishment. Also, the Preventive Group expresses hope that in the future, before opening of a new establishment infrastructural problems would be eliminated and their settlement would not be a cause for concern for the ministry after prisoners are placed there.

Recommendation to the Ministry of Corrections, Probation and Legal Aid of Georgia:

- To ensure proper refurbishment of all the aforementioned establishments, abolition of so-called barrack-type system and transformation into cell system;
- To ensure appropriate natural and artificial lighting, ventilation and heating of cells of all establishments;
- To ensure elimination of establishments N3, N4 and N12 or conduction of major refurbishment works.

PERSONAL HYGIENE

According to “a.a” subparagraph of the Article 14 of the Imprisonment Code, accused/ convict has a right to be provided with items of personal hygiene. According to 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 legislation requirement, twice a week shower was closed in any of closed-type establishments in the first half of 2012. Inmates placed in Tbilisi N8 establishment took showers once a week and according to them, they were obliged to end taking shower in maximum 10 minutes. The said problem in semi-open establishments is regulated to a certain extent thanks to bathrooms available in blocks and yard. The only exception is N6 accommodation block in the Geguti N14 establishment where inmates have possibility of taking shower just once a week.

After arrival of new management of the penitentiary establishment, as inmates in some closed-type establishments (in closed parts of N15 and N5 establishments, N2 and N8 establishments) said were given right to take a shower twice a week.

As to barber service, inmates are either service each other or an inmate registered in service unit acts as a barber.

As it was repeatedly stated, majority of cells of Zugidi N4 and Batumi N3 establishments have semi-open toilet facilities that do not comply with any standards. Cells of N6 establishments have isolated toilets but length of their door does not provide complete isolation.

According to the third paragraph of Article 22 of the Imprisonment Code “An accused/convict shall have a bed and bed linen for personal use, which shall be delivered to him/her clean and undamaged. Administration of establishment shall ensure cleanness of the bed linen”.

As a result of the monitoring conducted in summer 2012, it became apparent, that inmates were provided with bedding only on admission to the establishment. The bedding was systematically changed only in N8 establishment if an inmate wished so. Majority of inmates noted that they preferred to wash bedding that was purchased on their own money since after washing, administration did not guarantee return of the same bedding to them. It shall be noted that during the monitoring in winter, it was noted that bedding was distributed by the administration in most of the establishments.

EXERCISING THE RIGHT TO BE IN A FRESH AIR

According to the subparagraph “g” of the article 14 of the Imprisonment Code, accused/convict “shall enjoy the right to walk on the fresh air at least one hour a day”.

Despite the duration being defined by the Imprisonment Code the summer monitoring revealed that walk in Zugdidi N4 establishment lasted for about half an hour, while in Gldani N8 establishment – 20-25 minutes, in N7 establishment – 25-30 minutes,²¹ and in Batumi N3 establishment – 10-15 minutes.

The above problem in the establishments has been tackled following October, 2012.

Public Defender in his many parliamentary reports issued recommendation on ensuring the right of prisoners to daily walk in all closed-type regime establishments, including, Saturdays and Sundays which has not been followed yet in N3, N7, N8, N18 medical establishments. Prisoners in Zugdidi N4 establishment are allowed to walk on fresh air every day except Sunday.

The European Committee for the Prevention of Torture (CPT) recommends ensuring that both categories of prisoner are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in relevant activity of various nature while convicts placed in maximum security regime - for at least one hour every day.²²

No exercise yards in penal and closed-type establishments are equipped suitably so that prisoners could spend a time assigned for walking standing and sometimes this was a reason that they refused to for a walk or return before the time to their cells. Prisoners placed in N18 medical establishments for defendants and convicts often complain that they cannot exercise the right to walk due to poorly equipped yards. Namely, according to several prisoners they have difficulties with standing and due to a fact that there is no bench in a yard they refrain from going out for a walk. It is a problem for prisoners to be on a fresh air on rainy or hot days since some of the yards practically had no shelter from rain and sun rays.

Despite numerous recommendations of Public Defender, the above mentioned problem in exercise yards remain unresolved.

Recommendation to the Chairman of the Penitentiary Department:

- To ensure ability to have a bath or shower twice a week for prisoners in all penitentiary establishments;
- To ensure possibility for prisoners in all closed-type penitentiary establishments to take outdoor exercise for at least one hour every day, including at weekends;
- To provide installment of exercise equipment and benches in exercise yards and their equipment in accordance with different climate conditions.

21 Exception is inmates that are placed alone in cells. They are given the right to one hour exercise;

22 Visit to Georgia carried out on February 5-15, 2010 (parag. 82);

CONTACTS WITH OUTSIDE WORLD

Short-term visit

Except visit rooms in closed unit of juvenile institutions and N15 establishment visits in all establishments are carried out in glass-partitioned room where an inmate is deprived of every kind of physical contact with his/her family members. In some cases the glass on each side has an iron grid which even restricts a visitor from proper view. The European Committee for the prevention of Torture (CPT) issued a recommendation to relevant bodies to overview the issue of visits so that prisoners are given possibility to see visitors in less constrained situation. All limitations set with this view, in the opinion of the committee, shall be based on individual assessment of risks in every concrete case. According to the Committee, “any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. Open visiting arrangements should be the rule and closed ones the exception, based on well-founded and reasoned decisions following individual assessment of the potential risk posed by a particular prisoner or visitor”.²³

In accordance with paragraph 7 of the article 17 of the Imprisonment Code, Short visits are organized for the period of one to two hours. During the monitoring held in summer, as prisoners said, practice in different establishments were different – duration of a visit in penitentiary establishments N8 and N2 was 40-45 minutes; in N4 establishment – 15-20 minutes; N3 establishment – 10-15 minutes.

During the winter monitoring it became clear, that duration of visits in all establishments constituted an hour, which can be assessed positively.

Long-term visit

A long-term visit, first of all, is the best way for resocialization and maintenance of close contact with family that can be of critical importance to all convicts placed in closed-type establishments.

A change introduced in the the Imprisonment Code shall be assessed positively according to the paragraph 9 of the article 172, the long-term visits are not granted to convicts placed in the quarantine regime. ²⁴With the view of implementation of the right to a long-term visit, the Georgian Ministry of Corrections, Probation and Legal Assistance shall provide for necessary conditions and exercising of the right to a long-term visit in women’s and closed-type penitentiary institutions no later than December 31st, 2015. ²⁵

Infrastructure is provided for long-term prisoners in establishment N16 though so far it can be used by convicts sentenced to life-imprisonment.

Infrastructure for long-term visits exists in N6, N11, N14, N15 and N16 establishment.

In the reporting period from January 1st, 2012 to December 31st, 2012 long-term visits were used by 5995 convicts: 110 convicts used it in N6 establishment; 30 convicts - in N11 establishment; 1662 – in N14 establishment; 469 – in N15 establishment and 1941 – in N16 establishment; 1783 convicts - in N17 establishment.

Video communication

According to the paragraph 1 of the article 17 of the Imprisonment Code, “all convicts in penitentiary establishments, except for defendants of particularly grave crimes and persons stipulated in the subparagraph “c” of Article 1 of the Article 50 of the Imprisonment Code, are entitle to the right to use a video communication (direct verbal and visual video bridge) with any person”.

23 Visit to Georgia from MArch 21 to April 2, 2007, parag. 91

24 22.05.2012 N 6257 (to take effect on the 15th day from the publication)

25 Effective since January 1, 2011;

In the reporting period, infrastructure for operation of video communication was in place in establishments N11, N15, N16 and N17. During the reporting period video communication was used by 1289 convicts, out of which 24 were from N11 establishment; 653 convicts from – N15 establishment; and 174 persons – from N17 establishment.

Access of all categories of prisoners to long-term visits as well as video communication would have been a positive change and this would had a been a great contribution into the process of resocialization of convicts, but all the more, use of video communication may be exercised by not only members of the family and friends but close associates as well. A provision of the Imprisonment Code that prohibits convicts of certain category to use video communication carries characteristics of additional punishment and is unacceptable in this sense as all prohibition and restrictions should be individual and substantiated with relevance to a concrete case.

Suggestion to the Parliament of Georgia:

- **Introduce relevant amendments and annexes into the Imprisonment Code that would ensure the right of all convicts to video communication.**

Recommendations to the Chairman of the Penitentiary Department:

- **To ensure short-term visits without glass partitions and iron grid; all exceptions to be substantiated individually, based on concrete situation and personality of a convict (visitor);**

Telephone conversations

According to the Imprisonment Code, in a semi-open penitentiary institutions for deprivation of liberty a convict has a right to have three telephone conversations at one's own expense on the course of one month, for no more than 15 minutes each, while in closed-type penitentiary establishments prisoners may have two telephone conversations at their own expense, each of them - for no more than 15 minutes.

Convicts have a right to telephone to dial and talk with three phone numbers for 15 minutes with the use of phone cards. After making several calls the convict has to purchase several telephone cards and incur additional expenses. It shall be noted that after appointment of a new management in administration convicts of all establishments have the right for telephone conversations for the duration stipulated in the law and to several phone numbers, though exception is establishment N8, where there are no telephones at the penitentiary establishment and supposedly this is a consequence of incorrect interpretation of law.

It shall be noted that convicts in Zugdidi N4 establishment do not have a right to call abroad. In their words, some of them do not have family and relatives in Georgia and they are deprived of opportunity of communicating with them.

Recommendation to the Penitentiary Department:

- **To ensure complete enforcement of the right of all prisoners to telephone communication, including, with respect to interests of those persons relatives and family of whom are not in Georgia;**
- **To ensure preparation of standard, reusable telephone cards for convicts.**

RESOCIALIZATION OF CONVICTS

Public Defender have mentioned in his numerous reports that prison conditions should ensure resocialization and reintegration of a prisoner into society and it shall not be orientated to punishment only. Based on all the aforementioned, during the period of serving sentence a convict shall get or deepen further relevant education and occupational skills, get an opportunity to participate in sport or other types of activities, competitions, have relevant conditions to follow processes that are taking place in the outside world, have contact with family and friends. All this is necessary to prepare a convict for the return into a society.

Today no great attention is attached to the above-mentioned component in the penitentiary system – during the reporting period training or rehabilitation programs operated in only handful of establishments.

Women establishment of imprisonment N5 - semi-open and closed penal establishment – is the place where the greater number of various types of projects that enable women convicts to acquire different skills and receive occupational training, can be found.

M and psychological centre Tanadgoma implements a project “Bridging the gaps: health and rights for key population”.²⁶ The said project aims at psycho-social rehabilitation of convicts. The organization started its activities in establishments in October 31st, 2012.

“Global Initiative in Psychiatry – Tbilisi” is conducting a project “Establishment of service for rehabilitation, re-socialization, reintegration and mental health for women convicts and women in preliminary detention centers in Georgia. The organization provides a psychological assistance to defendants/ convicts placed in the establishment and carries out a training module “We are returning to the public”.

Starting from April 2012 project “Preparation for release” is being implemented. In the framework of the project civil education trainings are carried out with convicts twice a week.

Non-Governmental organization “Person, law, freedom” organizes preparatory training for persons who are supposed to be released.

“The Centre for development of civic conscience” is implementing a project through which convicts are able to study art-flora-design; enroll on English courses for beginners and for those in need of remembering.

Starting from 2008 Association Women and Business has been implementing the project “Promotion of rehabilitation and re-socialization through vocational training” with financial support of international organization Prison Reform International, The Norwegian Mission of law of law advisers to Georgia (NORLAG) and with the support of the Georgian Ministry of Corrections, Probation and Legal Assistance.

During the reporting period 250 women were engaged in the abovementioned projects.

In the first half of 2012 a project of the non-governmental organization - the centre for psycho-social and medical rehabilitation of torture victims (GCRT) was under way. In its framework 93 prisoners were receiving psycho-social rehabilitation; 13 prisoners were receiving comprehensive education. In the second half of the reporting period 9 juveniles were engaged in the stress handling-management therapy.

Organization of education of juveniles in N8 C was prerogative of the Georgian Ministry of Education and Science. In 2012, 42 juveniles were involved in the programme.

In the first half of 2012, in special juvenile establishment N11 there were the following courses such as enameling, barber, IT programs, carving, painting that were finished by 22 convicts. During the summer monitoring 6 convicts were undertaking the enameling course, while 6 convicts were studying Photoshop courses, 6 convicts – MS Office programs, 4 were enrolled on barber courses and 33 - in carving and painting courses.

²⁶ Donor: International Dutch Organization AIDS Foundation East-West

In the first half of 2012, in establishment N15 the centre for psycho-social and medical rehabilitation of torture victims (GCRT) carried out the program “establishment of 4R in Georgia” where there were two groups of 15 convicts going twice a week. The learning program included: Information technologies, marketing, book-keeping, English language, tile-layer, handling of construction skills.

In establishment N16 N8 Non-governmental organization “Person, law and freedom” with the help of NORLAG was implementing the project “preparation for release” where 40 convicts were involved. The above training was taking place for two hours twice a week.

20 convicts were taking English language course; 16 convicts – small business course; 8 prisoners were involved in electrician skills and painting works course; furthermore the Health Ministry held a training on HIV/AIDS that was attended by 12 convicts.

Since the end of 2012 the training and rehabilitation programs no longer operate in establishments of N15 and N16.

Recommendations to the Minister of Corrections, Probation and Legal Assistance of Georgia:

- In the near future to ensure drawing up a work plan for resocialization of convicts, taking into consideration type of the establishment N8 and categories of convicts which in the future will serve as basis for elaboration of individual plans of sentence-serving of convicts.

EMPLOYMENT OF PRISONERS

According to the European Prison Rules, 26.1 “Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment “²⁷

“Prison authorities shall strive to provide sufficient work of a useful nature”²⁸“As far as possible, the work provided shall be such as will maintain or increase prisoners’ ability to earn a living after release“²⁹

For the period of January 1st to March 31st, 2012, 26 convicts were engaged in paid labour activity in the penitentiary establishments; for the period from April 1st to June 30th, 2012 – 26 convicts; for the period July 1st to September 30th, 2012 – 25 convicts; for the period from October 1st to December 31st, 2012 - 25 convicts.

For years, convicts that were registered in service unit have been engaged in hard work (for example, distribution of food in accommodation blocks, which included taking containers weighting 25-30 kilos to cells of the accommodation blocks; delivery of products purchased by convicts in prison shop to these convicts; cleaning of territory of establishments, including communal toilets, etc) though they were not paid. During the monitoring, majority of those registered in the service unit noted that they no longer wanted to carry out the above-mentioned duties without a pay. The representatives of the establishment administration also spoke about this issue and noted that number of convicts registered or those wishing to enroll in the service unit was declining on a daily basis.

Recommendation to the Georgian Minister of Corrections, Probation and Legal Assistance:

- To elaborate strategy and work plan of employment of convicts in cooperation with relevant agencies;
- To ensure relevant pay to convicts registered in the service unit.

27 Rule 26.1
 28 Rule 26.2
 29 Rule 26.3



PLACEMENT OF PRISONERS

In pursuance of the paragraph 3 of the article 46 the Imprisonment Code, “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”.

Public Defender often receives statements from convicts and their family members who ask for help in placement of convicts in establishments in the nearest proximity to the place of their residence. There are many cases when convicts that reside in Eastern Georgia are placed in an establishment located in Western Georgia and vice versa.

Recently, several appeals of Public Defender’s Office were met and convicts were transferred to the establishment in close proximity to their place of residence or to a type of establishment specified for him/her in the order. It will be desirable if the Ministry of Corrections would take greater care when following the norm defined in the paragraph 3 of the article 46 of the Imprisonment Code.

Public Defender has frequently stressed negative effects of long-term placement of a person in a closed-type regime establishment. The recommendation of the European Committee for the Prevention of Torture (CPT) also states that “the placement of a prisoner in such a regime is for as short a period as possible and is reviewed at least every three months”.³⁰

The above problem is especially acute in establishments N7 and Rustavi N6 where for years convicts have been placed so that they were not given opportunity to be transferred to semi-open establishments. We do not even mention those sentenced to life-imprisonment who has been given their sentence term, are compelled to serve their entire sentence in the close establishment.

During monitoring it was revealed that Gldani N8 and Kutaisi N2 establishment held prisoners that according to the order of the chairman of the penitentiary department were assigned to serve their sentences in semi-open establishments.

Suggestion to Georgian Parliament:

- To introduce relevant amendments into Georgian Imprisonment Code in order to define serving sentence in a closed-type establishment as a social measure and to be used individually, taking into account personality of a prisoner.

Recommendation to the Minister of Corrections, Probation and Legal Aid of Georgia:

- To ensure opening of a special, semi-open type establishment for convicts with life sentenced as well as for prisoners of special category (e.i. so-called thieves in laws and authorities).

Recommendation to the Chairman of the penitentiary department:

- During admission of a prisoner into an establishment to take into consideration the place of residence of his/ her or his/her relatives;
- To ensure placement of a prisoner in a penal establishment that is defined for him by the law.

30 parag.132

AMNESTY

It should be noted that for years, number of prisoners in the penitentiary establishments have been increasing rapidly, causing difficulties in meeting with relevant standards.

On January 12t, 2013, Georgian Parliament adopted law of Georgia “On amnesty” serving as a legal basis for releasing several thousands of prisoners from penitentiary establishments.

According to the data from February 28th, 2013, as a result of the amnesty 8044 defendant/ convicts left altogether penal and penitentiary establishments located on the territory of Georgia. We believe that against the backdrop of the reduction of the prisoners the Ministry of Corrections, Probation and Legal Assistance will have easier task of creating suitable conditions for prisoners and complying with the national and international standards. Accordingly, with this view we welcome such large-scale amnesty.

On the other hand, prior to the adoption of the law on amnesty it was not studied in details convicts of what category were to be released and based on their social and economic situation what they should expect in the future. In the opinion of the Special Preventive Group, it would have been better prior to their release to create elementary conditions for resocialization and employment of former convicts that would have prevented many of them from returning to a prison.

Herewith we shall also stress necessity of more liberalization of the Criminal law and cancellation of the summarizing principle. Otherwise, in several years the number of prisoners would again reach the critical level. The strict criminal legislation polices shall be replaced by well-calculated and planned state policy of resocialization and rehabilitation.

Suggestions to the Parliament of Georgia:

- To introduce relevant amendment into the Georgian Criminal Code in order to replace the current combining principle with absorption principle;
- To implement measures necessary for decriminalization of several, less dangerous for the public crimes – first of all, drug related crimes.

2012

Protection of Healthcare in Penitentiary System and Torture Prevention Mechanisms

MONITORING OBJECTIVE AND METHODOLOGY

The monitoring aims at examination and assessment of implementation of international standards of prevention of torture and inhuman, degrading treatment in relation to the healthcare protection in the Georgian penitentiary system within the framework of The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and issue of relevant recommendations.

Multi-profile analysis was used for the study of implementation of prisoners' healthcare rights with examining the following priority issues:

1. Organizational aspects of healthcare protection of the penitentiary system of Georgia
2. Access to a doctor
3. Equivalent and adequate medical service
4. Patient consent and confidentiality
5. Humanitarian approach (special categories)
6. Preventive work, torture and fight against it
7. Medical personal: professional independence and competence

“General questionnaire of medical monitoring” developed by the Georgian Public Defender's Office, as well as Guidelines for monitors: Medical Services in Prisons, elaborated by the center Empathy were used as tools of the investigation; medical/psychological interviews and primary consultations were held with prisoners in accordance with the Istanbul Protocol principles, medical cards of each prisoner were studied.

Statistical reports and information, including those about deceased persons, provided by the Medical Department of the Ministry of Corrections, Probation and Legal Aid of Georgia, as well as forensic conclusions of the Samkharauli Medical Forensics National Bureau, national legislative acts were used for the analysis.

The above methodology is based on international mandatory and recommendation standards and monitoring methodology, in particular:

- The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997)
- The Optional Protocol to the Convention against Torture (OPCAT) of the above-mentioned convention (2006)
- European Convention for the prevention of torture and inhuman or degrading treatment and punishment (1987)

Non-mandatory

- The Istanbul Protocol - a set of international guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body (United Nations; New York and Geneva, 2001-2004).
- Principles and Precedents of Human Rights European Court
- The 3rd general report – healthcare in prisons – of the committee of the European Committee for Prevention of Torture (CPT)
- The UN Minimum imprisonment standards
- The UN combination of principles of protection of persons detained in any form and persons in custody (1989)
- European Prison Rules (2006)
- Recommendation NR (87) 3 (1987) of the Committee of the Ministers of the Council of Europe
- Recommendation N (98) 7 of the Committee of the Ministers of the Council of Europe, their address of the Committee of the Ministers to member-countries on organizational and ethical aspects of the medical department in prisons (Strasbourg, 1998, April 20)
- Improvement of mental health in prisons, coordinated statement, European Regional Department of the World Health Organization (Hague, Netherlands, November 18th-21st, 1998)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians for the Protection of Detained Persons and Prisoners against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982 (1982)
- Declaration of Tokyo (1975), Hamburg Declaration (1977), Declaration of Geneva (1948), Declaration of Malta (1991, 2006), WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment (2003, 2007),
- International instruments and machinery to against torture – collection of legal documents and standards on torture (as of July 4th, 2007, the International Rehabilitation Council for Torture Victims (IRCT)
- Healthcare in prison, guidelines on mandatory healthcare standards in prisons subordinated to the World Health organization
- Madrid Recommendation, healthcare protection in a prison as an integral part of the public healthcare (the World Health Organization, 2010)

**ORGANIZATIONAL ASPECTS (GENERAL REVIEW AND RECOMMENDATIONS)
OF THE PENITENTIARY HEALTHCARE IN GEORGIA
(GENERAL OVERVIEW AND RECOMMENDATIONS)**

Reform in healthcare of the penitentiary system

Status: healthcare and medical service in prisons, in the Georgian penitentiary system are administrated by the healthcare department of the Ministry of Corrections, Probation and Legal Affairs of Georgia. Since November 2012 this sphere is supervised by the Deputy Minister for Healthcare issues.

In September, 2012 after the scandal in relation to the facts of torture in the Georgian penitentiary system it became clear that the Georgian penitentiary system, including medical department was in need of urgent and radical reform. After the government change in the country on the October 1st, 2012 elections leadership of the said ministry changed and a new strategy of healthcare reform of the penitentiary system and ways of its implementation were presented. The strategy encompassed all aspects of healthcare in the penitentiary system stipulated by international standards, as well as echoes positive ways of getting closer to the civil healthcare. Though we shall note that it does not take into consideration the major principle stipulated by international standards e.i. its complete transfer to healthcare system of the civil sector. Implementation of the aforementioned component in the strategy is extremely important, given the principle of independence of medical staff and taking into consideration international standards of torture prevention.

It shall be noted that at this stage intervention of the civil sector into the penitentiary system is being done within the framework of the state program for tuberculosis control that to a certain extent improved standards of timely disclosure and prevention of those suffering from Tuberculosis. But this problem remains an acute challenge for the Georgian penitentiary system.

Another example of the civilian healthcare intervention is the methadone program for drug addicts that were being implemented in the N8 establishment of the penitentiary system. It also started to operate in Kutaisi N2 establishment starting from 2012. In addition, penitentiary system medical personal were integrated into some civil-type healthcare training-components, certain rehabilitation programmes or psychiatric monitoring were also held. Though facts of torture and inhuman treatment that were revealed to the wide public in September 2012 and monitoring and crisis intervention conducted in the penitentiary system after the said crisis situation demonstrated that such small-scale measures are not enough for the process of making the penitentiary healthcare system civilian. And it creates high risks of violation of ethical standards for both local medical staff on spots and civilian medical personnel employed on services.

Accordingly, it is recommended to present more close standing version of the Georgian penitentiary healthcare reform to international standards, stressing necessity of its transfer to the civilian sector and specifying work plan and timetable in this direction.

Medical service subsidizing

It should be noted that by the end of 2012 subsidizing of the medical service increased, and this was reflected on wages of medical personnel. We should note that the medical service of Georgian penitentiary system is subsidized through assignments in the state budget allocated to the Georgian Ministry of Corrections, Probation and Legal Assistance. While civil healthcare finances types of the medical service through budget funds allocated in the framework of assignments of the Ministry of Health, Labour and Social Affairs in accordance with the article 15 of the Georgian law on "Protection of healthcare". In compliance with the first paragraph of article 45 of the Georgian law on "Patients' rights" - "access to medical service for persons placed in the penitentiary establishment is carried out by state medical programmes" which in reality is not being implemented. As a result, we have a case of violation of the equivalence principle. The above problem again relates to the necessity of re-civilization principle of healthcare in the penitentiary system in Georgia.

Medicaiton provision and operation of a pharmacy

Herewith we stress that in recent years finances allocated for medications have increased significantly though centralized distribution of medications to separate organizations creates problems for timely and adequate medical service and causes prisoners' discontent. During the monitoring it was revealed that by the end of the year medication shortage and majority of those interviewed noted that often they were provided with the necessary medications by their family members or they used to buy them in a pharmacy located on the territory of their establishment. Sphere specialists mainly handled activities, typical for pharmacies in medical units. Starting from the second half of 2010 pharmacies' names were changed into "medication provisions" while personnel – "person responsible for medication provision". Against the background of such tendencies, even a person without special pharmaceutical education can be appointed on the above position which is already a step behind.

Based on the principle of timely and adequate provision of medical service and equivalence, it is recommended that provision with necessary medications be done on the basis of decentralization, on spot administration and management, while the medical department to implement evaluation and monitoring.

Referral programme

Referral medical programme is implemented and administered in the Georgian penitentiary system by the same medical department on the basis of an agreement with various hospitals of civil sector. Although, by the end of 2012 because of conclusion of new agreements there was a delay in timely conduction of medical examinations was hampered. It shall be noted that in the format of referral programme expensive medical examinations and in-patient department are being done though due to the centralization of the administration the question of timely promptness and proximity of medical service remains a problem.

Accordingly, as in the case of provision of medications it is recommended the referral proragamme to be implemented on the spot and evaluation and monitoring of the question to be carried out by the central management.

Medical infrastructure

It shall be noted that the Georgian penitentiary system where in 2012 there were 23 160 prisoners, was served by just one medical establishment which in the list of penal establishments is listed as N18 establishment of the penitentiary department and is designed for male in-patient service as well as medical and rehabilitation centre for tuberculosis sufferers (N19 establishment of the penitentiary department) that was in a deplorable state in respect of its infrastructure and service resources and to which a new block was added by the end of the year. Thus, improvement of the mentioned services is to be expected by 2013. In the majority of the penitentiary establishments there are attempts to improve a primary care component (in separte establishments: N2, N5, N6, N8, N9, N12, N15, N17 centres of primary healthcare were opened and equipped), also ambulatory component with elements of the secondary healthcare (with mini-in-patient units) though location and infrastructure of the said units in the newly-built establishments practically represent wards or rooms designed for medical purposes and are located in prison cells that does not correspond to organizational aspects of the in-patient and ambulatory type establishments and creates risks for violation of sanitary and hygiene norms.³¹ At the same time, it does not prepare psychologically patient and doctor for activities of medical character, which puts principles of protection of ethical standards under threat.

It shall be noted that infrastructure of psychiatric department of the medical establishments for defendants and convicts does not comply with requirement standards and therefore non-voluntary treatment of a patient cannot be carried out in the said establishments. Transfer of mentally ill patients to civilian psychiatric hospitals is also problematic

31 7 December 2010 Order #398/n of the Minister of Labor, Health and Social Welfare of Georgia on the "Approval of Form and Rule of Mandatory Notification for Providers of High Risk Medical Activity/Service to be Carried Out in Outpatient/Day Clinic Conditions and the Procedure for Administration of Register";

given the safety standards (security protection, conveying) which creates particular problem in case of convict women or/and juvenile convicts. Though we shall hereby mention that even the component of psychiatric reform of the civilian healthcare does not provide with means to ensure its implementation (there is no in-patient juvenile psychiatric assistance).

Questions of licensing of establishments

It shall be noted that in this direction the very issue is to be studied in a more detailed manner. The monitoring revealed that this topic remains problematic in the medical sector of the penitentiary system. The issue needs analysis and review of the legislative regulations. It is noteworthy that out of medical establishments of the penitentiary system the defendants/convicts establishments, as well as medical and rehabilitation establishments for those suffering from Tuberculosis have license for medical activities of various profiles. Medical units of other establishments do not have a license confirming any kind of activity though majority of them have in-patient component or/and high-risk out-patient medical activity of high risk factor. To a certain extent, with the view of elimination of the above problem by the end of 2012 the new administration concluded an agreement with the catastrophe centre brigades to ensure transportation of prisoner patients or/and on-spot treatment in case of necessity but this measure is not enough and the said issue needs systematic and complex regulation together with other healthcare issues. Herewith it shall be noted that despite the fact that the medical establishment for defendants and convicts has the license for in-patient psychiatric treatment the current psychiatric department does not comply with the licensing terms.³²

Recommendations:

- **To implement the penitentiary healthcare system reform in accordance with requirements of the healthcare legislation of the country.**

Rule of documentation, record-keeping and registration of statistical information

It should be noted that according to a memorandum signed in 2011 between Georgian Ministries of Corrections, Probation and Legal Aid and Labour, Health and Social Affairs, forms of medical documentation approved by the Georgian Ministry of Labour, Health and Social Affairs should have been implemented into the healthcare of the penitentiary system of Georgia but simultaneously N158 order of November 11, 2010 issued by the Georgian Minister of Corrections, Probation and Legal Aid “on approval of form of a medical card of defendant/convict” remained in effect.

The aforementioned card still fails to comply with the approved forms of the Georgian Ministry of Labour, Health and Social Affairs. Furthermore, it should be noted that according to official statement issued by Ministry of Corrections, Probation and Legal Aid, civilian type in-patient medical cards have been in use in N18 and N19 establishments, and that since 2012 the said in-patient cards became identical to cards of civilian establishments. We shall hereby note that in some establishments we see civilian out-patient forms of cards, for example, in Batumi N3 penitentiary establishment. Though in other establishments, even in 2012 we see medical cards of “defendants/ convicts”. In addition, in-patient medical card are used just in N18 and N19 establishments while such cards are not in use in so-called in-patient units of the establishment. As a result of analysis of the discussed medical cards and monitoring of patients reveal that frequently the medical cards do not reflect reality, especially, objective status in the part of anamnesis and catamnesis

32 17 December 2010 Resolution #385 of the Government of Georgia on the “Approval of Regulations on the Rules and Conditions for Issuing License for Medical Activity and the Permit of Inpatient Institutions”;

is so scarce that making any kind of analysis based on the presented information is quite hard. The analysis of medical cards reveal that discussion of cases on the basis of multidiscipline approach is not carried out which in most cases creates problems of incorrect diagnosis. Various medical activities, including consultations, visits, issue of medications, injuries and others, are registered in journals of various types which represent an attempt to implement the rule of statistical registration and is welcomed although it does not correspond to the forms approved by the Georgian Ministry of Labour, Health and Social Affairs. We shall also note that every establishment keeps forms of monthly medical reports that are also provided by the Georgian Ministry of Corrections, Probation and Legal Assistance. Analysis of such fragmented and non-systematized statistical information is practically impossible and hard to use for further planning and evaluation of cost-effectiveness. It is also hard to carry out accurate evaluation and monitoring. At the same time it shall be noted that confidentiality of medical files and norms of their keeping were complied with in any of the establishment where the monitoring was held. Often they are accessible for other persons that lead to violation of confidentiality and become a pretext for conflicts between inmates. Medical personnel is not informed about the rules and relevant orders of the Georgian Ministry of Labour, Health and Social Affairs.

Recommendation:

To fully enforce documentation approved by the following orders issued by the Minister of Labour, Health and Social Affairs of Georgia in the penitentiary system:

- Order No 01-41/N of August 15, 2011 issued by the Minister of Labour, Health and Social Affairs of Georgia on “Approval of Procedure for Administration of Outpatient Medical Documentation in Medical Institutions”;
- Order No 108/N of March 19, 2009 issued by the Minister of Labour, Health and Social Affairs of Georgia on “Approval of Procedure for Administration of Inpatient Medical Documentation in Medical Institutions”;
- Order No 01-27/N of May 23, 2012 issued by the Minister of Labour, Health and Social Affairs of Georgia “on the Rules of Administration and Provision of Medical Statistical Information”;
- Order No 198/N of July 17, 2002 issued by the Minister of Labour, Health and Social Affairs of Georgia “Rules of Storage of Medical Records in the Medical Institutions”;
- Order No 338/N of August 9, 2007 issued by the Minister of Labour, Health and Social Affairs of Georgia “on Approval of Rules for Filling in the Health Status Certificate and the Form of the Health Status Certificate”.

ACCESS TO A DOCTOR

According to international and national legislation, it is obligatory for every prisoner to pass a medical examination. The law also recommends providing inmates with information on rights and healthcare services available to them. After analyzing reports provided by the healthcare units of the penitentiary system it is hard to imagine that the above norm is complied with unequivocally. Namely, according to monthly reports, number of inmates that entered establishments and the number of primary medical examination or/ and number of patients treated in inpatient establishments N18 and N 19 (mechanism of adding together all these numbers is not clear from the reports) are the following:

2012

Table N1: number of inmates admitted in 2012

Establishment	Number of Inmates admitted	Primary medical examination passed (treated in inpatient establishment)
N 1	341	341
N 2	1051	712
N 3	583	583
N 4	360	360
N 5	253	253
N 6	351	351
N 7	11	8
N 8	4776	4776
N 9	311	311
N 11	89	89
N 12	1099	1099
N 14	976	976
N 15	1418	1418
N 16	790	801
N 17	725	725
N 18	1833	3129
N 19	1194	1332
Total	16161	17264

According to the same reports, indicators of intervention conducted in all establishments were added together (table N2).

Table N2: Conducted intervention

Name of Preventive and Treatment Measures		Total
1	Primary medical examination	16644
2	Outpatient visits, treatment	408737
3	Inpatient treatment	4149
3.1.	Medical establishment for convicts and inmates	3981
3.2.	Medical establishment for convicts with Tuberculosis	1834
4	Tests and treatment in specialized in-patient hospitals of civil sector	3558
5	Emergency and scheduled surgical treatment	1265
6	Dental service	20235
6.1.	Of therapeutic profile	11316
6.2.	Of surgical profile	8209
6.3.	Of orthopedic profile	383
7	Psychiatric help – consultation, treatment	7594
8	Screening to determine Tuberculosis risk-groups	114318
8.1	Examination of persons with suspected Tuberculosis	18594
8.2	DOTS involved in treatment	834
8.3	DOTS + involved in treatment	177
8.4	Treatment completed	532
9	Tested for HIV infection	6021

9.1	Included in HIV infection antiretroviral program	0
10	Tested for hepatitis	2432
11	Tested for venereal diseases	1930
12	Included in Methadone program	72
13	Consulted by doctor-consultants of various profiles	20838
14	Included in state program of treatment and rehabilitation of patients with insulin-dependent and non-insulin dependent diabetes (hormone provision)	224

When comparing the above two tables it becomes clear that according to the table N2 in 2012 primary examination in the penitentiary system was passed by 16 644 individuals, and according to table N1, the said examination was passed by 17 264 individuals while the number of individuals admitted was 16 161. Therefore, the above data show clear discrepancy that provides ground for doubting reliability of the reports provided by the penitentiary establishments.

According to the same table N2, it is impossible to determine number of convicts having undergone intervention and its forms. For example, according to the tables provided, outpatient visits and treatment was carried out in 408 737 cases, though the report does not clarify the exact number of individuals. At the same time the same monthly reports state that average number of inmates in 2012 in Georgia's healthcare in the penitentiary system amounted to 160 individuals. According to this data, frequency of inmate visits was on average 5-6 visits per annum which given the discontent expressed by inmates towards the healthcare system of the Georgian penitentiary, is hard to imagine. Also, number of diseased inmates and diagnosis established by forensic examination that will be discussed below in relevant chapters, indicate to late and often inadequate medical treatment.

After interviewing inmates it was concluded that there was a long waiting period for a visit to a doctor and even after undergoing relevant tests it was impossible to access adequate treatment due to lack of appropriate medications.

Herewith it should be noted also that dental care, therapeutic and surgical, as well as orthopedic care is accessible in all establishments and relevant para-clinical tests and consultations are being provided. Though, monitoring revealed that inmates' access to alternative examination or/and medical tests were quite limited up until the well-known events of September 2012. And their requests were not met or/and were fulfilled belatedly, when the inmate practically no longer had any traces of injury. Especially limited in this respect were inmates that appealed to the European Court of Human Rights alleging violation of the article 3 of the Human Rights European Convention that implies torture, inhuman treatment and, also, inadequate medical treatment.

We shall note that, there is no special guidelines or legislative provision on activity regulations for medical personnel of the penitentiary establishment and medical units on the spot, as well as there is no special brochures for inmates on right to access the doctor. Brochures published by various international organizations were found in some of the establishments though it was not enough for education of inmates on their right to healthcare.

The tendency established by the end of the year with regards to strengthening of civil healthcare intervention, as well as opening of primary medical care centres can be seen as a step forward. Though, implementation of the principle accessibility to a doctor should be considered in systemic complex of the penitentiary healthcare reform.

Based on the above, large-scale intervention of civil healthcare programs, inter alia psycho-social rehabilitation projects, into the penitentiary system and broadening of civil monitoring mechanisms is recommended that ensures, if needed, inmates' accessibility to alternative or/and medical service of other kind and increases possibility of enforcement of the right to choose doctor. The above recommendations are based on the international standards,³³ as well as Georgia's law "On rights of the patient".³⁴

The facts of torture revealed in September 2012 and documented cases of inspection of medical cards, revealing that the right of those individuals to access medical care was infringed, clearly indicate to necessity of intervention of civil

33 Recommendation of the European Council #R (98)7, chapter 1. main characteristics of healthcare service in prisons, A0 access to a doctor/ doctor accessibility

34 The law of Georgia "on the rights of patients", article 7, article 8.

healthcare system. As inmates explained, medical personnel were informed and knew about facts of torture in prisons but failed to register this. And this aggravated the situation between inmates and medical personnel resulting in distrust and aggression towards them. And this remains a significant challenge to this day and needs imminent intervention of civil healthcare in the system with the view of defusing and resolving the situation.

EQUIVALENCE OF HEALTHCARE

After the disclosure of the facts of torture in the Georgian penitentiary system and the monitoring of inmate health conditions it becomes clear that it is impossible to talk about equivalence and adequacy of healthcare in Georgia's penitentiary system. Often presented medical cards do not reflect real healthcare situation, especially given the context of documentation of facts of torture, registration of results and treatment-rehabilitation. The said situation is not reflected in illness tables provided by establishments that we have statistically processed.

Table N3: illness indicators according to reports of medical units of the establishments:

	Illness	Total	F
1	Cardiovascular diseases	1 1 1 1	0.03
2	Respiratory system diseases	2659	0.08
3	Digestive system diseases	1586	0.05
4	Urinary and genital system diseases	1713	0.05
5	Nervous system diseases	1331	0.04
6	Mental diseases	1352	0.04
7	Endocrine system diseases	200	0.01
8	Hematological diseases	46	0.00
9	Sense organ diseases	1844	0.06
10	Infectious diseases	397	0.01
11	tuberculosis	1 1 1 4	0.03
12	AIDS/ HIV	33	0.00
13	Bone-joint system and connective/conjunctive tissue diseases	281	0.01
14	Skin and venereal diseases	318	0.01
15	Self-inflicted wounds and traumas	1533	0.05
16	Dental diseases	17371	0.52
17	Acute surgical diseases	314	0.01
18	Oncological diseases	63	0.00
	Total	33266	1

The analysis of the above table reveals that otolaryngologic and ophthalmologic system diseases are not included in the division of organs into systems and they are united under the sense organs. Also, the said table does not enable us to determine how many were diagnosed supposing that one individual may suffer various diagnosis. Large percentage of pathologies is dedicated only to dental problems while the entire section of priority healthcare pathologies are represented in low percentage indicators. For example, indicator of mental diseases is only 4%, and the drug addiction problem is completely ignored.

Medical monitoring held after the events of September 2012 showed that drug addiction problem in Georgia's penitentiary system remains one of the main challenges. The presented table does not show statistical data for epilepsy sufferers. And herewith we shall note that no adequate and equivalent diagnostic has been made in the penitentiary system.

It is noteworthy that according to epidemiological research, number of individuals with mental health problems in European prisons amount to 32% while together with the drug addiction problem this figure exceeds 62 %.³⁵ Against this background it is hard to imagine that in 2012 the number of individuals with mental health problems in the Georgian penitentiary system, even primary cases, was 4 %. Also the level of bone and joint system pathologies is also low which against the backdrop of the tortures revealed is impossible; Indicator of illnesses of endocrine profile is low. It should be especially noted that pathology of thyroid gland practically which is stipulated in the guidelines and protocols of psychiatry at the time of mental and nervous diseases, is not diagnosed. In addition, as a result of monitoring held on the spot it was determined that inmates suffering from pancreatic diabetes often have glucometers themselves and themselves control its level while medical units suffer shortage of test strips necessary for a glucometer.

As a result of case analyses it was determined that often we encounter hypodiagnostic of patients which goes against the standards existed in the civil sector. The said cases shall be discussed in separate chapters according to categories.³⁶

The program of examination and rehabilitation in accordance with the principles of the Istanbul Protocol is not accessible for victims of inhuman treatment and torture in the penitentiary system of Georgia.

On this background we deem it necessary to exercise stricter control on the quality of medical care in the penitentiary system.

CONFIDENTIALITY AND INFORMED CONSENT

Despite repeated recommendations of the Committee for the Prevention of Torture (CPT) of the Council of Europe a right of confidential conversation with a doctor is neglected in Georgia's penitentiary system. As inmates stated, they were deprived of right to talk openly about widespread torture and inhuman treatment since they were overheard and after claiming about facts of torture they were punished and subjected to even more severe inhuman treatment. In words of medical personnel, conversations with inmates were always attended by non-medical personnel. It shall be noted that even forensic medical examination in many establishments were carried out with confidentiality violations.

We could not find forms of informed consent in outpatient cards that according to order No 01-41/N³⁷ of the Minister of Labour, Health and Social Affairs of Georgia should be definitely administered. According to inmates' statements they are not informed in a timely manner about results of examination and they are not aware of prescriptions they were given.

Given the above, it is necessary to take relevant measures for protection of the principle of confidentiality³⁸ and access to information within the framework of the healthcare of the penitentiary system of Georgia. It is necessary to arrange medical room of the admission department so that a doctor is able to have an opportunity to conduct a confidential and adequate medical examination of an inmate. Majority of prisons in Georgia lack this infrastructure.

HUMANITARIAN SUPPORT – SPECIAL CATEGORIES

Juveniles

We shall note that department of juveniles in temporary detention isolators was moved to the territory of N8 establishment thus both national and international standards of separation of juveniles was violated. The procedure

35 Mental health in prisons: The World Health Organization, European regional department – improvement of mental health in prisons; agreed statement, Hague, Netherlands, November 18 -21, 1998.

36 Chapter "Humanitarian support".

37 Order No 01-41/N of August 15, 2011 issued by the Minister of Labour, Health and Social Affairs of Georgia on "Approval of Procedure for Administration of Outpatient Medical Documentation in Medical Institutions";

38 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 3rd General Report, 1992, parag. 33,34.

of admission of juvenile and male prisoners is carried out in the same reception and the said procedure is done by the same personnel. In 2012 the Ministry of Corrections, Probation and legal Assistance of Georgia announced about “individual program of sentence-serving” for juveniles but unfortunately, this failed completely. It resulted in a riot of juveniles in juvenile establishment (N11). In November-December 2012 we interviewed 13 juveniles in N8 prison for juveniles who explained that the riot was caused by facts of inhuman and treatment and torture.

Case: M.B. 17 years-old, as he said he was detained by Tbilisi Didube-Chugureti police department on 28/11/2011. He describes a fact of physical assault in the police station where he passed out and “received scars on his arm and leg”. On December 1st, 2011 he was taken to N8 prison. And later he describes facts of physical assault in juvenile prison: “when I was brought here, on December 1st, 2011, I was not held below and when I was brought up here on duty there was Giorgi Razmadze. First he brought me to showers to search me, forced me to squat, verbally assaulted me, saying that whatever they wanted they would get, they would do, that there lions ... Wolves, he verbally abused me and started to beat me, beating and kicking me; he beat me when I was undressed; he was beating me in my head and body for 5-6 minutes and kicking me, then he took me back to a cell. Beating was systematic on the part of this Razmadze. On his duty he beat me every day, he beat others as well, but most of all he beat me; he was on duty once every three days; he forced me to live through such days that... he used to beat me twice on his duty. He did not have any reason, he used to stand at the cell, put his ear to a door saying why we were making noise when no one made any noise, immediately he would look into and come into the cell and beat us in the cell; he did not beat anyone as much as he beat me. Razmadze threatened us that he would “put us on a bottle”, that when we become adults they would take care of us there, visit us there.... In the middle of March, 2012 I was taken to Avchala facility. When I got there, I was brought to a room, there were Dimitri Kereselidze, Davit khukhia, Tamaz Jachvadze, Dimitri Kharabadze and of course, Ramaz Kakushadze, in room 3 or 4 of a newly-built building; they asked me why I was arrested, where did I get a weapon from; when I told them that I had found it, that probably irritated him and Kereselidze started beating me; Tamaz Jachvadze was also beating me; he started to beat me in the head and face, then I fell and they kicked me; I was really confused why I was being beaten; They were saying that nobody finds a weapon in a street like this and were beating me for 4-5 minutes, then told me to go and say nothing more otherwise this would seem nothing compared to what would inflict. I was kept there just for 3-4 months and I was not beaten any more. At every admission everyone was beaten up; surveillance camera were mounted in classrooms in school; for every smile detected by a camera children were taken down and beaten by Ramaz, Tamaz, Dimitri, Dimitri Kharabadze, Giorgi Khukhia. Gocha assaulted them verbally. They beat so that / in a way that no marks were left on the face. There was L. who said that he did not want to go to school and he was beaten so much that he was brought up by those on duty, his clothes were torn. As to psychologists, everyone said that one should not say anything that may cause problems, as they the psychologists would go and tell them. One of the reasons for a protest was that they made a parent to squat; but first of all it was beating, also that one should have swim in a pool in trousers and vests, as they said women passed there and it was indecent. And this was happening when workers that were building some small medical facility walked around in just shorts. Every parent was made to squat, and many of them stopped coming for a visit. Certain type of food was prohibited. Every newly-admitted inmate was beaten up, they were beating everyone...”.

During the focused interview M. B. presented the following complaints: “sometimes I think that maybe the situation is the same and fear engulfs me, sometimes at night I dream that my family and friends are dead; that sometimes someone is following me, that I am falling somewhere. Many times I was woken at night by a dream, my heart was racing, now this ceased, I was always tense, now somehow we breathed freely. When they open a slot in a cell door to send in food immediately I inwardly flinch thinking that I have forgotten to stand up. Sometimes I remember these things. Then I could not sleep at all, now sleep is considerably better, there is no comparison.”. The above shows presence of post-traumatic disorder and the person needs to be included in the psychological rehabilitation program.

We shall note that other juveniles also contacted us with similar stories and facts of repeated physical assault and inhuman treatment.

Given the above, at this stage and in order to document facts of torture and inhuman treatment in accordance with the principles of the Istanbul Protocol, as well as implementation of the treatment-rehabilitation program we consider intervention of multidisciplinary group of experts into adult establishments and juvenile prisons to be necessary.

At the same time it is necessary that juveniles at preliminary detention isolators were located on the territory of N11 establishment.

Women prisoners

We shall note that 5 women prisoners out of 7 interviewed describe facts of beating in the police department. One of them who applied to the prosecutor's office describes a fact of beating in Zugdidi N4 establishment after which she suffered feets later and also had symptoms of post-traumatic stress disorder. With regards to healthcare mental health issues are problematic in the mentioned establishment since there are no psychiatric department for women prisoners. Apart from this, only several non-medical social programs operated in 2012 volume of which did not satisfy requirements with respect to social adaptation of inmates of the establishment.

It is necessary to establish medical and psycho-social rehabilitation component through civil programs in women establishments as well as in other establishments.

Persons in preliminary detention isolators

The above-mentioned category is held in Kutaisi N2, Batumi N3, Zugdidi N4 and Tbilisi N8 establishments. Practically all interviewed inmates noted facts of severe ill-treatment, beating and in separate cases, torture, in these prisons. We have documented a well-known case of Malkhaz A.³⁹ who describes in details various facts of beating and torture, including psychological torture, in the Zugdidi police department, in various places near Zugdidi, in Zugdidi prison and later, in N8 prison as a result of which both psychological and physical problems have developed, especially notable are syndrome of chronic spinal ache, headache and pains in neck area, symptoms of post-traumatic stress disorder that is characteristic of practically all individuals that suffered torture and that we have witnessed in many cases.

Herewith we shall mention a problem that is extremely important given standards of torture prevention and which was acutely present in the penitentiary system of Georgia – violation of the right of access to independent examination - and, generally, medical forensic examination standards irrelevant to international standards of torture documentation and ineffective examination mechanisms, including irregular legislation.

Given the international standards of torture documentation, it is necessary to carry out judicial and medical analysis of legislation regulations and existing practices and introduce relevant amendments within relevant pieces of legislation.

Individuals with mental disorders and drug addiction problems in Georgia's penitentiary system

Despite being declared as a priority mental health issue remains one of the main challenges in the penitentiary system. Against the backdrop of torture and inhuman treatment, self-harming and aggressive reactions, statistical data on personality disorders have reached catastrophic levels. This is aggravated by co-presence of post-traumatic stress disorder and results of frequent traumatic injury in the head and spine area.

Results of the research carried out shows that completely inadequate method of treatment that was expressed in excessive prescription-consumption of psychotropic and painkiller medicines - was chosen as a way to overcome this problem. Namely, thousands of inmates take tens of pills of Diazepam, Zolomax, Optimal, Gabagamma and other similar medicines. Their number cannot be verified through reports of healthcare department of the penitentiary system. We shall note that psychiatric and behavioural problems caused by excessive and incorrect consumption of these medicines make it impossible to lower a medicine dose and that presents a dilemma to prison doctors and compels them, under threat of aggression or self-directed aggression prescribe and issue these medicines. According to lists

³⁹ See the case of Malkhaz A. page 10

provided by penitentiary establishments, 1337 inmates take the above-mentioned medicines, but in reality this figure must be much higher.

Thus we are dealing with a narcological problem in the penitentiary system. We believe that implementation of systematic changes and in separate cases introduction of component of non-voluntary treatment is needed to solve this problem as often we are dealing with the combined narcological-psychiatric diagnosis that in separate cases makes it impossible to find an outpatient solution to this problem. Simultaneously, implementation of individual, individual-orientated rehabilitation projects that are based on multidisciplinary approach in the penitentiary system as well as with a purpose of starting of problem-overcoming for released prisoners.

Adequate diagnostics and treatment of persons suffering from psychosis register disorder, mental retardation and dementia remains a problem in the penitentiary system and that violates equivalent healthcare principles. In this regard, conclusions issued by the Psychiatric department of the Samkharauli Forensic National Bureau in some cases are problematic and inadequate.

As a result of monitoring and individual intervention a group of experts in almost every prison witnessed persons with severe psychiatric disorder whose presence in the penitentiary system is impermissible. In three cases conclusions issued by the Samkharauli Forensic examination were inadequate. According to alternative expert evaluation, in two cases a schizophrenic diagnosis was made while in one case dementia was diagnosed. Another case: V. N. was found in N18 medical establishment, he remains in conditions of inadequate medical care. This person is diagnosed with epilepsy together with obvious mental retardation and behavioural violation. And in N18 establishment he is called "simulator" and is diagnosed of emotionally unstable personality disorder syndrome. We have met persons with severe mental problems in Geguti N14, Batumi N3, Kutaisi N2, Tbilisi N8 and women's N5 establishments.

Despite the fact that in October 2012 Georgia practically lost the case "Nachkepia against Georgia" in the European Court of Human Rights that concerned mentally ill woman prisoner under the article 3 (friendly settlement was reached) and it recognized necessity of implementation of psychiatric reform in the penitentiary system, the said reform still remains at the stage of a statement.

Given the above, as an immediate measure, we believe it necessary to separate a group of experts from civil healthcare sector and implementation of large-scale monitoring with the purpose of disclosure of other inmates with severe psychiatric pathologies and consecutive intervention.

Simultaneously, a plan of long-term reform shall be presented which will aim at development of strategy of joint approach towards standards of listed in illnesses for release from sentence and standards of medical forensic examination and psychiatry.

Particularly dangerous are infectious diseases, their management and prevention

Despite identification of this direction as a priority in the penitentiary system and given the loss of the case in the European Court for Human Rights or, taking into account the precedent, array of potentially losable cases, there was no progress noted in this direction in 2012. Namely, it concerns strategy of disclosure of virus hepatitis, its treatment and prevention, implementation of which though connected to expenses, is still necessary and not that hard to carry out. Screening and diagnostics for the above disease is not carried out upon admission of an inmate into the penitentiary system of Georgia, thereof there is no statistical data about cases of hepatitis-suffers upon entering the penitentiary system and those contracting the disease there.

As to AIDS/HIV the program is carried out partially and only some cases are diagnosed and treated. According to Table N2 (illness) of 2012 33 patients were involved in the above program.

Despite the fact that, the Tuberculosis program is carried out by the Tuberculosis disease Control Centre and progress was noted regarding timely disclosure. Both DOTS and DOTS+programs function, the said pathology remains a leading problem in the penitentiary system from the view of spread.

Herewith we should recall, that inhuman treatment and relevant conditions in Georgia's penitentiary system benefited to spread of especially dangerous infectious disease, and this has been done through artificially made overcrowding in so-called "quarantine" of N8 establishment and N1 establishment. According to narrative of inmates of this prison, disobedient inmates were intentionally introduced into sells with those suffering from infectious diseases or vice versa, an infected individual was introduced into a cell while the latter was warned not to speak about his disease. Inmates were threatened that they would be infected with/ untreatable disease. One of the former prisoners is undergoing rehabilitation in centre Emathy.

Case: Z.F. , 38 year-old, "I was arrested n August 12th, 2009 in front of the house. At the time of the arrest I was beaten up with a hand, there were many of them and I was taken to temporary detention isolator cell where I was held for 48 hours. Afterwards I was kept in the quarantine of N8 establishment. After 'breaking the quarantine' I was severely beaten up, there were many prison personnel, and I passed out during the beating. I do not remember for how long. Afterwards a corridor of about 40 people is erected and one has to pass through these corridors while being subjected to beatings. First 10 days I was in Gldani in a cell designed for 6 persons. In 2009, I clearly remember the day, at night I was taken away from the cell, prison personnel were about 20 people. I was severely beaten up with hands and using full water bottles. I do not remember how long I was out. A doctor was called for and this revived me. After this I was taken back to the cell. First 10 months that I was in Gldani 4 months I spent in so-called Kartzer and quarantine. I was kept in a Kartzer for 45 days, after that in quarantine and quarantine –breaking was always followed by beating. I do not exactly remember how many times I was beaten up. I used to hear voices of other beatings, inmates were beaten up in front of each other, and there was such stench from the Gldani dump and such smoke that it burnt our eyes. 10 months later I was transferred to Ortachala, to so-called Krit where a cell designed for 22 persons housed 32 persons and some had to sleep in turns. There were no basic sanitary conditions. In January 2011 I was beaten up and kicked in a director's office by the director himself. When I was taken back to the cell I suffered a "blood fountain", inmates started to shout. I was transferred to the hospital where I spent one month. While in hospital, I was taken to a morgue, where I was beaten up using bludgeon by numerous, I don't remember exactly how many, people. I have lost my conscience. Then I was left tied to a corpse for 2 hours. After that I was taken back to Krit hospital. For a fortnight I had a high temperature. I was transferred back to the hospital with the high temperature. For 5 months I was alone in a cell. I was treated of Tuberculosis. I was not allowed even a radio, as they said it broke too quickly. I was telling them that it was not their money to worry about. I paid for it. Then I was transferred to Ksani where three persons were in a cell. Two days after the transfer, prison personnel carrying long sticks and their mouths covered entered the cell and beat me up, they also poured 3 buckets of water at me. I lost 9 kilos in 9 days, started having high temperatures. I was taken to so-called rezbalnitsa. For a day I was taken to Khudadov where all tests were done. I was transferred back another day.

Then, at last I was transferred to Matrosov prison. Before there was a problem, Matrosov prison did not want to accept me. During my stay there I was once beaten, a prison guard repeatedly kicked me in the legs. Until released on 28.02.2013 I was in Matrosov prison. During my stay in prison, I became contracted Tuberculoses, my sight worsened, have got pain in my knees. I also have psychological problems. I served a sentence for a crime that I did not commit. In Krit inmates with Tuberculosis were warned by the prison administration when they entered a cell not to say that they had Tuberculosis otherwise they would pay for this. A guy was brought in our cell who said that he had Tuberculosis, and though he was warned he could not not say this to us".

It should be noted that taking into consideration damage statistics and data for assistance rendered, that was also provided by the penitentiary healthcare unit, it is hard to imagine how epidemiological control on spreading contagious diseases in the system could have been exercised when no relevant interventions were carried out in such a large number of cases of self-inflicted wounds, wounds or other types of open lesions; According to inmates, they often treated each other in the cell.

2012

Table N4: Injuries

	Injuries	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N13	N14	N15	N16	N17	N18	N19	Total	F
1	Indentation	388	42	3	156	102	0	180	6	7	0	49	2	124	14	109	27	18	1227	0.18
2	Bruise	45	23	2	12	78	0	65	8	0	2	26	2	207	2	19	30	12	533	0.08
3	Hypermia	34	4	0	11	0	0	19	0	0	2	4	0	1	0	4	8	0	87	0.01
4	Wound	813	37	35	268	618	0	383	4	72	0	450	83	640	82	130	716	90	4421	0.66
5	Fracture	0	0	0	2	0	4	0	0	0	0	1	1	9	3	11	6	0	37	0.01
6	Bruise/ swelling	32	9	3	58	13	0	20	0	0	0	4	6	86	6	20	10	4	271	0.04
7	General bruising of body	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0.00
8	Burn	6	2	3	12	0	0	3	0	0	0	0	3	1	0	1	12	0	43	0.01
9	Other (to indicate) one person drank bleach	1	4	0	21	0	0	5	0	0	0	2	1	1	5	12	2	2	56	1.00
	Total	1319	123	47	540	811	4	675	18	79	4	536	98	1069	112	306	811	126	6678	1.00

Table N5: Treatment

	Treatment according to trauma journal	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N13	N14	N15	N16	N17	N18	N19	Total	F
1	Transfer to in-patient medical establishment indicate exact location	0	0	0	14	9	0	0	0	0	0	1	0	4	4	2	0	1	35	0.02
2	Treatment on the spot (indicate what kind)	0	0	0	75	4	0	0	1	2	0	0	0	28	4	42	0	6	165	0.08
3	Recommendations (e.i.antitetanus)	0	0	1	49	6	0	0	0	0	0	1	0	3	0	6	0	1	67	0.03
4	Surgical Treatment on the spot, wound stitching	0	0	2	34	28	0	0	0	0	0	12	6	7	8	15	0	3	115	0.05
5	Surgical treatment on the spot, wound treatment	8	0	4	93	55	1	2	2	3	1	18	4	37	21	34	1	29	313	0.15
6	Bandaging	250	0	3	39	22	1	0	0	3	0	15	1	15	23	26	0	11	409	0.19
7	Not indicated	0	37	15	12	94	0	190	9	0	0	122	21	169	21	67	218	3	978	0.47
8	Treatment refused	0	0	0	7	0	0	0	0	0	0	0	0	4	3	0	1	0	15	0.01
9	Admitted with stitches/no treatment required	0	0	0	4	0	0	0	0	0	0	0	0	2	0	0	0	0	6	0.00
	Total	258	37	25	330	218	2	192	12	8	1	169	32	269	84	192	220	54	2103	1

Based on the above data only in case of 31 % of cases of damage medical treatment was given, and that at the time when 66 % of these injuries were wounds.

Prisoners who are incompatible with long-term imprisonment

Herewith we note that as of September 2012 no practice of release of prisoners with untreatable diseases has been observed. A list of these diseases and a committee was formed on the basis of decrees by two ministers. The latter was assigned to reveal and release individuals with such diseases, however it did not function. The list of severe and untreatable diseases did not correspond to modern criteria and classifications of diagnostics. Accordingly, the number of inmates deceased in the penitentiary system reflects such attitude towards severely ill inmates.

Several cases of delay were recorded but we did not possess such statistics.

At the end of 2012 with the view of defusing the crisis situation at Georgian penitentiary system and based on humanitarian principles sentences of hundreds of individuals were delayed due to their severe illness diagnosis; Though we shall note that during the monitoring we have again recorded inmates in the penitentiary system, whose state of health has severely worsened. Given the above, it is necessary to establish control on this issue and send a group of experts to carry out monitoring in this direction.

Case: O. M., 49 years-old: He has been serving sentence in Geguti N14 establishment since July 2009. Numerous self-inflicted wounds were noted on his body, namely on front shoulder and stomach area. Increased anxiety and angst noted. He has a catheter inserted and urine is released in urine-collecting bag. The medical history says virus hepatitis C. In 2003 he was in a car accident and suffered a head injury. He was beaten up by prison guards several times. The diagnosis set by establishment doctors says: “post-cystotomy condition, urine is draining through catheter, sleep rhythm disorder, chronic Cholecystitis, depressive state.” It should be noted that urine bag is so old that it cannot be changed. As he says he once already been released with postponement but was brought back for a new crime and the old sentence was added since he did not know that every year he should have passed examination at his own expenses and he did not have financial means for this. He also says that he contracted hepatitis C during imprisonment.

A.G. 46 years-old at N18 establishment, he is a wheelchair user (case is confidential), was interviewed in N18 establishment on 24.09.2012. According to a person, he is a victim of physical and psychological torture and was repeatedly tortured by personnel of N18 establishment. At the same time he is a very ill.

Diagnosis:

- Focal (partial) symptomatic (post-traumatic) epilepsy. Complex partial faints with secondary generalization (G40.2);
- Post-traumatic encephalopathy (result of intracranial injury, severe trauma of skull-brain – of subdural hematoma); Condition after evacuation of hematoma (T90.5);
- Consolidated fracture of neck of femur (right) with varus deformation and healed fracture of left acetabulum and healed break, pertrochanteric;
- Contracture of both knee joints;
- Chronic osteomyelitis (according to history);
- Infiltrative Tuberculosis of right lung (according to a history);
- Organic personal disorder (F 07.0).

2012

It should be noted that on December 18th, 2012 joint order N 181/N01-72/N⁴⁰ issued by the Minister of Corrections, Probation and legal Affairs of Georgia and the Minister of Labour, Health and Social Affairs on formation of joint permanent committee that would determine regulations for release from sentence of inmates suffering from severe and untreatable diseases. Which is, of course, a step forward but the second article “function of the committee” and the sixth article “decision (conclusion) of the commission, implementation rule and appeal” violates both standards of international medical ethics and national healthcare legislation since according to such standards subject that carries out medical practice is prohibited from taking part in decision on punishment. Respectively, with this in mind, we believe it is necessary for the order to separate functions and to leave the Ministry of Corrections, Probation and Legal Assistance as the only issuer of legal acts. Given the above it is necessary to introduce relevant amendments within the Imprisonment Code, in particular article 39.

We shall note that by order N01-6/N dated February 15th, 2013 issued by the Minister of Labour, Health and Social Affairs of Georgia approved a list of those diseases that may become basis for release from sentence. The above order N01-6/N⁴¹ is undoubtedly progressive taking into account modern classification it should be noted that the list of diseases needs to be once again reviewed by medical experts. For example, the chapter Psychiatry does not include list of all those mental conditions during which presence of an individual, especially of a juvenile, in prison is impermissible. For example, various grades of mental retardation, and it should not include diagnosis of chronic delirious disorder and so on. The mentioned issues, we believe, should be solved in the light of joint discussion of issues of medical-psychiatric and social examination.

Also notable is the order adopted by the Minister of Labour, Health and Social Affairs of Georgia on medical-social examination according to which status of a disable person is determined , based on the equivalence principle of healthcare services it is necessary to define a disable person status in prisons. Such precedent have already been registered in the case that the centre Empathy won in the European Court of Human Rights, that practically ended in favour of an applicant having reached friendly settlement with the state and within framework of which the state provided medical-social examination of a convict woman who had a convict status and who was awarded a disabled person status (case Nachkebia against Georgia).⁴²

Deceased inmates

According forensic examination reports and information provided by the penitentiary healthcare system, in 2012, 67 inmates died in the penitentiary system of Georgia which is quite a high indicator. Moreover, average age of those deceased was 44 . Majority of them died before well-known events known as “the prison scandal”. We shall note that in 2011 140 individuals died in penitentiary system while in 2010 this figure was 142.

Table N6

Place of death	Inmate number
Penitentiary establishments	10
N18 establishment	50
City hospitals	5
N19 establishment	2
N5 establishment	0
total	67

40 Joint order of the Ministry of Corrections, Probation and Legal Assistance and the Ministry of Health, Labour and Social Affairs 181/N01-72/n of December 18, 2012 on setting up of Permanent Joint Commission diseases from responsibility of serving of their sentence and adoption of Regulations on rules of release of such convicts.
 41 Order №01-6/n of February 15 of 2013 on approval of the list of grave and incurable diseases, which serves as basis for release of a person from responsibility of serving sentence.
 42 Nachkepia against Georgia <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114141>

Number of those deceased in penitentiary establishments indicates that the principle of access to doctor and equivalence healthcare is violated in the penitentiary system of Georgia.

A reason for death was studied on the basis of expert conclusions and diagnosis provided by the penitentiary healthcare system.

	First 6 months	Another 6 months
Cause of death	Inmate number N	Inmate number N
	50	17
Cardiovascular collapse	5	9
Liver failure	5	
Tumor intoxication (stage 4)	6	2
Brain edema	2	
Cardiovascular and respiratory failure due to tuberculosis	13	
Respiratory failure developed as a result of Tuberculosis against the AIDS background	1	
Cholelithic peritonitis	1	
Duodenal ulcer perforation peritonitis	1	
peritonitis that developed after intestinal resection due to suture failure	1	
Hemorrhage developed as a result of craniocerebral trauma	1	
Tuberculosis (intoxication)	1	2
Bleeding from varicose veins of the esophagus and stomach (liver cirrhosis complications)	1	
Lung-heart failure	2	
Bleeding (pulmonary tuberculosis)	1	
Respiratory failure as a result of AIDS	1	
Tuberculous meningoencephalitis	1	
Acute bleeding from a gastric ulcer	1	
Cardiomyocytes in acute ischemic injury	1	
Respiratory and cardiovascular collapse	1	
Multiple organ failure		1
Respiratory failure	1	
Neirospilisit caused by cerebral edema	1	
Adenocarcinoma complicated with peritonitis, bronchopneumonia, purulent pyelonephritis, interstitial myocarditis (4th stage)		1
Hemorrhagic shock (Suicide)	1	
The mechanical asphyxia (Suicide)	1	2
	50	17

2012

The above table shows that inmates with incurable diseases (malign cancer stage 4, cirrhosis of liver, Tuberculosis with cardiovascular and respiratory failure, meningoencephalitis) that were subject to release or/and postponement, were still in prisons.

It is also clear that in case of one prisoner who died as a result of hemorrhage developed as a result of craniocerebral trauma we cannot rule out a fact of torture.

Case: M.M. According to examination report, a cause of death was stated: “immediate cause of death is a diffuse hemorrhage in cavity of the skull and medullary substance, swelling of medullary substance, brain stem compression as a result of blunt trauma.

The examination of the body revealed the following injuries received during life: hemorrhage near ridge - temporal area in the soft tissue; dark reddish color hematoma of gelatin consistency in the temporal region of the brain in skull cavity to the left of the ridge between the skull valve and the hard casings; focal and diffuse hemorrhages in soft tissue and in the brain substance, swelling of medullary substance, brain stem swelling and compression. The said injuries were developed immediately before the death as a result of use of some blunt object; when examining people these injuries are considered to be severely hazardous to life level and have direct causal link with the – death result. The during-life injury – upper pole hemorrhage near the spleen diaphragm surface, was also identified on the body. This injury was developed immediately before the death as a result of action of a certain blunt object. When examining living people, it is ascertained to belong to injuries of low level without impediment to health and have in no causal link with the – death result ...”. The state of prisoner that is scarcely represented in the conclusion reveals that he was transferred from establishment N17 to surgical department of medical establishment for inmates and convicts where he passed away three days later. A small note is also included in the case: on February 5th, 10 minutes ago he fell in the bathroom.

It shall be noted that four people died as a result of a suicide. One of them E.N., 42 years-old, was transferred to establishment N18 from prison N8 and 10 days later was found in the department of infectious diseases hung on a sheet. Diagnosis stated the following: hallucination-paranoid syndrome. Another person - T.K., 28 years-old, was found in the cell of establishment N6 hung on a sheet. We shall note that in both cases information is very scarce in examinations reports and does not contain necessary data. We shall note that in both cases the case history does not contain ambulatory medical cards of establishments N8 and N6 that as a minimum raises doubts over inadequate medical care in the mentioned establishments. Suicide was also noted in the case of O.M., 35 years-old. The examination report says only that the body was found in a cell toilet in establishment N16. Neither this case discussed ambulatory medical card on the mentioned individual which also indicates to inadequate medical care.

4th case: D., 27 years, was transferred from Kutaisi establishment N2 to establishment N18 and he died one day later. As it turns out, he was brought to establishment N18 with a cut wound in a throat area, was settled in a therapeutic department where he tore off his stitching and died of blood loss. According to a medical card of N18 establishment he was diagnosed with emotionally unstable personal disorder, was prone to autotraumas, depressive condition, cut wound of throat. The examination report states hemorrhagic shock as a cause of death.

The expert report does not identify opportunity for detailed analysis of the said case, though correctness of the presented diagnosis is doubted. As a minimum the level of depression was not assessed adequately, neither relevant explanations have been presented as to how the prisoner died nor there has been any indication as to when and what quantity of blood he lost, etc.

Notorious case: M.B., 21 years-old, who died in establishment N15 in Ksani. According to forensic report, the cause of death was cardiovascular collapse developed after microcardiac infarction, against the background of severe bronchitis (pan-bronchitis), broncho-pneumonia. The expert report also describes injuries received during life that, according to the same report, have no causal link with the death. Though the case does not feature either medical card of the above-mentioned individual or circumstances of the death are described. Only the situation around the death was presented. It only shows epicris of the death according to which the inmate was brought in unconscious condition, with no pulse and breath, no external injuries were noted. Therefore, it is unknown how and when he received injuries described in

the expert report. Also the mentioned report does not say whether diagnosis of “acute bronchitis” mentioned in the report was diagnosed in his lifetime and this as a minimum indicates to inadequate medical care.

It should be additionally mentioned, that while studying expert conclusions on bodies of 19 deceased, injuries or/and injury (17 out of them were received at prison establishments) were noted which could not have become a cause of death, though expert reports does not even mention their origin.

TORTURE, INHUMAN TREATMENT AND TORTURE PREVENTION STANDARDS

We shall note that in 2011-2012, the penitentiary system was particularly inaccessible and closed to civil intervention that promoted development of wide practice of torture and inhuman treatment in the system. Penitentiary system was governed through torture, methods of inhuman treatment and excessive use of psychotropic drugs that supported formation of drug addiction and made the majority of prison population more manageable. And with video and photo documentation of especially cruel and degrading situations representatives of the administration blackmailed tortured individuals and that was a widespread method of torturing to achieve total control over an individual, break his/her moral integrity. Among majority of people that passed through such torture, especially in closed environments, and given the dead-end of situation, development of severe stress and various behavioural disorders has been observed. The mentioned disorders compile the range of both self-aggressive actions – self-harm, suicide, para-suicide, as well as aggressive behaviour and psychosis register disorders as well. The above-mentioned nervous and mental disorders are broadly developed against the background of organic damage to a brain and other multi-traumatic injuries that result in development of disorder complex and accordingly, needs implementation of complex, lengthy and multi-profile approach to treatment and habilitation. It shall be particularly noted that in this situation especially vulnerable persons are affected the most – people with already existing mental pathologies or/and defects that even without this have difficulties with adaptation and becoming accustomed with certain conditional regimes. We shall note that such vulnerable groups were subjected to torture and insult in the penitentiary system of Georgia, as an example we can cite the case of N.V. During the first imprisonment as a juvenile the latter was diagnosed at joint forensic psychiatric examination carried out by expert group of Empathy centre with the following: averagely expressed mental retardation (imbecility) with significant behavioural disorders F 71.1 that requires attention and treatment measures; Epilepsy with frequent fainting G.40; with a tendency to develop epistatus G.41. Now he, in his own words, has been arrested for a year and two months. He was tortured in the Kutaisi prison. According to the inmate, a hot iron piece was placed on his tight thigh and upper right extremities, he was thrown down the stairs and his head was dunk in a basin allegedly for not paying for the procedural agreement. In winter months of 2012, he does not remember exact day and month, he was tortured in Kutaisi prison. He was beaten up in Terjola police as well. As the prisoner said, he felt so bad in the prison that he tried to commit suicide thrice but was rescued, he said also that he was hearing voices, sometimes he thought he was talking to someone, sometimes he was hearing someone telling him to have some tea, or to cut themselves or sew themselves (he had been sewn before in the Kutaisi prison. He could not sleep at night just managing to fall asleep in the morning, he recalled everything he underwent. As he said other inmates were also terribly tortured in Kutaisi. In his words he could not control himself, was nervous and wanted to commit suicide, wanted to take his eye out, he did not have Karbamazepam, and diazepam did not wark. He said that his doctor Ia Gelovani in Khoni used to give him Triptazin, Azalepin, Ciclodol, Finlepsyn. In his words he should be given social benefit or pension”. Based on impartial data he has the following:

- Multiple scars (self-harm) on front surface of a stomach.
- Scar (self-harm) on both upper extremities
- Scar on a back, near left shoulder blade

Scars on right thigh, front surface of a right thigh and lateral surface of upper right extremity were left as a result of burn in N18 establishment was diagnosed inadequately: diagnose was made – emotionally unstable personological disorder with tendency to autotraumas.

2012

National Preventive Mechanism

In accordance with the Istanbul Protocol expert group interviewed and carried out primary medical examination of 113 inmates. As a result of study it as revealed that, 100 people out of 113 noted use of methods of systematic physical torture both in the penitentiary system and police. Methods used were revealed: numerous facts of beating using blunt objects, including, hands, feasts, legs, bludgeon, putting an iron hat on a head and then beating, tying to a corpse in a morgue and then beating, sexual threats, undressing and putting in a offensive pose, non-physiological position, inflicting a burn with a red hot iron, burning with a cigarette. Psychological methods named: placing in inhuman conditions, isolation-deprivation, making unreal choice between cooperation under threat, inadequate medical care in prison conditions, threats of sexual abuse.

We have studied data of injury description journals of the penitentiary establishments. The said injuries are not described in accordance with international standards of torture prevention and documentation in any of the prisons, it does not contain information on where an inmate received the injury, in what situation, from whom, why, how and what were physical and psychological consequences. It is noteworthy that as a result of interviewing both inmates and medical personnel it appears that the medical personnel of the penitentiary did not conduct primary medical examination protecting confidentiality. For example, according to one juvenile in a juvenile prison of N8 prison, “when we were beaten up a doctor was sitting nearby and has written that he has not identified any injuries”.

Statistical analysis of reports presented by the penitentiary system:

	Injuries	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N13	N14	N15	N16	N17	N18	N19	Total	F
1	Indentation	388	42	3	156	102	0	180	6	7	0	49	2	124	14	109	27	18	1227	0.18
2	Bruise	45	23	2	12	78	0	65	8	0	2	26	2	207	2	19	30	12	533	0.08
3	Hypermia	34	4	0	11	0	0	19	0	0	2	4	0	1	0	4	8	0	87	0.01
4	Wound	813	37	35	268	618	0	383	4	72	0	450	83	640	82	130	716	90	4421	0.66
5	Fracture	0	0	0	2	0	4	0	0	0	0	1	1	9	3	11	6	0	37	0.01
6	Bruise/ swelling	32	9	3	58	13	0	20	0	0	0	4	6	86	6	20	10	4	271	0.04
7	General bruising of body	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0.00
8	Burn	6	2	3	12	0	0	3	0	0	0	0	3	1	0	1	12	0	43	0.01
9	Other (to indicate) one person drank bleach	1	4	0	21	0	0	5	0	0	0	2	1	1	5	12	2	2	56	0.01
	Total	1319	123	47	540	811	4	675	18	79	4	536	98	1069	112	306	811	126	6678	1.00

Injury localization according to trauma journal

	Localization	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N13	N14	N15	N16	N17	N18	N19	Total	F
1	Cranial area	36	4	6	6	11	0	13	2	0	0	4	3	36	4	15	21	1	162	0.02
2	Face area	202	23	12	31	127	0	80	15	0	1	56	20	239	10	58	78	15	967	0.14
3	Neck	62	18	8	13	44	0	57	2	0	1	44	12	54	9	16	60	9	409	0.06

4	Chest area	37	5	4	3	6	0	7	0	0	0	5	1	27	2	10	15	4	126	0.02
5	Stomach area	115	18	1	31	98	0	80	0	0	0	40	23	99	4	9	121	7	646	0.10
6	Back area	53	8	4	12	15	0	6	0	0	0	5	1	72	3	37	14	1	231	0.03
7	Upper extremities	742	43	9	370	472	4	397	1	79	0	375	35	514	69	153	473	89	3825	0.57
8	lower extremities	75	8	2	60	49	0	22	0	0	0	5	3	40	8	15	32	0	319	0.05
9	Genitals	0	0	0	4	0	0	5	0	0	0	0	0	0	1	0	22	0	32	0.00
10	Unspecified area	0	0	0	9	0	0	6	0	0	0	0	0	0	0	0	1	0	16	0.00
	Total	1322	127	46	539	822	4	673	20	79	2	534	98	1081	110	313	837	126	6733	1.00

	Treatment according to trauma journal	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Transfer to in-patient medical establishment indicate exact location	0	0	0	14	9	0	0	0	0	0	1	0	4	4	2	0	1	35	0.02
2	Treatment on the spot (indicate what kind)	0	0	0	75	4	0	0	1	2	0	0	0	28	4	42	0	6	165	0.08
3	Recommendations (e.i.antitetanus)	0	0	1	49	6	0	0	0	0	0	1	0	3	0	6	0	1	67	0.03
4	Surgical Treatment on the spot, wound stitching	0	0	2	34	28	0	0	0	0	0	12	6	7	8	15	0	3	115	0.05
5	Surgical treatment on the spot, wound treatment	8	0	4	93	55	1	2	2	3	1	18	4	37	21	34	1	29	313	0.15
6	Bandaging	250	0	3	39	22	1	0	0	3	0	15	1	15	23	26	0	11	409	0.19
7	Not indicated	0	37	15	12	94	0	190	9	0	0	122	21	169	21	67	218	3	978	0.47
8	Treatment refused	0	0	0	7	0	0	0	0	0	0	0	0	4	3	0	1	0	15	0.01
9	Admitted with stitches/no treatment required	0	0	0	4	0	0	0	0	0	0	0	0	2	0	0	0	0	6	0.00
	Total	258	37	25	330	218	2	192	12	8	1	169	32	269	84	192	220	54	2103	1

	Injury character	N2	N3	N4	N5	N6	N7	N8	N9	N11	N12	N1	N14	N15	N16	N17	N18	N19	Total	F
1	Self-harm	250	26	10	100	123	1	141	3	4	0	115	17	108	38	37	185	14	1172	0.61
2	Common trauma	532	16	8	99	32	0	36	8	12	0	18	10	68	14	67	9	3	453	0.24
3	Third person inflicted	26	7	0	0	0	0	13	0	0	1	6	5	0	0	1	1	0	60	0.03
4	Not indicated	7	3	3	8	41	0	8	2	0	0	0	2	61	4	21	21	24	205	0.11
5	Other	0	0	3	3	7	0	0	0	0	0	5	0	2	2	3	3	0	28	0.01
	Total	336	52	24	210	203	1	198	13	16	1	144	34	239	58	129	219	41	1918	1.00

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Analysis of the above tables and study of the situation on the spot shows that instead of torture prevention standards and documentation of facts in the penitentiary system there was encouragement to conceal of such facts and inhuman treatment.

Accordingly, for the purpose of prevention of such situations, in the light of torture prevention and documentation and based on obligations to effective and quick investigation it is recommended to review legislative regulations, Imprisonment Code and Criminal Procedure Code and orders and resolutions on forensic examination. When documenting the Istanbul Protocol principles⁴³ and relevant annexes, including video and audio documentation principles, should be used.

It is recommended to support development of independent forensic-medical and forensic –psychiatric examination. Namely, an amendment was introduced into the order N385 of December 17, 2010 of the Georgian Government “on approval of regulations and licencing for medical activities and in-patient institutions”, according to which in order to acquire license for forensic medical examination a condition - practically impossible to meet by independent forensic centre was introduced into the relevant normative act by the Ministry of Labour, Health and Social Affairs - to have its own morgue and appropriate equipment. The amendment into the said order was introduced in the period of preparation of the report.

It is necessary to define terms for the conduct of a forensic examination, methodology and complex approach to documentation of torture in the Georgian Criminal Code

Also, victim rights shall be defined in Georgian Criminal Code. According to the current code a victim does not have a right to access investigation materials, even a conclusion on his examination report which, on the other hand, represents a violation of the law “on patient rights”.

PROFESSIONAL INDEPENDENCE AND COMPETENCE

Based on international torture prevention standards, which is also reflected in healthcare legislation of Georgia: the Law of Georgia on healthcare protection, the Law of Georgia on medical activity, prohibits doctors from participating in any activities which is not aimed to care for patient’s health. Accordingly, participation in any activities related to punishment procedures, as well as attending the acts of torture, providing any assistance or/and tacit consent is prohibited.

As a result of monitoring, it was identified that in some prisons when admitting an inmate into the solitary confinement cell a doctor still issues a verbal consent or/ and signs medical examination certificate. Such facts were disclosed in N17, N9, N6, N15, N16 establishments.

At the same time, by international standards, prison doctors belong to “doctors in risk zone”, that need special protection so that they do not become objects of pressure and persecution-harassment. Accordingly, it is necessary to place higher burden of responsibility of medical personal through legislative regulations based on torture prevention standards. On the other hand, it is necessary to create protection mechanisms for the purpose of creating guarantees for doctors working in “risk zones”. Such category includes not only prison doctors, but also experts, doctors working on rehabilitation and other risk groups.

Simultaneously, according to the Declaration of Helsinki of the World Medical Association (VMA) (2003-2007) it is necessary to widely implement the Istanbul Protocol principles of torture documentation identification of facts of torture to become mandatory, if such facts are known to doctor. A doctor to be given the right to derogate the confidentiality principle at his/her own discretion, of course, taking into consideration assessment of risks facing the patient.

43 The Istanbul Protocol - The **Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (United Nations; New York and Geneva, 2001 - 2004).

With regard to professional competence, more or less lack of awareness regarding healthcare regulation normative acts and laws currently in force in Georgia was revealed in the majority of establishments of the penitentiary system of Georgia, except for N5 women establishment. The issue of awareness of standards of the medical ethics, playing the decisive role in raising of interpersonal conflicts between a doctor and a patient, is also very problematic. A problem arises also with attitude of medical personnel towards disclosure, documentation, diagnostics and treatment-rehabilitation of facts of torture and level of their awareness of this in the majority of establishments. It needs to be noted that even after the events when inmates openly and without concealment stated about torture and presented various healthcare-related complaints prison doctors still failed to record such information in medical cards. To our question why inmates' stories and complaints were not recorded in the medical history, we were told at one of the establishments that "such issues do not concern doctors". The level of qualification when it comes to mental health issues is very low among penitentiary system doctors, including psychiatrists. The above is confirmed by results of the monitoring of those inmates suffering from psychosis that were discovered by us in the penitentiary system and who before were diagnosed with nervous and other disorders of non-psychosis type. During the monitoring we discovered 9 such inmates.

On this background, we believe, that necessity of transfer of the penitentiary healthcare system of Georgia to civil sector is of utmost importance. Also it is very important to urgently plan and implement a set of professional trainings within the complex module program to acquaint prison doctors with torture prevention, documentation, as well as ethical and international standards of penitentiary healthcare system.

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Monitoring of agencies subordinated to the Georgian Interior Ministry

POLICE

During the monitoring held in police stations and departments journals of registration of detained persons and persons transferred to temporary detention isolators were examined. We shall note that in some of these cases, the above-mentioned journals were not appropriately completed. As an example we may cite certain journals that do not provide information on the fate of a detained, at what time exactly the person was detained, in some cases numeration, time of incarceration into the isolator are mixed up , etc.

As a result of the monitoring conducted in the first half of the year 2012 it became apparent that two registry books, instead of one, were kept in Tkibuli District Department of the Interior Ministry. Based on the above, on September 13th, 2012 an address and documentation depicting violations recorded by the members of the Prevention Group was sent to the Head of the General Inspections of the Ministry of Interior by Public Defender's Office. According to the reply received from the General Inspection of the Ministry of Interior on March 25th, 2013, we were informed that on September 13th, 2012, on the basis of the letter sent from Public Defender's Office, official inspections were carried out. The result was that a recommendation letter was used towards 10 workers of the Interior Ministry, 5 workers were subjected to disciplinary measure-reprimand, while 7 workers were given warning.

During the inspection conducted in the second half of 2012 violations were again recorded in some police stations and departments, on reaction to which a letter was sent from Public Defender's Office addressed to the General Inspections of the Interior Ministry.

According to answer N533862, an internal inspection was currently under way in the General Inspection of the Interior Ministry, results of which will be additionally communicated to us.

As a result of the winter monitoring it was revealed that the large part of the citizens being arrested under Article 45 of the Georgian Code of Administrative Offences, were not found guilty in drug consumption. In December 2012 arrest of persons under Article 45 of the Georgian Code of Administrative Offences in regions surpassed all reasonableness. When studying registry journals of persons detained in the regions it seems that majority of men living in the regions were detained on the ground of the aforementioned article. We shall note that according to the second section of Article 45 of the Georgian Code of Administrative Offences, "a policeman to present a person toward whom there is a grounded doubt of illegal acquisition or keeping small amount of drugs or their use without doctor's prescription to a suitably authorized by the Georgian Interior Ministry". As the conducted monitoring revealed "grounded doubt", in most cases, is not justified and does not even exist. According to policemen's verbal explanations, the above practice represents prevention of the drug crime. Though, in our opinion, it may be also assessed as a violation of Article 5

of Convention for the Protection of Human Rights and Fundamental Freedoms (Right to liberty and security). The Special Preventive Group believes that detention of citizens on the basis of article 45 of the GCAO should be more well founded.

An interesting reality has been observed in Samtskhe-Javakheti Region, namely Akhalkalaki where, after inspection of registry journals for detained persons and persons transferred to temporary detention isolators it was determined that workers of the Akhalkalaki police were detaining everybody who moved around the town having consumed alcohol in accordance with the administrative regulations, notwithstanding whether the person committed an act prohibited by the Georgian legislation and administratively punishable acts or not. After examination of the situation it was determined that persons having consumed alcohol, were delivered to the Akhalkalaki police department where they were detained for several hours, sometimes, even till morning and then released. It shall be hereby noted that persons detained in such a manner were not put in temporary detention isolators of Akhalkalaki and so far it is not clear what status were used to detain them in the police building.

RIGHT TO A TELEPHONE NOTIFICATION

The Special Preventive Group often met with detained who stated that after the detention they were not allowed to contact their families. CPI gave a positive assessment to a fact that the legislation stipulates a right of a detained to inform relatives and family about the detention, though noting that in practice this right is not suitably implemented.

In accordance with the paragraph 10 of the article 38 of the Criminal Procedure of Georgia, “upon detention or in case of arrest an accused has a right to communicate a fact of his/her detention or arrest and his/her location, state, as well as to inform his/her creditor, other physical or legal person towards whom he/she has legal obligations”. Despite the law requirements, often investigation does not allow accused to exercise their right to a phone call.

Accused Ivane P. addressed Public Defender with a statement where he noted that upon detention he demanded to inform his family members about his detention which he was denied by an investigator on the grounds that he himself would inform Ivane P’s family about his detention.

Recommendations to the Ministry of Interior of Georgia

- To ensure implementation of the right stipulated in the part 10 of Article 38 of the Georgian Criminal Procedural Code in case of detention or arrest.

TREATMENT

Police has an essential role in the state with the view of ensuring of public order and security. It shall perform statutory obligations in order to avert actions violating the legislation. Additionally, while fulfilling their obligations workers of law enforcement agencies shall respect and protect human dignity and protect human rights. Effectiveness of the police activity in a democratic state depends on the level of human right protection. Every worker of the police is responsible for his/her actions or inaction. At the same time, police leadership is responsible for conformity with human right standards.

Forms, methods and means of conduct of policeman activities are defined in Georgian legislation.

According to Georgian law “On police”, while implementing its tasks, it undertakes to strictly protect legal rights of a citizen when fulfilling its duty, to render relevant assistance to other agencies of the state and citizens within limits of its competence, strictly follow work ethic in relations to citizens.

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Unfortunately, in number of cases policemen themselves violate human rights.

In accordance with the body of principles for the protection of all persons under any form of detention or imprisonment, ⁴⁴“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”.

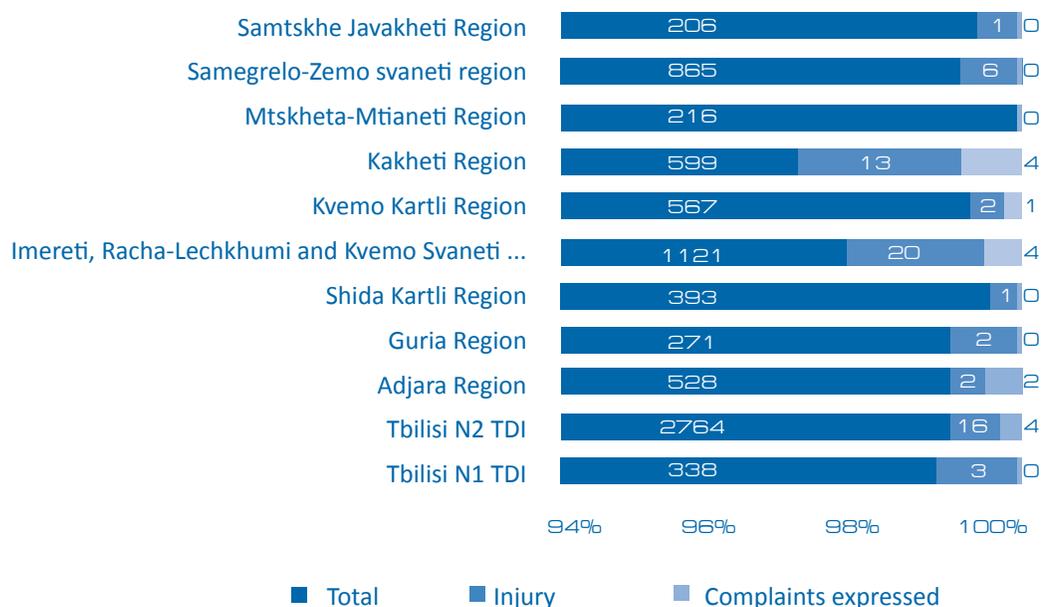
During the monitoring the Special preventive Group paid particular attention to the issue of treatment of those detained on the part of policemen both during and after the detention.

The Special Preventive Group studied reports of external injuries to those detained in every temporary detention isolators. In several cases, a person did not complain against the police though noted that injuries were received during the detention. Also, there were cases when level and gravity of described injuries prompted us to think that the person was subjected to ill-treatment. There were also cases when suspicious injuries were noted on several persons detained together. Some of them noted that injuries were received prior to the detention.

During the reporting period, Public Defender was addressed by citizens that referred to ill-treatment on the part of the police during detention. Each of these facts has been sent to the Chief Prosecutor’s Office and investigation is ongoing.

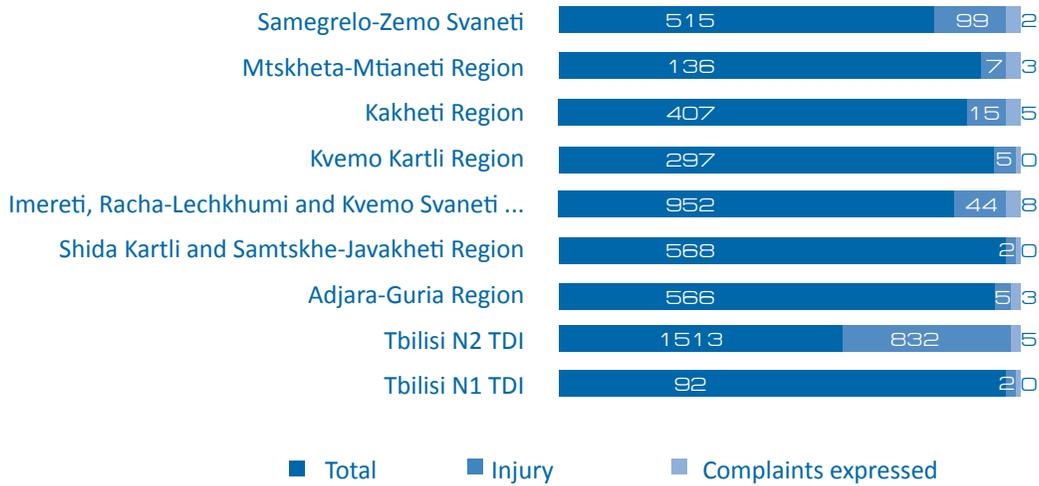
Pursuant to reply received from the Ministry of Interior of Georgia, in the first half of 2012, 7868 persons were settled in temporary detention isolators operating on the territory of Georgia. Injuries were noted in case of 54 persons and 16 out of them complained against the police. In the second half of 2012, 5106 persons were settled in temporary detention isolators out of which 1010 persons had injuries, while 26 of them lodged complaints against the police.

The first half of 2012

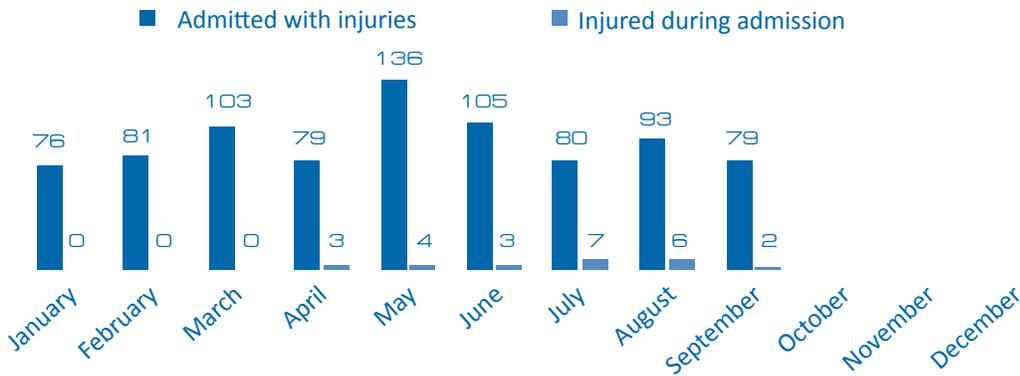


44 Adopted by 43/173 resolution of December 9, 1988 of the General Assembly

The second half of 2012



Prisoners with injuries admitted to penitentiary establishments in 2012



Case of Zurab L.

On June 8th, 2012 a citizen applied to Public Defender with a statement in which she demanded from Public Defender Office to study a fact of beating of her husband Zurab L. by policemen during detention. On June 11th, 2012 representative of Public Defender met and interviewed accused Zurab L. who was placed in establishment N4 of the penitentiary system. The inmate noted that on June 3rd, 2012 he was walking on a street in the town of Senaki when an unknown man dressed in black clothes got him by the neck, started verbally abusing and beating him while calling for other persons. In the words of the inmate, four persons approached him, knocked him down and started beating him, after which they put handcuffs on him, pushed him into a car and took him to the Senaki police. As the accused remarked the fact of his beating in the street was witnessed by members of his family and neighbors. As he explained while taking from the place of detention to the police building policemen continued to physically as well as verbally assault him.

According to Zurab L., while being in the temporary detention isolator he became unwell several times and emergency medical service was called four times. And on June 5th, 2012 the detained was transferred to Senaki district hospital.

The report of external examination of the detained in the Senaki temporary detention isolator states that on June 4th, 2012, at the moment of admission to the isolator, bruises were noted on Zurab L.'s right eye area of as well as left kidney and both knee areas, while bruising and swelling was marked on the left ankle area.

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According to medical certificate N187 dated June 6th, 2012, drawn up by a chief doctor of penitentiary establishment N4, Zurab L. suffered bruises in both eye-sockets, also bruises and indentations – in the left part of the forehead, indentation – in the right shoulder blade area, abrasions - near both wrists, bruises – on upper part of buttocks.

On June 11th, 2012 during the visit of the representative of Public Defender to Zurab L. external examination of the inmate still revealed various injuries: two bumps on the head, excoriations – on temples, yellowish bruises – on the left shoulder and both eye-sockets, excoriations and bruises – on both wrists, bruises – on both knees and kidney area, bruises - in the area of both ankles, long abrasion – on the right elbow, bruise – in the left shoulder blade area.

Based on the above, on June 13th, 2012 Public Defender addressed to the Chief Prosecutor of Georgia with a demand to start a preliminary investigation. He also provided the Prosecutor with a recommendation to ensure conduction of forensic medical examination in the shortest possible period to timely determine nature, degree and age of injuries present on the inmate's body.

Based on the above, on June 13th, 2012 Public Defender applied to the Chief Prosecutor of Georgia with a demand to start a preliminary investigation. He also provided the Prosecutor with a recommendation to ensure the conduct of forensic medical examination in the shortest possible period to timely determine nature, degree and age of injuries identified on the inmate's body.

According to the answer N13/26744 received from Georgia's Chief Prosecutor's Office, investigation was commenced by Senaki district prosecutor's office on the case of N068060612801 on the fact of exceeding official powers by workers of the Senaki district department of the Georgian Interior Ministry, the crime stipulated in the first paragraph of the article 333 of the Georgian Criminal Code.

Case of Giorgi Q.

On July 4th, 2012, representative of the Pubic Defender met and interviewed citizen Giorgi Q., placed in the Zugdidi Multi-profile Clinic Respublica. According to the latter, on July 3rd, 2012 he, together with his friends, was in the village of Anaklia, in the vicinity of the summer camp territory, where they drank beer and had already decided to stay for a night there.

According to Girogi Q., in the night hours they were approached by a police car and three people came out of it. One of the policemen demanded car documents and a driving license. After submitting the papers Giorgi Q. was asked to pass an alco-test after which he and his friends were put in the police car and taken to the Anaklia police station. According to Giorgi Q. they were placed in one room. Giorgi Q. asked policemen not to impose an administrative fee on him since he already had an ongoing administrative penalty. Because of this the policemen assaulted him physically and verbally, namely, slapped him in left eyebrow area, as a result of which G. Q. felt disorientated. As Giorgi Q. recalls, policemen also psychically and verbally assaulted his friends as well.

As Giorgi Q. says after this fact he had difficulties with speech. According to notes made in a medical card, when admitted to the medical unit he was in a neurotic state, he also had abrasive wounds in the head and chest areas. He was diagnosed with a concussion.

On July 9th, 2012 Public Defender applied to the Chief Prosecutor with a proposal to start an investigation. Pursuant to reply N13/31471 received from Chief Prosecutor's Office, an investigation has been launched on the fact of beating the citizen Giorgi Q. case N004404712002.

Temporary Detention Isolator (TDI) under the subordination of Human Rights Protection and Monitoring Main Division of the Administration of the Ministry of Internal Affairs of Georgia

TREATMENT

During the monitoring, finding that has to be considered as certainly positive, is that none of the detainees in temporary detention has expressed any complaints as regards the detention facility staff, concerning any sort of inappropriate treatment. The same can be said of released prisoners from other prisons.

It is regrettable, that during 2012, some instances of inappropriate behaviour by the detention facility staff were identified and revealed. The Office of Public Defender received appeals in which detained individuals raised concerns and drew attention to inappropriate conduct, behaviour and treatment of prisoners by Temporary Detention Isolator staff. This was especially seen with regards to individuals with different political views, who had been taking part in opposition activities. The same was identified with regards to persons detained after 26 May 2011, who subsequently were put into temporary detention isolators. (Further see Public Defender Parliamentary Report, 2011).

The Cases of Manuchar A., Irakli C., and Irakli D.

In May 2012, in the Regional Temporary Detention Isolator for Imereti, Racha-Lechkhumi and Kvemo Svaneti, the representatives of Public Defender met with Manuchar A., Irakli C., and Irakli D. who had been placed in administrative detention. According to these individuals, there had been instances when the temporary detention isolator staff was treating them inappropriately.

On 27 May 2012, during Public Defender's representative visit of these individuals in the temporary detention isolator, all three were stating that they had not received food for the entire day and had not been provided with bed sheets. Also, according to these individuals, when being put in the temporary detention isolator, the staff ordered them to take off their clothes and do squats three times in a row.

In his explanation given to Public Defender's representative, Manuchar A. stated that during his administrative detention period (26-29 May) the temporary detention isolator staff verbally abused him in a constant manner, as well as constantly reminded him of his political views. Additionally, according to Manuhar A, it was often the case that temporary detention isolator staff were hitting his cell door and making noise, so that the prisoner did not have the possibility to sleep.

According to the explanatory note of Irakli D. (detention period: 26-30 May) and Irakli C. (detention period: 26-31 May), they too were subjected to verbal abuse by the temporary detention isolator staff. According to the latter, the

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facility staff was ironic in their responses when the prisoners asked for necessary items and kits for their usage, as envisaged by law.

Hence, based on the above, on 11 June 2012 Public Defender called upon Georgia's Chief Prosecutor to launch a preliminary investigation. Based on reply N13/46329 from the Chief Prosecutor, the Investigation Division of the Western Georgian District Prosecution Office commenced its investigation into case SS N088291012801, i.e. a crime envisaged in the Georgian Criminal Code pursuant to Article 144³ sections A, B, E, and Z.

The Case of Kakhaber G.

On 19-20 July 2012, Public Defender's representatives visited the Sagarejo temporary detention isolator, where they met and interviewed Kakhaber G., who was detained in connection with the Karaleti incident that had occurred on 13 July 2012. That same day the Gori District Court, according to Article 166 of the Georgian Code of Administrative Offences, sentenced Kahaber G. to fifteen days of administrative detention.

According to the detainee, the Sagarejo temporary detention isolator Director and members of staff, from day one of his detention, were physically and verbally abusing him: they were swearing against him and his family, forced him to swear at his peers from the "Georgian Dream" Party, and did not give him the possibility to sleep and adequately use the toilet facilities. According to Kakhaber G. he was permitted to use the toilet a while after he asked for it and was forced to move around with his knees bent and hands around his head. During the night, they would repeatedly open the window of the cell door, and if the prisoner did not wake up or stand up on his feet, he was forced to stand on his feet for one or two hours or sit still on the chair. According to Kakhaber G., the temporary detention isolator staff only gave him the possibility to sleep for a couple of hours. According to him, this was the reason why he commenced his hunger strike from the day he was put into the detention isolator. He stopped his strike only for two days, from 17 to 18 July, and on 19 July he resumed it and wrote to the Sagarejo Temporary Isolator Administration about his hunger strike.

Based on the above, Georgia's Public Defender called upon Georgia's Chief Prosecutor to launch a preliminary investigation of the matter. According to reply N13/45960 from the Chief Prosecutor's office, the Signagi District Prosecution Office investigation commenced on case SS N034021112801 regarding the Sagarejo Temporary Detention Isolator staff exceeding their authority, pursuant to Article 333 part 1 of the Georgian Criminal Code.

DOCUMENTING FACTS OF ILL TREATMENT

Based on the monitoring, it was revealed that when a person is placed in the temporary detention isolator with various injuries, the facility administration contacts the Office of the Prosecutor in case the person expresses his discontent towards the law enforcement bodies. Public Defender issued a number of recommendations that in case the injuries on the body of the person raise the question of inappropriate treatment, irrespective of the detainee's complaints on the matter the isolator staff would have to notify the prosecutor in charge, who will then investigate the injuries the person has suffered.

Apart from N 1 and N 2 Temporary Detention Isolators where a doctor regularly conducts check-ups and documents prisoner injuries, in the other places of temporary detention isolators the injuries are being documented by the detention facility staff.

The CPT in its report of the visit on 5-15 February has negatively assessed Georgian Government on the practice of the external monitoring of placement in temporary detention isolators. The same shortcoming was a number of times mentioned by Public Defender in his reports. To be more specific, apart from N 1 and N 2 Temporary Detention Isolators being regularly visited by doctor, in other temporary detention isolators prisoner check-ups are done by the isolator staff on duty, who also have full access to the medical data. This in turn is a violation of the right to medical confidentiality and data protection.

In addition to this, the committee states that the presence of detention facility staff will hinder the person to speak freely about the cause of his or her injuries. Thus, the CPT recommends that a prisoner's physical examination should be conducted by a qualified doctor, as well as the confidentiality of medical data protected. In case the person has suffered injuries and there is evidence of inappropriate treatment, he or she must promptly undergo a forensic medical examination by an independent doctor who will assess the claim of the person on the nature of the injuries suffered⁴⁵.

ADMINISTRATIVE DETENTION

Pursuant to the Minister of Internal Affairs Decree N1074 of 28 December 2011 concerning "Georgia's Ministry of Internal Affairs Temporary Detention Isolator Regulation, Isolator bylaw and Isolator activity regulatory additional instruction", and according to the Ministry of Internal Affairs Decree N 108 of 1 February 2010, the conditions of administrative detention are spelled out: A person who is in administrative detention should not be allocated less than 3 m², the administrative detention facility has to have a window that fully lets in the daylight and provides for proper ventilation, the room where the prisoner is kept ought to be heated according to the seasons, the prisoner has to be provided with an adequate sleeping kit (sheets, pillows and blankets) and a bed, and he or she must receive parcels, food and clothes. For those persons who have been prescribed administrative detention for more than 7 days – or, in case of minors, more than one day – shower facilities have to be available twice a week, and the right to one hour of walks per day also has to be ensured. In facilities that do not have an outdoor walking space, prisoners can take their daily walks near the ministry of internal affairs administrative body or on its adjacent territory.

Also, detained persons ought to have full access (24/7) to toilet and shower facilities with adequate sanitary conditions. Prisoner's toilet facilities and compartments ought to be equipped with adequate sanitary equipment. If the person is in administrative detention for more than 30 days, he or she has to be allowed access to a hairdresser.

The administration of the temporary detention facility is prohibited to order a prisoner to completely shave his head. Should such a case arise, a doctor's agreement is needed or it must be due to hygienic reasons. Those persons that were proscribed 30 days of administrative detention – or, in case of minors, more than 15 days – have the right to two visits a month, and one 10 minute phone conversation per month. Person in administrative detention have to be given the possibility, at their own expenses, to receive reading material, journals and news papers, and to send complaints or letters. According to both the decree and the established rules of the Ministry of Education and Science, a person in administrative detention has the right to register as a student for national exams providing his or her request in writing. In addition to this, a person in administrative detention needs to be encouraged and all favourable conditions ought to be made so that he or she does not lag behind in the programme of the general education system.

Public Defender, in a number of parliamentary reports and statements, has stated that the infrastructure in temporary detention isolators is simply not adequate to serve the needs of persons placed there. For this reason, Public Defender has issued recommendations to the Government of Georgia to build and set up special facilities for persons in administrative detention, throughout the regions of Georgia, that would serve as a long-term housing facility as well. To this date, Public Defender's recommendation has not been adhered to and persons in administrative detention are continued to be put in temporary detention isolators.

During the preparation phase of the present report, Public Defender's representatives have identified number of violations in connection with administrative detention facilities and detention conditions. Hence, Public Defender's group has issued recommendations to the Minister of Internal Affairs of Georgia.

The Cases of Giorgi J., Giorgi N., Vakhtang S. and Kakhaber M.

On 31 August 2012, Public Defender's Prevention and Monitoring Department met and interviewed persons in administrative detention in the Tbilisi N 2 Temporary Detention Facility: Giorgi J., Giorgi N., Vakhtang S. They also

⁴⁵ para. 23

met and interviewed Kakhaber M, who is in administrative detention in the Gardabani Temporary Detention Isolator. All of them stated that in the temporary detention facility their rights were severely breached.

Giorgi J. was proscribed administrative detention of 60 days and nights in the N 2 Temporary Detention Isolator. The prisoner said that he did not have the ability to enjoy the rights enshrined by legislation in force, and namely: he could not receive visits, use the telephone, walk in the fresh air, shower and have basic toiletries and hygienic kit, nor was he allowed to read newspapers and religious literature.

Giorgi N. was kept in detention in N 2 Temporary Detention Isolator for 59 days and nights from 20 August 2012 onwards. He also did not have the ability to enjoy the rights enshrined in the law for persons under administrative detention.

Vakhatang S. was in the N 2 Temporary Detention Isolator from 20 August 2012 onwards. He stated that he was not given the right to walk in the fresh air, call, shower or have meetings. He also stated that he did not have basic toiletries and a hygienic kit, and that the parcel his family had sent him was not fully handed over to him. According to him, all these restrictions were due to his political views.

According to Kakhaber M., he did not have the right to receive visits and to telephone, was not provided with basic toiletries and a hygienic kit, did not have toilet paper and could not shower.

The prisoner stated that only on 31 August 2012 was he given the right to walk in fresh air, and even then just for ten minutes. In addition to this, the prisoner said that the Gardabani Temporary Detention Isolator administration did not give him the right to appeal to Public Defender. Hence, Kakhaber M. went on hunger strike, asked for a doctor and adequate medical supervision. Nevertheless, his requests were not satisfied.

The European Committee for the Prevention of Torture and Inhuman Treatment or Punishment (CPT/Inf (92) 3) stated, that all prisoners, without exception, need to be allowed to walk in the fresh air, as well as have regular access to showering and toilet facilities. It is also very important for prisoners to maintain contact with the outside world. It is of outmost importance that the prisoner is given the ability to maintain contact with his family and close friends. The guiding principle should be formed as fostering contact with the outside world. Limitations of such a contact should be based on specific security concerns or imposed due to insufficient funds. The CPT attributes great importance to inspection, monitoring and complaint mechanisms, which according to CPT are basic guarantees against torture and inhumane treatment: "Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority."⁴⁶

On this background, on 4 September 2012 Public Defender addressed the Minister of Internal Affairs with recommendation, requesting him without further delay and promptly, ensure that those in administrative detention had full enjoyment of the rights guaranteed under national legislation. Public Defender also called upon the Minister to study all violations, as well as to take necessary measures for remedying .

Pursuant to reply N1234473 from the Ministry of Internal Affairs, Kakhaber M. did not express his wish to contact Public Defender, until 1 September 2012 he declined to enjoy his right for daily walks, was taking showers according to the law, and on 5 September 2012 he used his right to receive a visit. With further correspondence N1234502 received from the Ministry of Internal Affairs, the persons whose cases were described availed themselves of the right to visits on 13 September 2012.

LIVING CONDITIONS IN THE TEMPORARY DETENTION ISOLATORS

We think, that in the temporary isolator the living conditions should be in accordance not only with internal, but also with international standards.

46 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The CPT Standards, para. 54

According to the European Prison Rules and Standards:

“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”⁴⁷.

In some temporary detention isolators such as in Borjomi, Akhalkalaki, Zestafoni, Tetrtskaro, Terjola, Lentekhi and Ambrolauri, there is no heating installed so prisoners are freezing. In most of the isolators there is no sufficient natural light and ventilation; in some of them either there is no window, for instance in the Akhaltsikhke and Borjomi Temporary Detention Facility, or the window is very small and does not provide natural light and adequate ventilation, for instance in the Chokhatauri, Ozurgeti and Lanchkhuti temporary detention isolators – cell 1; in Samegrelo-Upper (Zemo) Svaneti Regional, Khobi, Zugdidi N1, Senaki, lower Kartli, Tetri Tskaro, Tergola temporary detention isolator cell N 2. Kutaisi, Sagarejo, Telavi, Zestafoni, Chiatura, Khashuri, Gardabani, Dusheti and Tbilisi N 2 in all temporary detention isolators. In certain temporary detention isolators windows are large enough, but the triple layer of metallic cage hinders the inflow of natural light and blocks natural ventilation (Signagi Temporary Detention Isolator).

The Zestafoni Temporary Detention Isolator administration clarified that the new Police Station was built, where the Zestafoni Temporary Detention Isolator was supposed to be built.

According to the European Prison Rules and standards, “Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy”⁴⁸.

In Georgia’s Temporary Detention Isolators toilets are not separated. The issue of isolating toilet facilities in accordance with established standards was brought up numerous times in Public Defender’s recommendations to the Minister of Internal Affairs, albeit this recommendation is not yet implemented. Apart from Ambrolauri, Tbilisi N1 Temporary Detention Isolator and Batumi Temporary Detention Isolator (a couple of cells), the space allocated to prisoners does not meet the 4 m² standard. Public Defender in its Parliamentary Reports recommended to ensure such a standard for each inmate. The same was recommended by the European Committee for the Prevention of Torture. As for cells where persons are kept in solitary confinement, cell space should not be less than 7 m².⁴⁹

Notwithstanding Public Defender’s recommendation, in some temporary detention isolators such as Akhalkalaki, Tsalka, some cells in Tbilisi N2, or the Lower Kartli Regional isolators, there are no beds and inmates are forced to sleep on wooden planks.

Public Defender recalls, that for a number of times he issued the recommendation calling for daily walks for a minimum of one hour to be provided to persons detained for more than 24 hours, but in the majority of temporary isolators there is no yard with access to fresh air. Such isolators are those of Dusheti, Tetrtskaro, Tsalka, Signagi, Sagarejo, Zestafoni, Terjola, Ambrolauri, Lentekhi, Borjomi, Kobuleti, Zugdidi, Poti, Khobi, Chkorotsku, as well as temporary detention isolators in Samtskhe-Javakheti, Imereti, Racha-Lechkhumi and Lower Svaneti. It is recommended that prisoners being kept in administrative detention for more than 7 days be allowed to take a walk on the territory adjacent to the temporary detention isolator. Prior to this outdoor activity prisoners are obliged to sign a paper, which warns them about the consequences they will face in case they try to escape.

There are certain violations from the side of temporary detention isolators, for instance in Ozurgeti, where a hallway is used as walking patio. And this is simply unacceptable.

While drafting the present report, according to Decree N 108 of the Minister of Internal Affairs of 1 February 2010 on “Georgia’s Ministry of Internal Affairs Temporary Detention Isolator Bylaw, Isolator Internal Regulation and Isolator Activity Regulation Additional Instruction Approval”, the right to daily walks is given to prisoners who were sentenced to imprisonment for no less than 15 days.

47 Council of Europe Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, Rule 18.1.

48 Ibid., Rule 19.3.

49 Report to the Georgian Government on the visit to Georgia carried out by the European Commission for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) 2010, para.117

Maintaining a clean environment and personal hygiene is a key factor for ensuring a prisoner's dignity and health. Hence, all adequate measures have to be taken so that the prisoner has regular access to showers and maintains his/her personal hygiene. After the monitoring, it was revealed that in those temporary detention isolators where there are shower cabins, prisoners have the opportunity to shower once a week. Nevertheless the situation is problematic in those temporary detention isolators where there are no shower facilities. These isolators are in Zestafoni, Lentekhi, Dusheti and Akhalkalaki. Positively has to be assessed the fact that cells are cleaned twice a day.

In all of the temporary detention isolators prisoners are on the following food ratio plan: 300g bread, 20g sugar, 2 tea bags, 100g pasta, a small can of beef meat and one sachet of instant soup. It has to be stated that the provided meal plan is not adequate and is insufficient, as a prisoner can be in the isolator for more than 3 months and his next of kin might not have the means to provide him with parcels and additional food. In this regard, Tbilisi N 1 and N 2 Temporary Detention Isolators are the exception as prisoners are catered for by the prison cafeteria and have more nutritious and diverse meal plans.

Recommendation to the Parliament of Georgia:

90 Day Administrative detention to be reduced to 15 Days;

Recommendation to the Government of Georgia:

To construct, based on the regional principle, adequate administrative detention establishments and facilities, fully adapted to a prisoner's prolonged detention.

Recommendation to the Ministry of Internal Affairs:

To make pertinent changes to Decree N 108 of the Minister of Internal Affairs of 1 February 2010 on "Georgia's Ministry of Internal Affairs Temporary Detention Isolator Bylaw, Isolator Internal Regulation and Isolator Activity Regulation Additional Instruction Approval", so that the following is ensured:

- persons who are detained for more than 24 hours have the right to take walk in the fresh air in a specially designated area, as well as be provided with the opportunity to regularly shower;
- ensure that the official space, in the in multi-occupancy cells, allocated per inmate is not less than 4 m² or, in case of single occupancy cells, 7 m² of living space.

Recommendations to the Head of the Unit for Human Rights Protection and Monitoring:

- that all detainees in temporary detention isolators are given individual, appropriate beds to sleep and that the wooden planks used for sleeping are removed;
- that in all detention isolators an adequate heating system is set up and installed, that the cells have adequate lighting and ventilation, including access to natural light;
- that in all temporary detention isolators toilets are isolated allowing for privacy during usage;
- that persons in temporary detention facilities have full, nourishing meal plan three times a day.

Report on Conditions in Psychiatric Establishments in Georgia

The present Report covers the findings of the scheduled monitoring of Psychiatric establishments in Georgia carried out by the Special Preventive Group of the Office of Public Defender of Georgia exercising its mandate within National Preventive Mechanism on April 18-28, 2012.

The composition of the Special Preventive Group was:

Employees of Prevention and Monitoring Department of the Office of Public Defender of Georgia: Natia Imnadze (Head of the Department, lawyer), Otar Kvachadze (Deputy Head of the Department, lawyer), Amiran Nikolaishvili (chief specialist of the department, lawyer), Guram Bendianishvili (chief specialist of the department, lawyer).

Experts: Pétur Hauksson psychiatrist, ex-member of CPT, Council of Europe, vice-president; Vladimir Ortakov, ex-member of CPT, Council of Europe, vice-president, psychiatrist; Nino Makharashvili – NGO Global Initiative in Psychiatry, psychiatrist; Maia Kiknadze, psychiatrist.

Monitoring was carried out in the following facilities:

1. Ltd Rustavi Mental Health Centre;
2. Ltd M. Asatiani Psychiatry Institute;
3. Psychiatric Department of Ltd Referral Hospital;
4. Psychiatric Department of JSC Academician O. Gudushauri National Medical Centre;
5. Psychiatric Department of Ltd Hospital N5;
6. Ltd Tbilisi Mental Health Centre (two visits);
7. Ltd Bediani Psychiatric Hospital;
8. Ltd Republican Clinical Psycho-Neurologic Hospital, Khelvachauri District (two visits);
9. Ltd Kutaisi Mental Health Centre;
10. B. Naneishvili National Mental Health Centre, Qutiri (two visits);
11. Ltd Senaki Inter-district Psycho-Neurologic Dispensary;
12. Ltd A. Kajaia Surami Psychiatric Hospital.

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During the monitoring the Group members examined the infrastructure of all the above-mentioned establishments and held confidential interviews with patients therein. The Group members also interviewed the administration personnel, medical personnel, social workers and lawyers of the establishments. During the monitoring all documentation and record books of the establishments were also checked.

Monitoring was aimed to check compliance of conditions, treatment and nursing methods with the rules established under Georgian legislation⁵⁰ and international/European standards⁵¹.

It is a positive feature that the Group members did not encounter obstacles in any establishment during the monitoring. The administrations and staff of the facilities demonstrated their readiness to render assistance. The Group members did not confront with any limitations to move through the territory of the facilities, to interview patients therein and to have access to the documentation.

GENERAL OVERVIEW

One of the main priorities of the monitoring was to evaluate treatment of patients. It shall be noted that practice of ill-treatment by personnel is almost eliminated in the psychiatric establishments, however in several instances the patients still indicated they were subjected to rude treatment by this or that nurse (or nurse's assistant (orderly)).

Patients, as a rule, were satisfied with living conditions in the newly opened establishments. The main concern for them was "to go home" as they were not allowed to.

The physical restraint is used in absolute majority of facilities. The aim of the Monitoring Group was to check whether this procedure was resorted to in compliance with relevant laws and standards. In rare cases the restraint was allegedly used to punish the patients. In certain cases fixation record book indicating information on time and duration of fixation, as well name of person responsible for fixation, was not processed. As found out by the Monitoring Group, some facts were not registered in the record book even if the latter was processed in the establishment.

The liquidation of psychiatric establishment located on Asatiani Street, Tbilisi is one of the major positive changes in psychiatric treatment field; this establishment was substituted by several psychiatric establishments - Rustavi Mental Health Centre, M. Asatiani psychiatry Institute, psychiatric Division of Referral Hospital, Psychiatric Department of Academician O. Gudushauri National Medical Centre and Psychiatric Division of Hospital №5.

This change positively influenced the living conditions of majority of patients – newly built and refurbished establishments are equipped with standard, new furniture and equipment and all facilities are naturally lighted as rather wide windows were installed therein. The Monitoring Group positively mentions that the newly opened facilities have no window gratings; however this change has its adverse effects too – the windows cannot be opened for security/safety reasons and accordingly natural air ventilation in rooms and in the majority of corridors is not available; in addition, no ventilation systems are installed.

As the Monitoring Group members have learnt on site, these newly opened establishments were intended for short-term, so called acute patients; accordingly the equipment is designated for intensive supervision and not to create a quiet, cozy environment for patients. Every bed has fixation equipment, the bedroom door has 1/3 of glass windows and the door locks and handles can be removed from outside enabling the administration to lock it from outside, while toilets and bathrooms cannot be locked from inside. As found out by the Monitoring Group, the long-term, so called

50 Law of Georgia on Psychiatric Assistance, law of Georgia on Rights of Patients, Order #87/n of the Minister of Labour, Health and Social Affairs on approval of Rules concerning Placement in Psychiatric Hospital.

51 Principles on Protection of Persons with Mental Illness and the Improvement of Mental Health Care adopted by the UN General Assembly Resolution N46/119 dated 17 December, 1991; Recommendation No. R(83)2 Concerning the Legal Protection of Persons Suffering from Mental Disorder laced as Involuntary Patients adopted by the Committee of Ministers of the Council of Europe; Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder; Recommendation 1235 (1994) on psychiatry and human rights adopted by the Parliamentary Assembly of the Council of Europe; 8th General Report of European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment (CPT).

chronic patients, who are placed in these establishments, feel rather depressed due to the aforementioned conditions.

As observed by the Monitoring Group, patients enjoy more or less respectful and normal living conditions in the newly opened establishments. Alongside the newly established facilities there are old establishments where heating, warm water and sanitary-hygienic conditions are still a problem. However in some newly established establishments with 24-hour warm water supply patients are not always allowed to use showers whenever they want, instead they have to observe the schedule established by the administration.

One of the serious problems of the new establishments is either irrespectively arranged or small courtyards which make it difficult or often even impossible for the patients to spend enough time outside the buildings on fresh air. Notwithstanding the alarming conditions of the living space as well as of the utility rooms in the old facilities, the latter ones offer better conditions in this respect as they are usually located on a vast territory with greeneries, so patients may spend more time outdoors.

Community-based services enabling persons with mental disorders to run a normal life in society are still unavailable. This is the very reason why certain number of psychiatric patients is not discharged from the establishments - they neither have a place to go, nor have income for living.

Monitoring results showed that improvements were basically achieved in terms of infrastructure while there are no changes in systematic approaches – old treatment methods and practices are still used in the majority of the establishments. Moreover, in some cases the deterioration tendency is observed – the Minister of Labour, Health and Social Affairs introduced new regulations mainly on transparency of financial records aiming at fight against corruption, which do not comply with requirements on protection of confidentiality of information about a patient. During the monitoring process, an emphasis was also made on the system of financing psychiatric facilities which is based on differentiation of acute and chronic patients; this creates obstacles to normal functioning of the facilities.

On the one hand, the establishments have to ensure that so called acute divisions always work at maximum capacity; at the same time establishments have to avoid re-hospitalization, otherwise, the quality of treatment might be challenged. On the other hand, financial support of each chronic patient is much less compared to the one of an acute patient; therefore the establishments are often forced to speed up the process of discharging chronic patients from the establishments earlier than needed, often against the interests of such patients.

Taking into account the aforementioned the administrations of the establishments have to, in a sense, manipulate with statuses of patients (acute, chronic); this fact proves inflexibility of the financing system that does not comply with real needs of the establishments.

Similar to previous years, system of treatment of somatic and dental diseases is not organized. As clarified on site this issue is not problematic for the establishments that are parts of multi-profile hospitals (Gudushauri Hospital, Referral Hospital); however the Monitoring Group observed that this issue is more relevant in terms of access to treatment. Such services (treatment of somatic and dental diseases) should be financed from the funding allocated for psychiatric treatment. The only exception is emergency services covered by the special state program.

The issue of voluntary patients is still acute – their voluntary status is only a formality. The vast majority of such patients are hospitalized involuntarily; often this status is usually granted to avoid the prescribed formalities for involuntary placement or, in some cases, due to social conditions of a patient or his/her family. Despite the ability of the majority of such patients to run independent life and take care of themselves, they are forced to stay at the establishments as they have no income or, in many cases, accommodation. This issue is directly linked to the non existence of community-based services as already highlighted in Public Defender's Reports.

The cases when the voluntary status of the patient is deceptively preserved “in sake of his/her interests” should be especially mentioned (for instance, a patient is told that in case of involuntary treatment, he/she will not be able to leave the establishment soon).

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The practice in the establishments reveals the formal nature of the voluntary status – notwithstanding his/her status, a patient is not allowed to leave the building independently. There is indeed a list of exceptions defined by doctors, however, they do not take into account either voluntary or involuntary status of the patient, but rather his/ her personal abilities and features.

The patients are not duly informed on the methods and duration of treatment in the majority of the establishments. As a rule, such information, if existent as such, is available for the family members or relatives. The patients, in most cases, are not informed on details and methods of their treatment.

Similar to previous years, the treatment process basically includes drug treatment; rehabilitation and adaptation programs are rarely and insufficiently incorporated in to the treatment course. This problem is mainly directly linked to the lack in financing – funds allocated for a patient do not suffice to cover rehabilitation measures. It goes without saying that entertainment, cultural and other events are not available – libraries and entertainment or leisure rooms do not exist in the majority of the facilities.

It is a positive development that in the majority of the establishments there are social workers and psychologists who are responsible for identifying non-medical needs of the patients as well as for solving different types of their problems. Nevertheless, it shall be noted that in most cases the work of such employees is more of a spontaneous nature and often based on their individual abilities. There are neither government regulations concerning standards of work of social workers and psychologist at the psychiatric establishments, nor any kind of support to their activities or directions of their work.

During the monitoring process, the qualification of staff and their work conditions were also examined. Similar to previous years, due reimbursement of lower-level medical personnel (nurses and assistants to nurses) is still an issue. Due to very low wages it is difficult to hire and sustain qualified personnel. As stated by all directors of the establishments, assistants to nurse have undertaken the special trainings on treating patients, including methods of behavior with and fixation of aggressive patients. We consider that these trainings positively influenced the reduction of ill-treatment; however it is necessary to ensure relevant conditions of work and leisure for those lower level medical personnel directly and intensively dealing with patients on a daily basis, as social problems of such employees might influence their relations with patients.

Besides, due to the lack of relevant number of lower-level personnel at the establishments, the process of the supervision of patients is not implemented properly. As observed by the Monitoring Group, this very issue creates the necessity of introduction of stricter living conditions (locked windows and doors, rare outdoor walks, etc.). On the other hand, the allocated finances do not suffice to hire medical personnel in line with the needs of the establishments/patients.

Contact with the outside world is vital for patient's rehabilitation process. As found out during the monitoring, patients are enjoined the right to use a telephone in some facilities. The visits are not limited (the special time-frame is determined for visits) however in the majority of establishments there are no special rooms for visits, so a patient meets the visitor in the ward, courtyard or any other place. None of the establishments employs the specific limitations regarding acceptance of parcels, apart from the prohibition of subjects that are sharp and prickly.

ILL-TREATMENT

The main priority of National Preventive Mechanism is monitoring of treatment quality at all places of the deprivation of liberty including psychiatric establishments aiming at revelation and prevention of facts of ill treatment.

The Monitoring Group notes with satisfaction that no cases of ill-treatment were identified during interviews with the patients at the majority of establishments. Even though some patients mentioned few such cases (described below) these are rather isolated, rare cases of a non-systematic nature. Nevertheless, it is indeed necessary to immediately reveal every such case and to react accordingly. This issue is still pending for every establishment as the

complaint system is not duly organized. The situation is complicated by the fact that patients are not informed of their rights, procedures concerning lodging complaints, existence of complaints box and its usage.

According to the staff members of the establishments, past practice showed that the ill-treatment by orderlies (now nurse assistant) was a common practice as a result of lack of qualification and skills in managing the critical situations. Currently most of orderlies have undertaken special trainings. As doctor on duty at the Psychiatric Department of Gudushauri Hospital mentioned, this positive development is based on different approaches towards patients as well as on modern trends being incorporated into the field of psychiatry. The doctor also emphasizes, that the very fact of being a member of a multidisciplinary team, which discusses thoroughly conditions and needs of the patients, is very important for the orderlies / nurse assistants and indeed changes their attitude towards patients. Despite the aforementioned, the patients of several facilities stated that they were subjected to rude treatment by orderlies. In the majority of cases the patients did not inform anybody about such facts.

Tbilisi Mental Health Centre. As several male patients placed in the so called social unit of the Centre stated, some staff members treated them rudely and carelessly. One of the patients mentioned that two years ago one orderly was dismissed for beating a patient twice. He also stated that personnel is “noisy and they shout”, though “recently situation has improved and relations are warmer”. After being asked what exactly he did not like therein, the patient answered that despite the improvements the situation is still bad. “Sometimes I feel aversion and apathy from their side”.

One of the patients of the female unit mentioned: “Staff members sometimes talk roughly and shout though there has been no cases of beating”. Another patient of the same unit stated that “those who misbehave are subjected to shouts and fixation to bed”.

The records examined at the establishment showed that 11 employees were reprimanded for ill-treatment of patients in 2011; the same data for 2010 was 12 staff members.

Psychiatric Department of Hospital N5. The interviews with patients placed in the Psychiatric Department showed several very important issues regarding treatment of patients: One patient claimed that her attending doctor Natulie treats her roughly and insults her. “She considers me to be a prostitute. This Natulie insults me permanently and often speaks of men in my presence; she has no right to interfere into my private life”. “Once when I asked for some medicines, she forced into the ward and rejected my requests. She said that I was doing it to show up in front of men.” “Other doctors and orderlies love me”.

Another patient of the same facility confirmed the rude and insulting behaviour of the same doctor towards patients.

The same patient stated that security officer Ucha hit him once with hand. “Those who are sick are beaten”, “one male patient was beaten and hit several times. I approached and saw how he was beaten and then he cried”; “I think he refused to take medicine, pushed with hand. The security officers have beaten that man. I love him and cannot tell his name”; “I do not know whether doctors are aware of this fact, they are always in their rooms”. “If you misbehave you are locked. One patient was locked though he deserved as he misbehaved”.

As other patients said, “Teona beats everybody” (The patient could not specify whether she was nurse or assistant to nurse).

As doctor on duty at **Psychiatric Department of Hospital N5**, mentioned last year 3 orderlies were dismissed as their behavior did not meet the modern standards – they were rude with patients and had conflicts on subordination basis.⁵² Presumably issue of treatment is still a serious one this facility and the administration have to adopt all necessary measures to eradicate this problem. In addition the doctors have to express more attention towards patients not only in terms of medical treatment.

⁵² Presumably the Establishment, mentioned here is the old establishment on Asatiani Street, as by the time indicated the psychiatric unit did not exist at the establishment N5.

Qutiri Psychiatric Establishment. During the monitoring of this establishment none of the patients complained on ill treatment. However, it should be mentioned, that during the reporting last year period several patients submitted complaints to Public Defender concerning alleged ill-treatment from staff, basically from security officers. Investigation was launched concerning one case based on the recommendation of Public Defender.

The written submissions from the establishment, mentioned reprimands for 14 employees, however no ill-treatment facts were identified.⁵³

Bediani Facility Patients claim that some orderlies treat them roughly and scornfully. As a rule, patients do not discuss this issue with “bosses” (they mean director and doctors) as they feel awkward. “The orderlies shout on patients. Once I asked the orderly the reason for shouting and he answered: to have fear of me.” Patients did not confirm facts of beating. Some of them cannot confirm facts of rude treatment either. One of the patients declared that “beating is excluded”. Another patient mentioned a conflict between an orderly and a patient – the orderly tried to wake up the patient rudely and the latter reacted aggressively. “Generally [orderlies] are not rude”, the same patient added.

While answering questions on reasons for dismissal of employees, the patients said that drinking or escape of patient might serve as such reason. Shouting might serve as a basis for reprimand. The director clarified that due to the geographical location of the establishment the decisions on dismissal of personnel should be cautious as there are little hopes to hire a better employee. In addition, he said “they are not afraid of loss of 300 GEL”. Therefore he prefers to use strict reprimands and control behavior of orderlies rather than fire them.

The director of the establishment mentioned one case when he saw the orderlies making the patients to unload the tracks (food products). He decided to use disciplinary measures against them.

Khelvachauri Psycho-Neurologic Hospital. Some patients claimed rude treatment from orderlies and other patients. One patient claimed that two weeks before, upon arrival at the hospital he was beaten by staff members and placed in the isolation room (he was a voluntary patient).

In some establishments (**Khelvachauri Psycho-Neurologic Hospital, Psychiatric Department of Hospital N5, Surami Psychiatric Hospital, Qutiri**) the patients also claimed that some other patients are quite violent, even showing signs of physical aggression. The personnel either do not notice such facts or do not react adequately upon them. The reason for this gap is insufficient number of personnel and their improper training. At any case this issue should be properly addressed by the administrations of psychiatric establishments.

The National Preventive Mechanism of Public Defender considers that prevention of conflicts and all forms of violence among patients, as well as appropriate response to such cases should be main concern for the assisting staff. The mere existence of such conflicts clearly indicates to insufficient attention of personnel towards patients or lack of professionalism. One of the reasons of this problem can also be inadequate number of staff members.

The 8th Report of European Committee for the Prevention of Torture (CPT) states: “It is also essential that appropriate procedures be in place in order to protect certain psychiatric patients from other patients who might cause them harm. This requires inter alia an adequate staff presence at all times, including at night and weekends. Further, specific arrangements should be made for particularly vulnerable patients; for example, mentally handicapped and/or mentally disturbed adolescents should not be accommodated together with adult patients” (para. 30).

For the prevention and record of ill-treatment it is recommended that trauma record book is run in every establishment indicating trauma of a patient, date, trauma origin (according to patient’s explanation) and assistance rendered. It is also recommended to run the record book for external visual examination upon admission to the hospital that should register physical injuries of a patient upon admission and their origins.

At the present moment such information is recorded in nurse’s journal or patient’s medical history paper. Accordingly, the Monitoring Group did not have an access to systematized information. There are neither indications nor

53 Our question tried to find out the cases of disciplinary measures for improper treatment towards patients; apparently, the 14 cases of administrative misdemeanours were not related to treatment with patients.

statements by the personnel whether it became necessary in particular cases, based on patients' injuries or his/her comments, to apply to the law enforcement bodies for further investigation.

THE REFORM OF MENTAL HEALTH SYSTEM

One of the important documents on which the ongoing reform in mental health system is based is Healthcare Strategy of 2011-2015. Para. 4.6 of the Strategy deals with "Mental Health Support" highlighting the necessity of introduction of principles of balanced, integrated and continuous care. To reach this strategic goal, the "state will support" and take active part in improving the quality of rendered services by upgrading the infrastructure, opening new types of mental health centers and increasing skills of medical teams." The Strategy also deals with introduction of new forms of social services as well as measures aimed at reduction of discrimination.

The strategy specifies the modern vision of mental health system – the need of shifting from institutional approach to balanced care model, continuity of service, introduction of new services, the need for qualified personnel who are aware of modern approach in mental health treatment and able to use this knowledge, etc.

This document is indeed a step forward, though it cannot replace mental health policy paper that should thoroughly define and identify the reforms and changes necessary in different sectors.

At this stage it is necessary that the government takes further logical steps and adopts mental health reform action plan identifying priority measures, time-frames, reform success indicators, responsible agencies, etc. Unless the action plan is adopted, the implemented measures shall not develop logically and be fragmental, also, due to their unplanned character they might cause ambiguity and discontent among the main stakeholders, etc.

Creation of children unit at N5 Psychiatric Department Clinic Hospital should be underlined. It is indeed a serious step forward as for decades children have been treated in adults departments. It is also worth mentioning that the unit is the integral part of a multi-profile hospital, which is a positive feature. However, non-existence of a specially arranged courtyard should be assessed negatively as children are basically "locked" in the unit.

Unfortunately this 10-bed unit is designed only for children under 15 years; therefore 16-18 years juveniles remain in rather vulnerable position as this age is at high risk in terms of development of different mental health problems. Needs of children and juvenile mental healthcare are rather high, at the same time, are not adequately addressed, so there is a necessity to develop hospital-based, ambulatory-based and community-based services.

The major shortcoming is that new methods are either introduced in a very limited format or not introduced at all in the newly reformed establishments. Such methods imply to *inter alia*: introduction of multi-disciplinary groups and case management, promotion of treatment quality safeguards guidelines or integration of psychological treatment methods into the treatment schemes. Unfortunately only medication-therapy approach is employed in almost every acute (short-term) division, which applies to majority long-term divisions as well (f.e. division located on Kavtaradze str.). In addition introduction of internal regulations and schemes such as, for instance, suicide prevention algorithms were only a formality.

REFORM WORKING GROUP

One of the main prerequisites of success of the reform is full transparency of the process to ensure exchange and correlation of opinions and experience. In December 2010 the Ministry of Labour, Health and Social Affairs created a working group that was responsible for supervising the reform implementation. Unfortunately so-called ex-users were not involved in the process as required by international practice; furthermore, the working group did not define decision-making mechanism and correspondingly long debates did not often result in joint decisions. In addition, the adopted decisions were often changed without consultations with working group.

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In order to enhance efficiency of the working group it is important to make a revision of its composition, define the working procedures and increase role of the group in the reform process.

STATE PROGRAM AND NEW SYSTEM OF FINANCING

In 2011 the title of state program was changed. The “Psychiatric Assistance Program” was replaced with “Mental Health Protection Program”, the budget was increased by 800 thousand GEL and services diversified.

It shall be noted that financing of hospital component remains very high (approx. 70%), while ambulatory assistance is only about 30% and rehabilitation component – 1%. In order to ensure more balanced financing, the allocation of funds should be redistributed.

New system of financing of reformed hospital services has been developed. It divides hospital services into two types:

short-term hospital service covering medical treatment of acute psychosis symptomatic conditions (2-8 weeks stay);

Long-term hospital service that covers situations when short-term medical is being prolonged, or medical treatment for those patients who cannot be treated outside the hospital due to grave psycho-social dysfunction.

The Ministry defined that the cost of so-called “acute” hospital services shall be reimbursed upon actual expenses up to 840 GEL; as for the long-term hospital services it shall be reimbursed based on monthly voucher with the value of 450 GEL.

The establishments distribute the funds allocated for short-term hospitalization in the following way: 30-40% out of the total sum distributed for 18 or 21 days (depending the duration of patient's placement) is allocated for salaries for the whole personnel (taking into note their position). Accordingly these “allocated finances” shall be used for reimbursing salaries despite the duration of hospitalization of a patient. However if expenditure for the medical treatment of patients exceeds the prescribed amount (about 65 GEL), personnel's salary budget is re-distributed and decreased to cover treatment expenses. Accordingly, members of staff are interested in discharging a patient within the period of 21-25 days. Moreover, the salary of personnel depends on turnover of patients as the bigger the number of patients - the higher staff salaries are.

The managers of long-term hospital services note that the allocated funds are not enough for medical treatment of patients as it includes additional expensive treatment (somatic disorders) and caring means (diapers etc); accordingly difference of 400 GEL between short-term and long-term treatments is not fair.

Efficiency of this financing system should be subjected to additional review and modifications.

GAPS IN FINANCING SYSTEM

Based on the aforementioned the Group members raised the question whether this financing system might trigger artificial increase of turnover of patients. Some directors of establishments consider that case-based financing is the reason why long-term patients are often given short-term/acute patient status. Bearing in mind that the terms acute and chronic patients are not differentiated in psychiatry it becomes easier to practice such an approach.

On the one hand artificial turnover of patients is hindered by re-hospitalization control carried out by the State Regulation Agency for Medical Activities of the Ministry of Labour, Health and Social Affairs. In case a patient is re-hospitalized within 7 days after being discharged from the hospital, it is being considered that the quality of medical treatment was not adequate or the patient was discharged earlier than needed; consequently the medical establishment is obliged to return funding received for this specific case.

On the other hand, having finished short-term treatment course the patient may be moved in a long-term unit or other establishment without considering such re-placement as re-hospitalization. As stated by several directors, the establishments are manipulating with these artificial practices so to avoid sanctions of State Regulation Agency.

As identified during the monitoring process, the funds allocated for one patient are not enough to cover expenses for somatic diseases management and purchase of means of hygiene. This is a rather serious issue especially in relation to patients whose family members or relatives cannot provide them with such treatment or items (the majority of chronic patients who actually live in the hospital face this problem). The problem is aggravated by the shortage of finances especially compared to short-term treatment.

As a result of financing problems the establishments cannot afford hiring duly qualified personnel that affects the quality of patient treatment and care.

In addition to that, the directors state that financing allocated for long-term medical treatment does not correspond with the needs of such patients. One director even told the Monitoring Group that he did not intend to participate in the next tender for placing disabled persons, as allocated government funds were not adequate to comply with the requirements of the Ministry of Labour, Health and Social Affairs.

As noted by one of the directors, psychiatric program provides for patient/case-based financing. The Program precisely defines the items to be subjected to financing; it depends entirely upon good will of the financing authority to decide whether expenses were reasonable or not. For instance, the Program does not provide for financing neither for treatment of somatic diseases nor for the means of hygiene and clothes.

Directors mention that despite the real needs of patients they cannot spend more funds than allocated, since, if they do so, the expenses won't be reimbursed by the state notwithstanding reasonability of such expenditure.

As stated by one of the directors, they refrain from openly discussing gaps and insufficiency of financing, as in such case they are considered to be bad managers unable to use funds appropriately and therefore they avoid raising this issue.

There is one additional element not covered by voucher-linked (case-based) financing – refurbishment and rehabilitation works. This is a concern basically for old establishments; however the representatives of new ones also noted that even reimbursing expenses for basic refurbishment works is a problematic issue.

Such an approach, first of all, adversely affects the patients' interests, as only placement, food and psychotropic expenses are covered by the Psychiatric Assistance Program. The Program does not address other necessary expenses, especially for long-term patients.

Furthermore, the majority of directors stated that the operation of psychiatric establishments has been burdened by the applicability of Law of Georgia on State Procurement since April 2010.

As stated by administrations, the quality of medicaments is no longer a priority. While observing state procurement rules the establishment have to purchase cheap (Indian) medicaments which, as the majority of doctors note, are not efficient due to the lack of active substances in the medicines.⁵⁴ Accordingly such medicines are prescribed in bigger dosage and have adverse effects on patients' health.

As stated by the administration member of Rustavi establishment, despite their view on necessity of specific medicaments they are not entitled to purchase any medicament not included in the special prescribed list. While asked who makes such lists, the director was not able to answer the question.

Directors informed the Monitoring Group that the Ministry of Labour, Health and Social Affairs plans to introduce obligatory rehabilitation services in every hospital, although financing of such services is not incorporated into financial plans. Nobody understands how this requirement might be implemented.

⁵⁴ As a director clarified usage of low-quality medicament is directly linked with the decision of 2007 requiring Medicines Agency to use conclusions of drug-store net laboratories instead of independent laboratories for licensing medicines.

Directors noted that all their needs should be included in the tender list. If they fail to include every single necessary item in the tender list, they will be forced to arrange another tender that requires additional expenses. At the same time, it is absolutely impossible to identify all needs of the establishment one year earlier. As one of the directors mentioned, the tender system is not adequate in certain cases, for instance, in case of serious damages of heating system, as the tender procedures necessary for renovating the system shall take at least two weeks and meanwhile the patients shall have to stay in the establishment without heating.

As stated by another director, the procurement system prevents them from purchasing products from local farmers. This practice damages interests of local economy as well as of patients. For instance, tender procedures actually allow the establishments to buy frozen meat and fish only, while it is clear that the quality of such products is much lower than of those available at local markets.

STATE CONTROL

Control over the utilization of financing is an innovation requiring submission of medical information (form IV-100/a) of every patient to the Social Service Agency.

Doctors clarified that within 24 hours of patient's admission to the establishment the information on the patient – first name, last name, personal number, case number, and code of preliminary diagnose, shall be communicated electronically to the Agency.

They also stated that in case of very minor inaccuracy the doctor is subjected to fine. Together with electronic documentation, Form IV-100/a is submitted to the Social Service Agency on a monthly basis; together with other information, this form includes precise diagnosis of a patient.

Doctors in the establishments do not know who has access to this confidential information.

Such system of control clearly infringes confidentiality of information on patients' health as recognized by Georgian legislation and international standards. The Council of Europe Recommendation of 2004 stipulates: "All personal data relating to a person with mental disorder should be considered to be confidential. Such data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection."⁵⁵ The same article specifies that the conditions governing access to that information should be clearly specified by law.⁵⁶

State Regulation Agency for Medical Service of the Ministry of Labour, Health and Social Affairs carries out government control over the patient-based financing system. The latter triggers doctors to violate laws and not to allow voluntary patients to leave the facilities. The doctors are well aware that, on the one hand, the voluntary patient may leave the facility freely upon request and on the other hand, they might be hospitalized voluntarily or non-voluntarily within several days that shall be considered as re-placement; the latter constitutes a violation and the facility has to return finances to the state.

- The mentioned problem once again highlights inadequacy of control system, even more so the aim of such mechanism is to control finances and not to check the quality of treatment.
- National Preventive Mechanism considers that existing case-linked financing system is not adequate and does not reflect the needs of persons with mental disorders as well as of relevant establishments.
- It follows from the afore-mentioned that the State is unable to establish adequate system of financing and quality control being in line with the rights of patients, confidentiality principle and does not trigger medical personnel to violate the law.

55 Rec(2004)10 art. 13, para. 1.

56 Ibid, para. 2.

- The State should take into account the peculiarity of psychiatric establishments and introduce procurement system in compliance with their needs.

PROCEDURES OF PHYSICAL RESTRAINTS

Physical restraints of patients – isolation or fixation are subject to regulations by Georgian legislation, as well as international and European standards. These regulations are aimed at avoiding improper or inadequate use of physical restraints that might cause physical or any other injury to a patient.

Article 16 of the Law of Georgia “On Psychiatric Assistance” deals with this issue. Application of physical restraints is also regulated by the Order #92/n of the Minister of Labour, Health and Social Affairs dated March 20, 2007 on Approval of Regulations on Rules and Procedures of Physical Restraints Methods of Patients with Mental Disorders.

Article 27 of the Committee of Ministers of The Council of Europe Recommendation Rec (2004) 10 precisely defines this procedure. The same issue is regulated by paragraphs 47-50 of the 8th General Report of CPT.

The aforementioned provisions provide that physical restraints shall be used only if the patient poses threat to himself/herself or other parties. Both the Georgian legislation and European standards requires that physical restraints shall be used only in strict compliance with prescribed, defined in advance detailed procedures. Physical restraint could be imposed: at the specially designated places, using special equipment⁵⁷, in only exceptional cases and only in case it is impossible to control a patient’s behavior using other, less restrictive measures, for the least possible period of time and only in accordance with an express order and approval of a doctor. Physically restrained patient should be under the uninterrupted supervision of the doctor. Every case of fixation shall be registered in the relevant record book. The patient should have a right to appeal the doctors’ decision on physical restraint. These measures shall never be applied as punishment.

CPT standards also provide that physical restraints of patients should be applied in accordance with detailed procedures, which clearly state the following: agitated and violent patients should be, to the maximum possible extent, controlled via non-physical methods (for instance, verbal instruction) while in cases, where physical restraints are absolutely necessary, it should be limited to manual control.⁵⁸ The Committee considers that relevant training of personnel is necessary for managing situations the way that neither patients nor staff members are injured.⁵⁹

As for the record of physical restraint cases, the Order of the Minister of Labor, Health and Social Affairs on procedures of physical restraints specifies that medical doctor or doctor on duty shall “register the reason, nature, specific times at which the measure began and ended in the medical file of the patient”⁶⁰ As soon as the reasons for restraints are eradicated, psychiatrist makes the decision on termination of measures as well as makes an appropriate record on the case.⁶¹

It is recommended to specify the document where the records on restrain procedure is made. As provided in the CPT 8th General Report,⁶² every detail of the physical restraints should be recorded in a specific register created for this very purpose, as well as in the patient’s personal medical record. The record should indicate time of the beginning and the end of the procedure, name of the doctor who ordered or approved the measure, also any injury inflicted to a patient or staff.

During the monitoring it was observed that the practice on physical restraints journal is not consistent in different establishments – some hospitals do not have such records at all (**Khelvachauri Psycho-Neurologic Hospital**

57 Order #92/N dated March 20, 2007 is the only legal document regulating this issue. It provides: “Special instruments for physical restraint shall be resorted for physical limitation.”

58 CPT 8th General Report, para. 47;

59 Ibid.

60 Order #92/N of the Minister of Labour, Health and Social Affairs dated March 20, 2007 on Approval of Regulations on Rules and Procedures of Physical Restraints Methods of Patients with Mental Disorders, para. 6.

61 Ibid, para. 14.

62 Para. 50.

LTD Kutaisi Mental Health Centre, Qutiri Mental Health National Centre, Senaki Psycho-Neurologic Dispensary), thus they definitely contravene national and international legislation. At other establishments existence of such journal is only a formality, as there are no entries on fixation in the record book whatsoever. (**Gldani establishment, Referral Hospital**).

Kutaisi Mental Health Centre. There is no fixation record book in this establishment. The administration members claimed that they do not run the record book as such procedures are not applied therein. Nevertheless there is an isolation room at the establishment.

Qutiri. There is no fixation record book in this establishment; therefore cases of fixation are not being registered here. Qutiri hospital represents that exceptional case where even isolation procedures are being used rather intensively, although neither in this case there is a record book for registration of such practices.

Senaki Psycho-Neurologic Dispensary. The fixation journal is neither run in Senaki establishment. The personnel clarified that the relevant entry is made in the nurse's journal and oral notification is given to the substitute nurse. Isolation measures are also periodically applied in this establishment, however without running a special record book.

Khelvachauri Psycho-Neurologic Hospital The administration stated that fixation is not used therein, therefore there is no special record book with registered cases. Sometimes isolation procedure is applied – there are two isolation rooms in male as well as in female units. In these rooms the Monitoring Group found special soft belts for fixation and straitjackets. No record book on isolation cases is run in this establishment.

In certain establishments – **Gudushauri, Psychiatric Department of Hospital N5, Referral Hospital, Surami Psychiatric Hospital** - there is no special room for physical restraints and therefore the fixation of patients is practiced in wards in front of other patients. This indeed is unacceptable practice. As the personnel of the Asatiani Institute clarified fixation takes place upon need, sometimes even in the ward. Similarly, in the Senaki Dispensary, despite the existence of a special room fixation is usually applied in the wards, in front of other patients and sometimes with their help too.

The reasons of fixation differ upon establishments. For instance, the Director General of Asatiani Psychiatry Institute stated that main reason for fixation can be refusal to take medication, however medical doctors clarified that fixation is normally not applied in such cases.

In the majority of establishments fixation is applied only in cases when the patient poses threats to himself or other persons (**Asatiani, Referral**). Nevertheless, several rather unusual entries were found in the record book of Referral Hospital. Those are as follows: “Falls down from the bed” (20min); “felt sleepy, but refused to go to bed, was reeling and falling down” (15 min); “felt sleepy, refused to go to bed, made noise, woke up others”(30 min).

Hospital N5. One of the patients claimed that he was fixed after he had released another fixed inmate.

Tbilisi Mental Health Centre. Female patient of Social Department said that fixation is prohibited therein though she mentioned one patient, L.G., who was sometimes tied for 5 minutes as she liked to enter rooms and take others' belongings. A male patient of the same department mentioned that fixation was not applied therein; however the practice was used downstairs” (in long-term department).

Based on the aforementioned it might be concluded that physical restraints of patients are used as punishment in these establishments that is strictly prohibited.

During the interview one patient of the Referral Hospital stated that when a patient is aggressive, personnel twist his arms and fix him. This patient interviewed stated that he was tied himself upon admission to the hospital as he acted aggressively. He was fixed for 10-15 minutes. Another patient mentioned that two days before an interview, new, aggressive inmate was brought and “was tied for half of a day and later released”.

Bediani Psychiatric Hospital. The Monitoring Group was informed in this hospital that fixation was not applied as the personnel is able to calm the patient down in any circumstances by just talking to him/her.

Kutaisi Mental Health Centre. The administration noted that they do not use physical restraint procedures, although they do have a special room if needed. They also mentioned that they plan to receive acute patients and presumably might need fixation.

In some establishments the fixation record book is run with defects or there are no entries on restraint duration or other important components.

Tbilisi Mental Health Centre. The interviewers mentioned one patient who was systematically subjected to fixation; however there were no relevant entries in the record book.

Surami Facility. Only few entries concerning restraints of patients were found in the record book. In addition, such important elements as duration of fixation or signature of doctors were missing.

Gudushauri Psychiatric Department . There is no information concerning duration of fixation in the record book for the first half of 2011. The information concerning a decision-making doctor was also missing.

In several establishments there are no special instruments of restraint and the patients are fixed with bed-sheets or other handmade materials (**Referral Hospital, Tbilisi Mental Health Centre, Surami, Senaki**).

In the majority of establishments fixed patient is under supervision of a nurse or nurse assistant, who claim to report to either medical doctor or doctor on duty on every case. There are no indications concerning injections in any record book. As the Monitoring Group was informed, this data is being registered in patient's personal medical file, which, after double-checking by the Group, proved to be true. Nevertheless, it is recommended to register all medicaments used during the fixation period both in record book and medical file.

Maximum duration of fixation differs. According to the record book of Referral Hospital (total 11 cases during 2011), duration of fixation is 15-40 minutes, while average duration, according to personnel, is 20 minutes. Afterwards the patient gets injection.

LIVING CONDITIONS AND PHYSICAL ENVIRONMENT

The physical environment, and accordingly, the living conditions of patients are not similar in different psychiatric establishments. As already mentioned above, the National Preventive Mechanism welcomes opening of new establishments with refurbished infrastructure and improved conditions for patients. Such facilities are: **Rustavi Mental Health Centre, M. Asatiani Psychiatry Institute, Psychiatric Department of Referral Hospital, Psychiatric Department of Gudushauri National Medical Centre, Psychiatric Department of Hospital N5, one division of Republican Clinical Psycho-Neurologic Hospital, Kutaisi Mental Health Centre.** In these establishments the living conditions are much comfortable than in the old ones; bed-rooms are usually designed for two patients and equipped with adequate furniture, bedside tables and wardrobes, thus patients are able to keep personal belongings and to have so called personal space.

At the same time several old hospitals still exist and living conditions of patients are not satisfactory there. Furthermore, these establishments are designed for several hundred patients; dormitories are large and uncomfortable. Such conditions are not recommended for therapy of patients.

Living conditions of patients are essential not only for safeguarding respect to and protection of rights of patients, but also for the efficiency of treatment; the CPT stated that adequate living conditions constitute "positive therapeutic environment"⁶³. Moreover, placement of a patient in inadequate living conditions might be considered

63 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, para. 32.

as inhuman and degrading treatment. Good living conditions are important not only for patients, but for personnel too.⁶⁴

Aforementioned is the very reason why living conditions of patients fall within particular interest of the Monitoring Group. It should be mentioned that the tendency of replacing large-capacity psychiatric establishments with the small capacity ones is indeed a positive trend, as provided by the CPT standards. The Committee considers that large psychiatric establishments pose a significant risk of institutionalization for both patients and staff, the more so if they are geographically isolated. This can have a detrimental effect on patient treatment.⁶⁵

Living environment

The 8th General Report of CPT provides detailed provisions on living conditions of persons with mental disorders. As the Committee considers, „creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements.“⁶⁶

The recommendation of the Council of Europe provides that facilities designed for the placement of persons with mental disorder should be as close as possible to normal, family conditions.⁶⁷

The infrastructure of old establishments does not comply with the aforementioned requirements (Surami, Bediani, Qutiri, and Khelvachauri). These establishments have quite good natural light and ventilation; nevertheless due to conditions of infrastructure, age of the facilities themselves, poor state of repair, it is impossible to ensure adequate sanitary-hygienic conditions. Due to the large size, these establishments are not heated properly and the hot water is provided with limitations. Furthermore, in case of large-capacity dormitories, it is impossible to create comfortable environment for patients, neither can they have their personal space (bed-side table, wardrobe, etc). The CPT states:

„The importance of providing patients with lockable space in which they can keep their belongings should also be underlined; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy.“⁶⁸

The Committee also notes: “The CPT also wishes to make clear its support for the trend observed in several countries towards the closure of large-capacity dormitories in psychiatric establishments; such facilities are scarcely compatible with the norms of modern psychiatry. Provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and also a key element of any policy for the psychological and social rehabilitation of patients.”⁶⁹

Based on the same reason it is impossible to create “visual stimulation”⁷⁰ recommended by the Committee - adequate decoration of dormitory, living space and recreational areas.

The newly created small-capacity establishments with only double-occupancy wards promote creation of positive environment for patients. On the other hand, the doors of wards in these establishments are partially glassed that prevents creation of comfortable environment in the room as everybody can look inside from the halls. According to female patients, this circumstance is of particular discomfort for them, as newly opened establishments are for both, women and men patients. Sanitary-hygienic conditions of the new establishments are generally satisfactory. Except for natural ventilation problems, these establishments have comfortable environment for patients (**Gudushauri, Asatiani, Hospital N5, Rustavi, Kutaisi, mixed unit of Khelvachauri establishment, Referral Hospital**). Lack of fresh air causes serious discomfort for the patients, especially in the absence of ventilation.

64 Ibid.

65 Ibid, para. 58.

66 Ibid, para. 34.

67 Rec(2004)10(2004)10, art. 9;

68 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, para. 34..

69 Ibid, . para. 36.

70 Ibid, .para. 34.

Psychiatric Department of Referral Hospital. Video control cameras are installed in the halls, wards and observation room, where a patient spends some time upon admission to the hospital. According to patients, they were not informed about cameras installed in their wards. There is no special written or oral notice informing patients on the video control in the establishment. Video control cameras are also installed in the halls of **Qutiri facility**, however, not in the wards.

Window gratings are not installed in the newly opened establishments; patients usually cannot open the windows in such facilities as handles are removed and kept by the staff (**Referral Hospital**) or window can be slightly opened (**Gudushauri, Referral Hospital**). There is no central ventilation system in these establishments.

Hospital N5. Windows cannot be opened at all (they are nailed) and windows in the hall are being opened from time to time, so there is rather bad air and unpleasant smell in the building. As one patient stated: “if we behave well we are allowed to come close to window”; “that is why I say that when I leave this place I shall at least be able to breathe fresh air”.

In the newly opened establishments the wards windows are not curtained, thus causing discomfort to patients. Patient of **N5 Hospital** stated: “when I felt ill, injection was made in my ward. Everybody gathered near the door glass. I protested though was disregarded and mocked.”

A patient of the **Referral Hospital** noted: “They do not open windows at all, only when guests come”. Other patients confirmed this statement.

In certain establishments the door handle is also removed and so the door can be closed only from outside. However during the interviews, both staff members and patients confirmed that doors were never locked save the exceptional cases when isolation of patient was necessary (**Rustavi, Referral Hospital, Gudushauri, Hospital N5, Asatiani**).

In the old part of women unit of Tbilisi Mental Health Centre window gratings are installed inside the window; therefore patients cannot open windows independently.

The doors of toilets and showers of the newly opened establishments cannot be locked from inside which creates rather uncomfortable conditions for patients, especially taking into consideration the fact that these establishments are for both - man and women patients.

The directors of establishments justify these limitations by the lack of staff. They claim that if the patients are allowed to lock and open windows and doors without close supervision of staff the probability of accidents will increase twofold.

As for the old establishments, as a rule, the living conditions are bad, utility rooms and showers are not refurbished, the sanitary standards are not observed, patients are placed in large wards where they do not have personal space. Lighting and heating systems are not operating. (**Surami, Bediani, Qutiri, Khelvachauri**)

During the monitoring there was urine smell in the halls and wards and bed were not tidied in **Referral Hospital**. The Staff stated that they lack hygiene means as the latter is provided by the central administration of Referral Hospital in small and insufficient amounts.

Nutrition

The CPT standards provide that “Patients’ nutrition is another aspect of their living conditions which is of particular concern to the CPT. Nutrition must be adequate not only from the standpoints of quantity and quality, but also must be provided to patients under satisfactory conditions. The necessary equipment where food can be stored in adequate conditions should exist. Further, organization of meals should be decent; in this regard it should



be stressed that enabling patients to accomplish daily rituals - such as eating in proper conditions - represents an integral part of programs for psychosocial rehabilitation of patients. Table setting during nutrition process is a factor which should not be ignored either.⁷¹

Private companies in accordance with executive contracts provide nutrition for newly opened facilities. As to the old establishments (**Qutiri, Surami, Khelvachauri, Gldani, and Bediani**) food is being cooked on site. During the monitoring process, the Group did not receive any particular complaints on food quality at the establishments. In some of them, for instance, in Bediani, exists a rather positive practice when menu for the upcoming week is agreed with the patients and, subsequently, posted publicly. In some establishments menu is not available to patients at all (**Referral**).

In addition, it shall be noted that the Monitoring Group observed cases related to nutrition service which were not in compliance with CPT recommendations.

Firstly, it should be mentioned that during nutrition process patients of the establishments are using spoons only. As found out, they have no knives or forks and so the nutrition process cannot be called normal. In addition to that, there is no enough dining room space for all patients (**Referral Hospital**) so they have to wait for their turn to eat. Therefore, in the new establishments where food is delivered already cooked, some patients are not able to eat it in hot condition.

Walk

None of the establishments allow patients to have independent outside walks notwithstanding of voluntary or non-voluntary status of patients. The doors of every establishment/division are locked and guarded by a security officer or orderly. Any movement of patient outside the building should be approved by a doctor or a nurse. In **Asatiani Establishment, Psychiatric Department of Gudushauri Hospital, Tbilisi mental Health Centre** the Group was informed that doctors make the list of those patients who are allowed to walk outside independently.

In **Bediani establishment** patients enjoy relatively greater extent of freedom – the door of the hospital is open and patients can move around the courtyard freely (they are not allowed to leave the courtyard). In the courtyard there is always an orderly supervising the patients. Often in such cases it is difficult to differentiate orderly from patients, and such practice might, in a sense, be perceived as a stimulus for establishment of informal relationship between personnel and patients. The patients placed in the **Psychiatric Department of Referral Hospital, Psychiatric Department of Hospital N5 and Senaki Dispensary** do not have possibility to go for walk. Non-existence of recreation area aggravates the situation. Even food is served in wards where the patients spend the most of their time.

As one employee of **Gudushauri Psychiatric Department** said, previously patients were allowed to go for a walk in the common courtyard of the Hospital which was better arranged and larger compared to department's courtyard. Nowadays patients can walk only in the department's courtyard – it was decided so by the new administration of the hospital who stated that patients with mental disorders created discomfort to others by their odd behavior. The same employee also noted that doctors make the list of patients who are allowed to freely move outside the territory of the Hospital. The question of the Monitoring Group whether there was at least one incident justifying prohibition of walks in the common courtyard was answered negatively.

The aforementioned fact deserves special attention as it comprises elements of discrimination of persons with mental disorders. As UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care provide “There shall be no discrimination on the grounds of mental illness”⁷²

The patients of **Gudushauri facility** state that they are allowed to one-hour outdoor walks twice a day in the internal courtyard.

71 8th General Report, para. 35.

72 Principle 1, para. 4;

Duration of outdoor activities also differ in the establishments. With this respect the old ones offer better conditions to patients as these establishments are usually located on a larger areas surrounded by parks; accordingly the outdoor conditions for patients are much better here (**Bediani, Surami, Qutiri, Batumi**). Nevertheless, patients of **Qutiri Facility** complained on the insufficiency of duration of outdoor activities.

There is no walking area in Psychiatric Department of **M. Asatiani Psychiatry Institute, Hospital N5 and Referral Hospital**. In the latter establishment there is a practice of taking smokers (patients) to specially designated smoking areas (special room in the hall) in groups. One patient explained that though he is not a smoker he usually joins the group to leave the department even if he still stays in the building.

Contact with the Outside World

The CPT standards provide that “[t]he maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends. Confidential access to a lawyer should also be guaranteed.”⁷³

Contact with the outside world for the patients of Georgian psychiatric establishments is quite limited. They are allowed to use telephone, however telephone is usually located in the administrative part of the building or procedures room and a patient can access the telephone only with special permission of personnel. Usually it is difficult to get such permission.

Patients of **Hospital N5** said that it is problematic to make a phone call. One of them told us that once when he requested the use of a phone he was threatened to be placed in an establishment with stricter regime.

The patients of **Bediani Hospital** may use Magtifix telephone that is installed in procedures room (as confirmed by patients).

In **Surami Hospital** it is problematic to have access to telephone and a patient may use it only with assistance of staff member.

As patients of **Qutiri Mental Health National Centre** note, they are allowed to use telephone very rarely. In a forensic psychiatry unit access to telephone is better guaranteed – the telephones are installed in the halls and patients have better opportunities to freely exercise their right to use them. During the monitoring, there were no complaints regarding impediment of telephone communication.

We have been informed in **Khelvachauri Psycho-Neurologic Hospital** that the telephone call is sometimes made by social worker and not the patient. Patients may access telephone on a regular basis however with the permission and supervision of a social worker.

Visits of friends and family members are allowed everywhere. However in the majority of establishments there is no special room for visits. Patients often have to meet with their relatives and family members in the courtyard or wards.

THE CONDITIONS AGAINST DE-INSTITUTIONALIZATION OF PATIENTS – NON-EXISTENCE OF EXTERNAL SERVICES

As observed by the Monitoring Group and confirmed by the doctors and patients, the majority of patients – so called chronic, long-term patients do not necessitate hospitalization. For them, the psychiatric institution performs the function of social habitation rather than of medical treatment institution and the majority of patients stopped receiving medical treatment years ago. The only reason why the patients continue to live in the psychiatric institutions

73 CPT 8th General Report, para. 54.

is the non-existence of the accommodation or income for living in the outside world. In Georgia there are no services to assist the persons with mental disorders to adjust with the outside world.

The director of Bediani Facility noted that the majority of patients of this institution may freely live in society, however they have no place to go. The institutionalization of some of the patients is initiated by their own family members.

One patient of the Bediani institution stated that he had been undergoing the treatment at psychiatric institution on Asatiani street since 90s. When the territory of Asatiani psychiatric institution was sold, those patients who had no accommodation were taken to other institutions.

The majority of patients of **Qutiri and Surami** institutions have been living there for many years mainly because they do not have other places to live. **Senaki Dispensary** administration noted that the number of patients at the institution increases during winter season because of the social hardship of patients.

During the monitoring it was also observed that another reason for institutionalization of patients is the fact that during dispensary treatment the cost of drugs is not reimbursed and patients cannot afford buying them; thus, they are forced to remain at the hospital as in that case the cost of medicine is financed by the government program.

SOMATIC AND DENTAL DISEASES MANAGEMENT

Article 5.1.i of the Law of Georgia on Psychiatric Assistance provides that a patient has the right to “receive relevant medical care in a non-psychiatric medical institution”. This provision is of a declaratory character, as it does not specify the relevant methods of implementation. In practice, the issue of managing the non-psychiatric diseases of mental disorder patients is still not decided up to today.

During the Monitoring serious shortcoming in psychiatric treatment was observed – regular blood analysis to check existence of leucocytes in blood is not conducted for those patients who undergo Leponex treatment; the international guidelines provide that such patients should be checked on a regular basis as the Leponex treatment might cause decrease of leucocytes in blood that poses danger to life. Presumably this gap is also related to the lack of financing.

The directors of institution clarified that one-time allocated finances do not suffice for diagnostics and treatment of somatic and dental diseases; this issue is especially important for the patients who regularly take strong psychotropic medicaments. As directors and doctors noted, they may provide such treatment only based on their personal contacts. The patients are treated in the same establishments if the psychiatric institution operates on the basis of multi-profile hospital. However none of the directors could identify the source and program for financing such treatment and diagnostics. Presumably, in such hospitals the availability of doctors with different specialization is improved while financing is still problematic.

As the director of **Rustavi Mental Health Centre** noted they have to clarify the details of placement of patient with the Ministry of Labour, Health and Social Affairs in every specific instance. They have to contact Tbilisi Catastrophe Service that would send car to take a patient to Tbilisi.⁷⁴ As recorded, in 2011 only one emergency displacement of patient took place; as for diagnostics and different manipulations, the same letter states that the institution concluded the contract with Rustavi Central Hospital. During 2011 32 patients received consultation services (therapeutic, surgeon, proctologist, ophthalmologist and laryngologist), while 11 patients used laboratory examinations. (including ex-rays, echoscope, electrocardiogram).

In M. Asatiani Psychiatry Institute therapist and neurologist provide services to patients. The administration noted that they do not have finances for additional diagnostics and examination. Accordingly they cannot manage

⁷⁴ It is not clear why Tbilisi medical services provide services to this facility as it is located on the territory of Rustavi Clinical Hospital.

somatic diseases. The administration also informed the Monitoring group that during 2011 there were 3 instances of emergency services for patients in different hospitals.

The administration of **Psychiatric Department of Referral Hospital** noted that they contact hospital call-centre in instances of somatic problems to arrange the visit of doctor. However there are no records of such instances.

The administration of **Psychiatric Department of Hospital N5** use the services of the hospital therapist for somatic diseases who defines “necessary measures”. However the records are never made. Dental diseases are not treated. Emergency treatment was provided to three patients during 2011.

The director of **Bediani Hospital** mentioned that consultants—surgeon, therapist, pulmonologists, neuropathologist are invited from Tbilisi. The reimbursement for one or two visits is 200 GEL. Currently he is negotiating with Clinics “Geo-Hospital” to purchase dental treatment services. The patients confirmed that the administration takes all available measures to manage somatic diseases. As one patient mentioned, his leg was badly injured so he was taken to another hospital for relevant treatment and operation.

In **Tbilisi Mental health Centre** there is a therapist and a neurologist; surgeon consultant is invited if necessary who consults the patients and conducts small surgery manipulations. Allocation of finances for other diseases or long-term treatment is very problematic. This issue is especially vital for this institution as the majority of patients actually live therein because they do not have another accommodation or income. In 2011 17 patients used emergency treatment in other medical institutions; 29 patients were examined (ex-rays, electrocardiogram, ultrasonographic examination, liver checks, prothrombine index, brain examination, laboratory examination).

At **Psychiatric Department of Gudushauri Hospital** the services are provided by the doctors of Gudushauri Hospital; however we could not check this information as records concerning the medical treatment and consultancy are not made. As for the emergency services, 8 patients were moved to relevant hospitals.

Surami Establishment has a contract with therapist and neurologist who visit the establishment if necessary. Administration noted that they usually face difficulties if there is a need to place their patient in another hospital for treatment of somatic diseases. They also receive services by Tbilisi Catastrophes Centre who transport patients to Tbilisi. Dental treatment services practically do not exist. According to the official written information, 15 patients were transported for emergency surgical services.

Kutaisi Mental Health Centre administration noted that they have contracts with several specialists who visit the facility on a regular basis and may be called upon in case of emergency. However in reality, according to the written information provided by the Center, in 2011 no facts of emergency or examination transfer have occurred.

Qutiri Mental Health National Centre has contracts with medical consultants who regularly visit the facility. The written information submitted by the centre provides that 8 patients were transported for emergency services during 2011 (in 2010 - 6 patients). In 2011 medical treatment was provided to 9 patients in different hospitals.⁷⁵

It shall be noted that tubercular patients are also placed in this institution; DOTS program is operational. 14 patients are placed in the unit for tubercular patients (7 of them are on a voluntary treatment while 7 – on involuntary treatment as defined by the court). In addition, in units IX and XI there were two more TB patients in isolated wards.

Senaki Inter-District Psycho-Neurologic Dispensary has a contract with two specialists –therapist and neurologist. The administration provides that they visit the facility on a regular basis and patients are transported for out-patient treatment immediately. Records made in the medical file of some patients confirmed the existence of transportation services.

Khelvachauri Psycho-Neurologic Hospital has contracts with several specialists who regularly visit institution. They may be summoned in emergency instances. Administration considers that out-patient services might be

⁷⁵ Several out of these cases are emergency assistance, f.e. fracture of heels, shanks bones, foreign body - metal wire. A patient was hospitalized with the diagnosis of bronchial tubes and lung malignant tumour. Pleura cavity rinsing procedures and drainage removal was conducted in another case.

provided easily. They also noted that the government programs do not finance routine health problems, but only emergency cases. The written submission of the hospital stated that emergency aid was provided to one patient; while 28 patients were transported for examination during two years (2010-2011).

VOLUNTARY AND INVOLUNTARY PLACEMENT

A patient may be placed in psychiatric hospital voluntarily or involuntarily. Recommendation of the Council of Europe dated 1983 defines involuntary medical treatment as the admission and placement for treatment of a person suffering from mental disorder in a hospital, other medical establishment or appropriate place without prior request of the patient.⁷⁶

Such patients should be under special care as any improper approach/treatment or misdemeanor on behalf of medical staff may violate their rights and freedoms.

Article 18 of the Law of Georgia on “Psychiatric Assistance” provides that a patient may only be placed in the psychiatric institution against his/her will if s/he has no ability to make conscious decisions and it is impossible to treat him without in-patient placement and he poses threat to himself/herself or third persons or may cause serious material damage.

This procedure is laid down in details in article 4 of Order #87/n of the order of the Minister of Labour, Health and Social Affairs.

Due to the fact that the procedures for placing involuntary patients are very labor-consuming, including receiving court order to that effect, also systematic review of the court decision, hospitals endeavor to decrease to minimum the number of involuntary patients which is possible through the means provided in chapter below (see chapter “Right to information of patients”)

During the reporting period involuntary patients were not placed in the following institutions: **Rustavi Mental Health Centre, Surami Psychiatric Hospital, Kutaisi Mental Health Centre.**

In addition according to the CPT standards,⁷⁷ while deciding upon involuntary placement a court shall also consider opinion of an independent external psychiatrist who does not represent the establishment where the patient is placed. The Georgian legislation has not incorporated this provision that shall be considered as the gap of the full protection of patient’s rights.

As for the voluntary medical treatment - the law of Georgia on “Psychiatric Assistance” provides that treatment shall be considered as voluntary if a patient is hospitalized based on his/her request and/or gives his/her informed consent; juvenile or legally incapable person shall be hospitalized only after request or informed consent of his/her legal representative.⁷⁸ The law also provides that such a patient shall be discharged from the hospital at any stage of treatment if the patient so requests.⁷⁹ If a person does not want to continue treatment but he/she may pose a threat to himself/herself or third persons, the hospital shall resort to involuntary treatment procedures.⁸⁰ All other cases of rejecting the request on discharge of the patient shall be considered as violation of law.

At the present moment the vast majority of hospitalized patients of psychiatric institutions are under voluntary treatment. The voluntary treatment procedure requires that upon admission to the hospital patients sign special documents confirming the consent for treatment. The law requires that this document be kept in the medical file of the patient.⁸¹

⁷⁶ Rec (83)2, art. 1;

⁷⁷ <http://www.cpt.coe.int/documents/fin/2009-05-inf-eng.pdf>, para 138, 139.

⁷⁸ Article 1, paragraph 1 of the Law of Georgia on Psychiatric Assistance.

⁷⁹ Ibid, para. 3;

⁸⁰ Ibid, para. 4;

⁸¹ Ibid, para. 2;

During monitoring the majority of voluntary patients in all institutions stated their will to be discharged, however they claimed that the decision on discharge is made solely by their doctors and they are not entitled to decide when to leave the establishment. Some patients mentioned that they cannot leave the hospital without permission as they already signed the consent on placement.

In Kutaisi Mental Health Centre consent documents in the patient's medical files were not signed. Nevertheless administration claimed that patients were on voluntary treatment.

The interviews with patients at Senaki Psycho-Neurologic Dispensary revealed that some patients were forced to sign the document of consent. Some of them did not understand the meaning and essence of such consent.

Khelvachauri Hospital mixed units. In one instance the consent document was not signed while other documents were signed by family members notwithstanding the legal incapability of patient to do it himself. During the interview, the patients claimed that they were forced to sign the consent form or did not understand the meaning of the document. Some patient even said that signature was not his/hers.

M. Asatiani Psychiatry Institute. The nurse assistant noted that the doctor provides her the list of patients who could go for walk independently notwithstanding to their status of voluntary or involuntary treatment. The same is true for other establishments, for instance Gudushauri psychiatric establishment.

The majority of interviewed patients claimed that they were forced to sign the consent document while they were under the influence of medicine and could not contemplate their behavior. In some instances the policemen who accompanied the patient also attended the procedure.

In many establishments it is a practice to tell a patient that if he/she does not sign the consent document he/she will have to stay at the hospital for approximately 6 months, but if they sign the consent document they will remain in establishment for several weeks. (for instance, Qutiri, Referral Hospital).

In Hospital N5 the consent of patient was expressed by marking crosses instead of the signature of patient; the consent document was filled in by the doctor (G.P. diagnosis senile dementia). This demonstrates a formal and inadequate approach towards the conscious consent. In medical file of another patient (T.T. diagnosis: grave mental deficiency with pathology of behavior) the consent was also expressed by crosses.

In the same facility, in the consent document the words "I am informed" were written by the doctor and patients had only signed the document.

The Special Preventive Group members interviewed the involuntary patients concerning court proceedings. A patient of Hospital # 5 said that he was not allowed to invite his lawyer. The lawyer appointed by State Legal Aid intervened during the proceedings only with one sentence. Other patients also agreed that participation of legal aid advocate was just a formality. They also claimed that the judges usually agree with the opinion of doctor and disregard the patients.

During the interviews it was revealed that doctors on a contrary, consider the aforementioned as progress. They consider that doctor has better knowledge and understanding of patient's needs and a judge, who usually has no medical background, should not take decisions against doctors position. They also claimed that recently there were very rare instances when the court disregarded the decision of commission on placement.

A patient of **N5 Hospital** also noted that he hardly understood the meaning of the court proceedings as he was intoxicated by drugs.

In the same hospital the patient's medical record included the court decision that prolonged in-patient placement until certain criteria were met and no legal reasoning or justification was provided thereto. Evidently the mentioned decision further confirms the patients' claim concerning the formality of court decisions.

INVOLUNTARY TREATMENT

Involuntary placement does not include involuntary treatment. The CPT standards provide that „Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.“⁸²

Special Preventive Group observed that in every psychiatric establishment of Georgia treatment of patient generally depends entirely upon the doctor who makes unilateral decision. Accordingly **forced treatment** is often used for both voluntary and involuntary patients. Patients of all establishments declared that it would have been better to receive medicines voluntarily. Some of them even stated that they were threatened by injection if refused to receive medicine.

As mentioned above, the refusal to take medicine might also serve as a basis for fixation of patient.

All aforementioned violations are tolerated by state control mechanisms. Though the Georgian legislation provides sanctions for violations of involuntary treatment procedures, there are no provisions sanctioning coercive hospitalization of patients on voluntary treatment; therefore, this fact promotes existence of such violations.

As indicated in the letter of Asatiani Centre, during 2011 4 employees (a nurse and 3 nurse assistants) were punished for escape of patient. However the letter did not specify the status of patient's (voluntary or involuntary) placement.

Recommendations:

- **To review the status of every voluntary patient in every establishment in order to ensure that the status was attributed in line with his/her will and relevant law;**
- **To establish strict control by relevant units of the Ministry of Labour, Health and Social Affairs over protection of rights of voluntary patients and to ensure relevant legal safeguards for involuntary patients.**

RIGHT TO INFORMATION OF PATIENTS

Recommendation of the Committee of Ministers of the Council of Europe dated 2004 provides that persons subject to involuntary placement or involuntary treatment should be promptly informed verbally and in writing of their rights and of the remedies open to them. They should be also informed of the reasons of the decision and the criteria of its possible extension and termination.⁸³

Patients should be informed in the form and language understandable to him/her of any information mentioned in the previous paragraph, as well as of the rules in the establishment and any issue of his/her interest.

CPT standard provides: “Regular reviews of a patient's state of health and of any medication prescribed is another basic requirement. This will inter alia enable informed decisions to be taken as regards a possible de-hospitalization or transfer to a less restrictive environment.

A personal and confidential medical file should be opened for each patient. The file should contain diagnostic information (including the results of any special examinations undergone by the patient) as well as an ongoing

⁸² CPT 8th General Report, para. 4.

⁸³ Rec(2004)10, art. 22;

record of the patient's mental and somatic state of health and of his treatment. The patient should be able to consult his file, unless this is considered to be irrelevant from a therapeutic standpoint. And the patient as well as his family member or lawyer may request the information of the medical file.“

In accordance with the UN standards: „A patient in a mental health establishment shall be informed as soon as possible after admission, of all his or her rights in accordance with these Principles and under domestic law in a form and a language understandable by the patient.“⁸⁴

Accordingly, it is desirable that an introductory brochure setting out the establishment's internal regulations and patients' rights be issued to each patient on admission in a language he/she understands. In the majority of establishments patients had a little information concerning their disease, treatment and expected outcomes. They also were not aware of diagnosis and said that the doctor better knows what is good for them. The question, posed by Monitoring Group, whether patients received explanation regarding the duration and volume of treatment, was answered negatively by patients. The only regrettable exception is that in order to seek consent of the patient the doctors usually explain to the patient that in case they do not sign the consent document they will have to stay in the facility for at least 6 months, and if they sign the document, they will be “set free/ discharged” in the nearest future.

Furthermore every patient signs the informed consent document in Georgian regardless the fact whether the patient speaks Georgian or not. Doctors clarified that Georgian document is approved officially and if there is a form in other language in medical file, it will be considered as violation.

National Preventive Mechanism considers that in order to ensure that patients are adequately informed an establishment has to ensure translator for non-Georgian speaking patients.

As already mentioned, the majority of patients were sure that they were unable to revise their decision on voluntary treatment after signing the relevant consent form. The majority even did not know what did they sign. They noted that when signing they were anxious or under psychotropic medications and accordingly could not realize what they were signing. Some of them even stated that they had not signed any document, though later they could vaguely recall signing the documents only after the Group showed them the signed form.

National Preventive Mechanism strongly believes that the patient shall be offered to sign document on information only when he/she is able to understand his/her own state/condition.

COMPLAINTS MECHANISMS

CPT considers that in any place of deprivation of liberty, an effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly- designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.“⁸⁵

Appeal against involuntary placement decision

The possibility of a patient to appeal against court's decision on involuntary placement has a paramount importance in terms of protection of patient's rights. Accordingly, all legal instruments concerning persons with mental disorders focus on this issue.

Article 25 of Recommendation Rec(2004)10 of the Committee of Ministers of Council of Europe specified the requirements for states that are necessary for ensuring the right of appeal for patient.

84 Principles for the protection of persons with mental illness and the improvement of mental health care, adopted by General Assembly resolution 46/119 of 17 December 1991, Principle 12.

85 8th General Report, Para. 53

The CPT 8th General Report provides that „In any event, a person who is involuntarily placed in a psychiatric establishment by a non-judicial authority must have the right to bring proceedings by which the lawfulness of his detention shall be decided speedily by a court.“⁸⁶

Article 18.14 of the Law of Georgia on Psychiatric Assistance provides that a patient, his legal representative or relative may lodge an appeal in accordance with Administrative Procedure Code against decision on involuntary placement, denial or prolongation of such placement.⁸⁷

In practice, patients and their legal representatives do not exercise the legal right to appeal against court decision on involuntary placement. The exception is Qutiri establishment case, that allocates accused and sentenced persons who were confined to involuntary treatment and are traditionally more active to appeal against court decisions.⁸⁸

During 2011, 36 cases out of 100 were appealed in Qutiri establishment.

Another set of cases of appeal, were observed in **M. Asatiani Psychiatry Institute** where 5 cases out of 62 were appealed.

Neither in case of Qutiri nor in case of Asatiani establishments did the court render even a single decision in favor of appeal made by patient.

In all other cases lodging an appeal was complicated due to delayed receipt of court decisions by patients. Patients and doctors stated that usually the court decision is served within 2 weeks or more. During the oral proceedings in court, only the findings of the court is announced and not the motivation part. It is almost impossible in practice to appeal against this decision, even if there is accompanying wish by the patient

The doctors of several establishments went as far as to state that in some instances patient's deinstitutionalization takes place before the receipt of court decision on involuntary treatment.

Internal Appeal Procedure – Complaints Box

The practice proved that complaints box does not constitute an effective mechanism of receiving feedback as patients do not widely use such boxes even if available.

Generally a social worker is a responsible person to open a complaints box (Gldani, Asatiani, and Bediani); however in the case of Qutiri establishment the administration is tasked with opening the complaints box. In **Khelvachauri establishment** a complaints box is opened once a month. There is no rapid complaints mechanism in the facility.

Complaints box is not available in the following establishments: **Psychiatric Department of Referral Hospital, Psychiatric Department of Hospital N5, Surami, Kutaisi and Senaki establishments.**

PSYCHO-SOCIAL REHABILITATION

The CPT standards provide that „Psychiatric treatment should be based on an individualized approach, which implies the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports activities.“⁸⁹

86 Para. 52

87 Article 2120 of Administrative Procedure Code „Lodging an appeal against the Order (Decision) of a judge concerning hospitalization of a person to provide involuntary psychiatric assistance.”

88 Qutiri establishment is an exception in terms of prolongation of involuntary treatment – during 2011 there were 477 (!) cases of prolongation. Monitoring Group considers that the aforementioned is related to the specific population of establishment.

89 CPT 8th General Report, para. 37

The Order of the Minister of Labour, Health and Social Affairs #112/n on approval of Standards of Psycho-Social Rehabilitation provides rules regulating psycho-social rehabilitation in Georgia. According to Article 1.1. of this order, every institution notwithstanding its ownership and organization form shall observe the abovementioned standards on psycho-social rehabilitation.

Despite the decisive importance of psycho-social rehabilitation component in the treatment process and their binding nature as confirmed by the Order of the Minister of Labour, Health and Social Affairs; as of today in absolute majority of the psychiatric establishments the rehabilitation programs either do not exist or function in limited manner and do not apply to every patient. Psychologist or psychotherapeutic is not employed in some facilities (e.g. **Senaki**).

The individual treatment plans for every patient is not developed in the majority of the institutions. The treatment process usually is limited only with medical treatment, i.e. provision of particular medicines.

Non-availability of psycho-social rehabilitation programs especially affects so called chronic long-term patients as they do not continue medicament-based treatment and so the rehabilitation measures are the only available method to help them to integrate into the society.

As the representatives of some institutions explained, the Ministry of Labour, Social and Health Care plans to introduce binding psychosocial rehabilitation without allocating additional finances. Further research should be conducted concerning this issue.

The only entertainment activities available for the patients are watching the TV or some table games. Books, newspapers or magazines are less available.

The government has to ensure that psycho-social rehabilitation as an integral part of treatment of persons with mental disorders. Nowadays the treatment basically implies provision of medicine that is not sufficient and adequate.

Generally, the psychiatric sphere has lack of psycho-social rehabilitation programs. The personnel of **Rustavi psychiatric health** establishment noted, that they develop individual treatment plans for patients – multidisciplinary group (psychiatrist, psychologist, nurse and social worker) identifies the needs of patient and records the progress. For this very purpose, the psychiatrist, nurse and patient fill in the special evaluation questionnaires for each patient once in every 2-3 months or 6 months; based on these questionnaires the multi-disciplinary group evaluates the result of treatment and identifies the needs.

According to statement of social worker s/he has to fill in “Evaluation form of adults mental health” provided by the Social Workers’ Association. The representative of this organization was present during the monitoring process. The social worker noted that the representative of Social Worker’s Association assists the social worker of the establishment to better understand his/her functions.

The psychologists of the Rustavi Establishment noted that efforts were made to improve social skills of patients. The patients are given simple tasks, according to their abilities. For example, some of them help the cook, clean their room, and do laundry twice a week. These works are monitored by the nurse. The patients are also taught management of their pension.

Psycho-social rehabilitation programs and individual treatment plans do not exist in **Senaki psychiatric establishment, Referral Hospital, M. Asatiani Psychiatry Institute, Psychiatric Department of Hospital N5, Psychiatric Department of Gudushauri Hospital, Senaki psychiatric establishment, Kutaisi Mental Health Centre.**

In Surami Psychiatric Hospital the occupational instructor is employed; however rehabilitation activities are extremely limited in this establishment.

In Bediani establishment art-therapy courses operate since 2009. The art-therapy and work-therapy instructors are employed. The trainings take place in specially allocated building where patients paint, sculpture and knit (12-15

patients a day). The work therapy courses include planting and growing of greenery and vegetables. The director of the facility mentioned that he and employees of the institution do not have possibility to undergo the trainings in psycho-rehabilitation that would have positively influence implementation of different psycho-social rehabilitation programs. He also noted that he introduced the art and work therapy courses based on the experience of his colleagues and it would have been better if he had special knowledge on this subject.

Tbilisi Mental Health Centre provides for the art-therapy, cognitive therapy, ergo-therapy and individual psychotherapy. According to the documents, 116 patients were recorded to attend the therapy courses, however according to the information obtained on spot currently much less number of patients are able to undergo the mentioned therapy courses due to the lack of facilities and financing. There are specially designated rooms to teach patients painting, to sculpture, to knit, etc. In the same rooms the works of patients are exhibited. Teacher noted that the patients are very talented and some of them are even quite famous. However due to the lack of financing it is impossible to ensure participation of every patient in the art-therapy programs. The psychotherapist of the institution works with patients individually and in groups.

In Kutaisi Mental Health Centre are psycho-social rehabilitation courses; however only 5-6 patients participate in the courses and there are no individual plans for them.

In Qutiri Mental Health National Centre some rehabilitation activities are implemented however they lack the structure and regulation and, accordingly, they hardly meet the real needs of patients. In addition there are no individual treatment plans for patients.

The Qutiri Establishment provides art-therapy courses – paint-therapy, music-therapy, dance-therapy, drama-therapy, phototherapy, ergo-therapy. Only 45 patients attend the courses (according to the administration). It is a positive development that the drama circle of the institution stages performances with patients as actors. For this reason the establishment has special performance stage in the building. The administration also noted that patients might play football and basketball in the courtyard of the facility.

It shall be noted that the involuntary forensic psychiatric patients are not involved in the psycho-rehabilitation programs that constitutes a serious gap in their treatment.

In Khelvachauri Psycho-Neurologic Hospital there is a multi-disciplinary group in charge of implementation of relevant standards of psycho-social rehabilitation. Patients of every unit participate in occupational therapy. During the monitoring 12 patients were working in the special therapy room. They painted, knitted, sewed, etc. Nevertheless the rehabilitation activities are not structured – the schedule of activities is not publicly posted, the records are not made concerning the individual success of patients. 10 patients are daily involved in different rehabilitation activities however it is a small amount taking into account the capacity (140 patients) of the establishment. The individual plans for patients are not used in the hospital.

The psychiatrist and psychologist conduct the courses of cognitive therapy for 8 patients. Some discharged patients regularly visit cognitive or occupational therapy courses.

CARE FOR NON-MEDICAL NEEDS OF PATIENTS

Social workers are responsible to assist patients in acquiring /restoring their personal documents. Basically it means assistance to acquire ID or pension book. Social workers clarified that there are no interconnected electronic data-base shared and used by Civil registry Agency and psychiatric institutions; therefore in every specific instance they have to take patients to the House of Justice or other relevant institution.

None of social workers could explain to the representatives of the National Preventive Mechanism what happens if a patient cannot move independently. They mentioned that there were no such cases and could not recall to the

procedures necessary to be observed (or whether there are such procedures at all) for patients who are unable to move.

All patients usually have an ID card. In the personal files the copies of ID cards are stored, or there is an abstract from Civil Registry Agency with indication of personal number. Only very few medical files did not include data certifying the identity of a patient.

Social workers clarified that unless there is personal data on the patient the institution cannot get financing for the specific patient. If it is impossible to identify a person, personnel of an establishment does not know which agency shall be responsible to assist. In one instance the administration of an establishment called patrol police and criminal police who stated that the identification of a person did not fall within the scope of their competences. Therefore the administration drafted the minutes act/certificate signed by the representative of criminal police. Still, the Social Service agency did not finance this case.

Social workers also mentioned that they are quite active to facilitate/restore good relations between patient and his/her family members (Gudushauri, Gldani, and Rustavi).

The responsibility of a social worker also includes supervision of guardians - whether a guardian visits a patient regularly and whether the pension (collected by the guardian) is spent pursuant to patient's needs. If problems are revealed social worker shall apply to the Social Service Agency that is responsible to provide guardianship and custody services.

Procedures of changing a guardian are unclear; everybody avoids changing a guardian because it is difficult to find one. Without a guardian legally incapable person cannot receive pension and carry out any legal action.

One of the social workers noted that - expertise for defining incapability of a person is often based on the readymade conclusion without the presence of patient. A person may lodge an appeal against the decision that requires expenses for court proceedings and extra 250 GEL for additional expertise. The aforementioned constitutes a serious obstacle for patients declared legally incapable.

Any proceedings concerning a patient without his/her presence, especially when the cases concern definition of the legal capacity of a person, shall not be permitted and violates the UN General Assembly Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care⁹⁰ and principles of fair trial. This is also true for cases related to defining legal capability of a person.

Social workers mention that they do not have access to information on pensions of patients. Accordingly they are unable to provide timely assistance to patients in renewing documents and clarifying different issues.

Generally, it is a serious obstacle for social workers that they do not have access to information on patients' pensions and their guardians. The aforementioned complicates their work to resolve any issues related to granting pensions and later spending the money, as well as other property issues (registration of property, obtaining title over property).

One of the social workers also mentioned that notaries no longer verify the power of attorney issued by persons with mental disorders; accordingly patients' family members and guardians are unable to receive medicines by warrant. The Monitoring Group is not aware of all the dimensions of this problem as the latter should be thoroughly studied further – it should be identified the reasonability of notaries' decision should be identified and it should be ensure that there is no discrimination of persons with mental disorders.

Patients are having difficulties in dealing with some administrative and other issues as social workers are not employed in every establishment (**Referral Hospital, Hospital N5**). The same social worker provides services to **Gudushauri Psychiatric Department and Tbilisi mental Health Centre (Gldani)**. At the moment of monitoring there was

⁹⁰ Principle 18, Procedural safeguards, para. 5: "The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing."

no social worker in Bediani establishment; the administration clarified that one social worker died while another was passing entrance exams at the High School.

- **The monitoring results revealed that State does not provide sufficient care for different needs of patients with mental disorders. There is no organized and unified system to respond their non-medical needs. The activities of social workers are spontaneous and depend upon their personal enthusiasm and abilities.**
- **The procedures for recognition of a person as legally incapable violates rights of persons with mental disorders in certain cases; State has to ensure that persons with mental disorders are always represented in the court or any other instance to simplify the procedures for lodging an appeal against any decision and to abolish court fees for the mentioned persons.**

PERSONNEL

During last several years, the government implemented measures for promoting activities aimed at improving knowledge and competencies of the personnel engaged in psychiatric health services. More precisely, the Ministry of Labour, Health and Social Affairs of Georgia concluded Memorandum of Cooperation with GIP-Tbilisi Foundation, thus agreeing coordination of qualification trainings for the personnel employed in Tbilisi mental health institutions in the first stage of reforms.

Foreign and Georgian experts jointly developed 10 professional modules such as requalification of nurses, management of multidisciplinary group and the relevant medical cases, clinical psychiatry (2 modules), management of aggression and agitation and other modules. Trainings began in May 2011 and are still ongoing⁹¹. Approximately 1000 persons (psychiatrists, nurses, nurse assistants, psychologists and others) participated in the free of charge qualification trainings.

Notwithstanding the aforementioned another important problem has emerged – applying the acquired knowledge in practice which means that relevant skills of using modern approaches in practice are not incorporated in a daily working routine. The trained psychiatric health specialists rarely request supervision and consultancy for implementation of new methods. It is obviously necessary to require the managers to translate theoretical knowledge in practice, for instance, case based management, suicide prevention and management rules and etc. In general only very few hospitals follow the new approaches in this very field (for instance introduction of multi-disciplinary group). The upcoming trainings should include training of managers based on modern service management technologies.

M. Asatiani Psychiatry Institute nurse stated that he underwent several trainings on treatment of patient, the last one-week training was conducted approximately 3 months ago while the previous one – 5 years before. The nurse was taught how to treat the patient and fixate him/her.

Rustavi – one of the nurse assistants noted that there were no incidents since they had moved to the new building. The Monitoring Group was informed that the personnel underwent reform-related trainings on Multidisciplinary group and medical case management in psychiatry and on management of aggression.

Written information from **Psychiatric Department of Hospital N5** administration states that “every employee attended all trainings recommended by the Ministry of Labour, Health and Social Affairs”. According to the onsite information, employees attended trainings on physical limitation procedures, however these trainings dealt only with legal provisions thereon. The trainings did not provide practical casework.

Written information from **Gudushauri Psychiatry Department** administration states that doctors were trained in management of patient’s agitation and interviewing of patient. Nurses attended the training on Modern Ap-

⁹¹ In June 2012 seminars on Children and Juvenile Psychiatry is ongoing.

proaches in Psychiatry. All personnel attended the training on Principles of Work of Multidisciplinary Group and Management of Aggression.

Written information from **Qutiri Mental Health National Centre** provides that 79 employees (11 doctors, 31 nurses, 3 social workers, 25 guards and 9 administration members) attended training on Medical and Social Aspects of Violence, Main Principles of Involuntary Psychiatric Treatment and Methodology of Risk Control, Management of Aggression and relationship with patients, Concept of Management in the Clinics of Involuntary Treatment, Developing Principles and Regulatory Documents for Protected Accommodations.

In accordance with written information submitted by **Khelvachauri Psycho-Neurologic Hospital**: in 2011 2 doctors and 3 nurse assistants attended trainings. Director and deputy director attended the seminar in medical issues.⁹²

Recommendations

Proposal to the Parliament of Georgia

- To amend Article 18 of the Law of Georgia on Psychiatric Assistance in order to introduce an obligation to seek and consider opinion of an independent psychiatrist in the process of defining involuntary placement of a person with mental disorders.

Recommendations to the Minister of Labour, Health and Social Affairs:

- In the framework of reform of psychiatric health system to develop an action plan specifying all activities, time-frames, implementing agency and performance indicators;
- To draw more attention to active involvement of civil society and professionals in the reform process;
- To develop financing system responding to needs of psychiatric patients and personnel/ establishments through dialogue and consultations with stakeholders, establishments and healthcare and management professionals;
- To review existing state control system and establish a new system safeguarding effective control without prejudice to right of patients to confidentiality of personal and medical information;
- To develop effective mechanisms of internal and external control to eradicate and prevent ill-treatment of patients, and to establish a system safeguarding adequate redress to any violation;
- To ensure establishment and effective functioning of community-based services;
- To plan phased abolition of old and deprecated large hospitals after introduction of community-based services.
- To provide financing of expenses for diagnosis and treatment of somatic diseases of patients with mental disorders in the relevant state programs;
- For the purposes of psycho-social rehabilitation of patients with mental disorders:
 - To safeguard introduction and promotion of psycho-social rehabilitation programs in every establishment, including providing relevant financing;

⁹² The subject matter of seminars and trainings were not specified

- To oblige every establishment to develop and dully implement individual treatment plans after relevant trainings and preparation;
- To provide state-sponsored regular trainings and other activities for improving qualifications on treatment of patients, physical restraint procedures, the rights of patients for the psychiatric hospitals personnel, and especially for the low and middle level medical personnel;
- To identify the minimum number of medical personnel for the certain number of patients;
- To introduce state control system over adequate remuneration and other social guarantees of personnel;
- To develop an action plan for assisting psychiatric establishments in implementation of recommendations elaborated by Public Defender.

Recommendations to directors of Psychiatric hospitals:

- To introduce active control over personnel's treatment to patients; every case of ill-treatment shall be responded immediately and effectively, including informing relevant agencies;
- To apply to physical restraint procedures as a means of last resort in very exceptional and emergency situations. In addition the following shall be taken into account when resorting to physical restraint procedures:
 - To observe national legislation and international standards;
 - Special room and special equipment;
 - Relevant registry indicating decision-maker, justification of application of physical restraint, time of fixation, and every manipulation and medical check-up underwent by the patient subjected to restraint, also information on the beginning and the end of the procedure;
 - To eradicate resort to physical restraint procedures as punishment.
- To provide appropriate living conditions for patients in every establishment, including:
 - Sufficient ventilation, including natural;
 - Creation of living conditions as close as possible to family conditions
 - Creation of privacy in bedrooms, as well as in toilets and bathrooms;
 - Development and implementation of entertainment measures and activities;
 - Ensure that patients spend enough time outside/on fresh air;
 - Library;
- To implement measures to ensure different forms of contact with outside world:
 - Allocation and equipment of a special meeting room on the territory of a facility;
 - Access to telephone for patients;
 - Ensure receipt and sending correspondence;

- Access to printed media and TV.
- Voluntary and involuntary placement and treatment:
 - To review the status of every voluntary patient taking into account his/her will and requirements of law;
 - To safeguard protection of patients rights guaranteed by the legislation, including the right to be discharged from the hospital voluntarily;
 - To provide translation services to patients who do not speak Georgian.
- To safeguard legal remedies for involuntary patients and systematic review of status with participation of the patient and/or his/her representative.
- To ensure that patients are duly informed on mechanisms and procedures of appeal on every stage of involuntary placement;
- To introduce safeguards for involuntary treatment eradication and prevention, inter alia, education of personnel in relation to this issue;
- To implement measures for improving awareness of patients:
 - To provide information to patients in the language and form understandable to him/her upon admission, as well as before any manipulation or treatment;
 - To discuss a prescription with a patient in a form he/she understands;
 - To ensure access to his/her medical file or any record related to the patient
- To ensure continuous education of and to introduce relevant social guarantees (including adequate remuneration) for personnel in order to improve professionalism and motivation.
- To increase the number of personnel, inter alia, by employing nurses, nurse assistants and personnel in charge of psycho-social rehabilitation (psychologists, social workers, occupational therapists, etc).

2012

Report on the State of Human Rights in Institutions for Persons with Disabilities

The present report covers the results of monitoring carried out in residential institutions for persons with disabilities on June 12-29, 2012, by the Special Preventive Group of Public Defender of Georgia within the mandate of the National Preventive Mechanism.

The monitoring was carried out in all the residential institutions where persons and children with disabilities live (or may live):

1. The Tbilisi Infant House;
2. The Makhinjauri Infant House;
3. The Senaki Institution for Children with Disabilities;
4. The Kojori Institution for Children with Disabilities;
5. The Dusheti Boarding House for Persons with Disabilities;
6. The Martkopi Boarding House for Persons with Disabilities;
7. The Dzevri Boarding House for Persons with Disabilities;
8. The Chiatura Public School No. 12 (Specialized Boarding School for Children with Disabilities);
9. The Akhaltsikhe Public School No. 7 (Specialized Boarding School for Children with Disabilities);
10. The Kutaisi Public School No. 45 (Specialized Boarding School for Children with Hearing Loss and Impairment);
11. The Tbilisi Public School No. 200 (Specialized Boarding School for Children with Disabilities);
12. The Tbilisi Public School No. 202 (Specialized Boarding School for Children with Vision Loss and Impairment);
13. The Tbilisi Public School No. 203 (Specialized Boarding School for Children with Hearing Loss and Impairment).

The Special Preventive Group was composed of the following experts:

- Daniel Mgelashvili – The Office of Public Defender of Georgia;
- Ana Arganashvili – The Office of Public Defender of Georgia;
- Ana Abashidze – The Office of Public Defender of Georgia;
- Kakha Mikadze – expert of the National Preventive Mechanism, psychologist;
- Irma Manjavidze – expert of the National Preventive Mechanism, physician;
- Maia Kiknadze – expert of the National Preventive Mechanism, psychiatrist;
- Koba Nadiradze – NGO The Youth Center for Independent Living;
- Eric Mathews – international organization Disability Rights International;
- Larry Kaplan – international organization Disability Rights International.

During the monitoring, members of the group inspected the infrastructure and interviewed the directors, medical staff, physicians, and social workers of all the afore-mentioned institutions. They also interviewed beneficiaries in a confidential environment. In the process of the monitoring, the group members checked the documents and logs kept in the institutions.

It should be assessed positively that in the process of the monitoring the members of the Special Preventive Group did not encounter any obstacles created by the administrations of the institutions. The monitoring was carried out in partnership with international organization Disability Rights International and with the financial support of Open Society – Georgia.

THE MAJOR FINDINGS OF THE MONITORING

In the process of the monitoring, the Special Preventive Group revealed violations in all the institutions for persons with disabilities. Violations were of systemic as well as of individual character.

- The Special Preventive Group documented ill-treatment in the institutions for both children and adults with disabilities.
- Facts of physical restraint of persons with disabilities, contradicting with the norms established by Georgian legislation was observed.
- Particularly serious violations were documented in terms of restriction of medical service for children with disabilities. Among these violations, particular attention should be paid to refusal to carry out medical intervention and to provide palliative care for children diagnosed with hydrocephaly.
- The service of psycho-social rehabilitation was restricted in absolutely all the institutions. In fact, none of the persons with disabilities is given the opportunity to develop his/her functional abilities and skills of independent living.
- Disabled persons' rights to legal assistance and private and family life are restricted. They cannot maintain contact with their children and other members of their families.
- The global restriction of access to the outside world prevents them from living a full life even in the environment of an institution for persons with disabilities.
- The sharp storage of staff, the lack of relevant professional methods of approach and qualification creates a danger of violence among beneficiaries which can be followed by severe damage of health and other lethal consequences for disabled persons.

2012

THE MAIN PRINCIPLES AND METHODOLOGY OF THE MONITORING

The monitoring was conducted in the framework of the National Preventive Mechanism envisaged by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment whose functions Public Defender of Georgia is obliged to fulfill on the basis of the July 16, 2009 amendment to the Organic Law of Georgia on Public Defender of Georgia. Proceeding from the aforementioned functions, first in 2010 and now in 2012, monitoring was carried out in state residential institutions for persons with disabilities. Another important document used in the process of the monitoring was the UN Convention on the Rights of Persons with Disabilities of 2006.

The main principles for conducting the monitoring were as follows⁹³: do no harm, respect the mandate, know the standards, exercise good judgment, seek consultation, respect the authorities, credibility, confidentiality, security, understand the country, professionalism, accuracy and precision, impartiality, objectivity, sensitivity, integrity, and visibility.

Taking into account the main principles of the UN Convention on the Rights of Persons with Disabilities of 2006⁹⁴, in the process of the monitoring, the group of experts included a member of Disabled Persons' Organization (DPO)⁹⁵.

In order to ensure communication with persons with sensory restriction (hearing impairment), the monitoring process involved a sign-language interpreter who interpreted the group members' conversations with beneficiaries in the sign language in full compliance with the principles of confidentiality.

Inquiry into possible cases of ill treatment and violence towards persons with disabilities was carried out with special care and sensitiveness; the process involved the expert-psychologist and the expert-psychiatrist, as well as the lawyer. Interviews were conducted in separate rooms, in an environment that was known and acceptable for the beneficiaries. The beneficiaries could disrupt the interview at any stage. The experts used the method of semi-structured interview. In case of the beneficiary's consent, the conversation was recorded on an audio recorder.

The group attached considerable importance to ensure that inquiries into facts of ill-treatment and abuse of persons with intellectual impairment and mental health problems were conducted with a sensitive approach. The methodology of the working process, which was based on the basic principles of human rights, included both the work to be done before the monitoring and the development of a specific form reporting in the process of monitoring: validation (verification) of information about ill-treatment and abuse received by experts in the process of monitoring through different sources, analysis of information, interviews with professionals, obtaining of photo and audio materials. Results obtained by the group were summarized and processed with respect to both individual violations of rights and possible systemic problems.

STANDARDS ESTABLISHED BY INTERNATIONAL TREATIES

Despite the fact that Georgia has yet to ratify the 2006 UN Convention on the Rights of Persons with Disabilities, it has ratified the international and regional standards whose enforcement is obligatory to strengthen the guarantees of protection of the entire population of Georgia, including persons with disabilities. These international documents are as follows:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms;
- The International Covenant on Civil and Political Rights;

93 The Office of the UN High Commissioner for Human Rights (2001). Training Manual for Human Rights Monitoring, Professional Training Series No. 7, Chapter V, Basic Principles of Monitoring, p. 87. Geneva, ISBN 92-1-154137-9

94 The Office of the UN High Commissioner for Human Rights (2010), Monitoring the UN Convention on the Rights of Persons with Disabilities, Training Manual for Human Rights Monitoring, Professional Training Series No. 17, Geneva, Chapter III, Monitoring the Rights of Persons with Disabilities, p. 33

95 Disabled Persons' Organization (DPO), an organization protecting the rights of persons with disabilities

- The International Covenant on Economic, Cultural and Social Rights;
- The UN Convention on Elimination of All Forms of Discrimination against Women;
- The UN Convention on the Rights of the Child;
- The UN Convention against Torture, etc.

Public Defender of Georgia, relying on the twin-track approach⁹⁶ introduced by the UN High Commissioner for Human Rights in the process of protection of the rights of disabled persons, calls on state agencies to ensure that the rights of disabled persons are protected in the framework of implementation of all existing conventions, since any social group of the general population can have disabilities; in addition, Public Defender supports the ratification of the 2006 UN Convention on the Rights of Persons with Disabilities as the most complete standard among the international treaties on human rights created for this purpose.

STANDARDS GUARANTEED BY NATIONAL LEGISLATION

The state policy of Georgia in relation to persons with disabilities living in residential institutions, is determined by the Constitution of Georgia, international treaties, national legislative acts, and documents of the state policy.

In accordance with Article 14 of the Constitution of Georgia, “Everyone is free by birth and is equal before the law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.”

Article 27 of the Law of Georgia on Social Protection of Persons with Disabilities says the following about the rights of persons with disabilities living in boarding houses and other inpatient facilities of social assistance:

1. “The state shall provide persons with disabilities with accommodation in accordance with an individual program of rehabilitation, taking into account their wishes. The conditions created in boarding houses and other inpatient facilities for persons with disabilities must ensure the exercise of their rights and lawful interests.

2. If, as a result of rehabilitation measures, it is no longer necessary for persons with disabilities to be in a boarding house or other inpatient facility, the bodies of local self- government and government shall provide them, including orphans or children devoid of parental care of this category, with accommodation, in accordance with the applicable legislation.”

The Civil Code of Georgia determines the grounds for depriving persons, who, in most cases, are also disabled, of legal capacity; Article 1276 of the Code indicates that guardianship shall be imposed on a person who has been recognized as legally incapable due to a mental illness or mental retardation.

The aforementioned normative documents, together with other legislative acts ensuring social assistance, are implemented through the Concept of Social Integration of Persons with Disabilities adopted by the Parliament of Georgia on December 2, 2008, and the Action Plan on Social Integration of Persons with Disabilities for 2010-2012 approved by the government of Georgia on December 15, 2009.

Despite the fact that the process of deinstitutionalization of large children’s homes has been implemented successfully since 2005 and more than 4,000 children⁹⁷ have already left children’s homes, no children with disabilities in institutional care have been deinstitutionalized through placing them in small family-type children’s homes; by the time of the

⁹⁶ The twin-track approach ensures that the issues of persons with disabilities are taken into consideration and implemented (mainstreaming) in all initiatives and projects.

⁹⁷ The Ministry of Labor, Health and Social Affairs of Georgia, the Main Directions of the Reform of the System of Child Care, Action Plan for 2011-2012, http://www.moh.gov.ge/files/2010/socialuri/kanonmdebloba/bavshvze_zrunva/samoqmedo_gagma/ChildCare_GEO.pdf

monitoring, no residential institution for children with disabilities had been closed; adults with disabilities have also been unaffected by deinstitutionalization. As it is noted in the aforementioned strategic document of the Ministry of Labor, Health and Social Affairs, *“In terms of deinstitutionalization of children under state care, the children with disabilities are the most problematic category. The existing practice makes it clear that children of this category mainly find themselves in child care institutions from their birth, and the probability of their return to their biological families, adoption, or transfer to foster care is quite small. Due to this, at this stage, institutions for children with disabilities remain the only option for exercising care on children of this category, for which it is necessary to maintain the existing service and further perfect its form and quality.”* The passage given above, as well as the fact that children with disabilities are yet to be deinstitutionalized, indicates to discrimination towards these persons, since, in accordance with the 2006 Convention on the Rights of Persons with Disabilities, discrimination on the basis of disability means “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

Public Defender of Georgia addresses the Minister of Labor, Health and Social Affairs of Georgia with a recommendation to:

- ensure the exercise of the rights of persons with disabilities while planning and implementing the process of deinstitutionalization

ILL-TREATMENT

International Standards on Ill-treatment towards Persons with Disabilities

Crimes committed against persons with disabilities go unnoticed by the society, particularly when these crimes are directed against people held in places restriction of liberty or those living in institutions⁹⁸.

In the opinion of Janet E. Lord, a legal scholar of Harvard University, violations envisaged by the UN Convention against Torture are especially grave towards persons with disabilities held in institutions, since it is the living conditions in these institutions that were considered as a violation of human rights by the European Court of Human Rights in the case of **Price v. United Kingdom**⁹⁹. The Court found that to detain a severely disabled person in conditions where there was dangerously cold, patient risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet, etc. constituted inhuman and degrading treatment. Particular vulnerability of persons with disabilities to torture and ill-treatment was identified by the Office of the UN High Commissioner for Human Rights, the UN Committee against Torture, and the UN Special Rapporteur on Torture at an expert meeting convened on December 11, 2007, on the basis of which a special document¹⁰⁰ was adopted on the protection of persons with disabilities from torture and ill-treatment.

The aforementioned document discusses why it is particularly difficult to inquire into facts of torture and ill treatment in relation to persons with disabilities. As one of the members of the experts' panel¹⁰¹ stated, the binding states are seldom held responsible for carrying out torture and ill-treatment towards persons with disabilities, because it is considered that representatives of the state always acted with “a good intent”. The staff of institutions for disabled persons always has the argument that they wanted to treat the patient with the established practice (which constitutes ill-treatment). And the aforementioned indicates that the use of the so-called “intent criterion” in assessing the facts of torture and ill-treatment against persons with disabilities is ineffective. The same expert indicated that, in connec-

98 Janet E. Lord, Shared Understanding or Consensus-Masked Disagreement? The anti-torture Framework in the Convention on the Rights of Persons with Disabilities, Loyola of Los Angeles International and Comparative Law Review, 2010, No. 27

99 Price v. United Kingdom, the European Court of Human Rights, No. 33394/96, 10.07.2007

100 The Office of the UN High Commissioner for Human Rights, Expert Seminar on Freedom from Torture and Ill-treatment and Persons with Disabilities, Report, Geneva, 11 December 2007

101 Eric Rosenthal, Executive Director of the international organization protecting disability rights – Disability Rights International

tion with the aforementioned, it is important to revise the doctrine of “medical necessity” established by the European Court of Human Rights, which the court discussed in the case of *Herczegfalvy v. Austria*¹⁰². Accordingly, regardless of what type of “intent” (that of help, treatment, etc.) medical staff uses as an argument, it is important to appropriately document all circumstances when assessing ill treatment towards persons with disabilities and accurately describe the harm sustained by the person. The staff of residential institutions for persons with disabilities also has a habit of saying that persons with mental health problems do not feel pain [in the case of ill-treatment] due to mental disorder. This is a classic stereotypical opinion which must be immediately eradicated by human rights organizations.

The Working Group on Violence against and Ill-treatment as well as Abuse of People with Disabilities¹⁰³ of the Council of Europe has actively deliberated on the difficulty of identifying violence inflicted on people of the aforementioned group; to prevent the aforementioned, a publication issued by the Working Group of the Council of Europe included concrete forms and definitions of violence and ill-treatment towards people with disabilities¹⁰⁴:

- physical violence, including corporal punishment, incarceration – including being locked in one’s home or not allowed out, over- or misuse of medication, medical experimentation or involvement in invasive research without consent;
- sexual abuse and exploitation, including rape, sexual aggression, indecent assault, indecent exposure, forced involvement in pornography and prostitution;
- psychological threats and harm, usually consisting of verbal abuse, harassment, humiliation or threats of punishment or abandonment, emotional blackmail, arbitrariness, denial of adult status and infantilizing disabled persons (treating them as children);
- interventions which violate the integrity of the person, including certain educational, therapeutic and behavioral programs;
- financial abuse, including fraud and theft of personal belongings, money or property;
- neglect, abandonment and deprivation, neglect of health care needs or other daily necessities, etc.

The aforementioned publication of the Council of Europe distinguishes between active and passive forms of violence, or between carrying out violence, on the one hand, and restriction of protection from violence, on the other hand.

The publication pays particular attention to facts of abuse and neglect of persons with disabilities in the field of health-care, including:

- discriminatory access to routine and preventative health care;
- rationing of interventions on account of disability rather than clinical need;
- a perceived readiness to accept euthanasia or non-intervention in cases of life threatening illness because of an individual’s impairment;
- over, or inappropriate, use of sterilization and other intrusive or irreversible methods of contraception;
- neglect of personal hygiene to the extent that it presents real health hazards;

102 *Herczegfalvy v. Austria*. With the aforementioned decision of the European Court of Human Rights No. 10533/83 of September 24, 1992, the Court upheld the use of long-term physical restraints where such practice is determined to constitute “medical necessity”.

103 The Working Group was set up by the Committee of Rehabilitation and Integration of People with Disabilities of the Council of Europe in 1998, which was caused by an increase in the number of cases of abuse and ill-treatment of persons with disabilities in the member states of the Council of Europe. The group worked in the years 1999-2001, and the results of the group’s work were reflected in the Resolution No. 2005 (1) on Safeguarding Adults and Children with Disabilities against Abuse of February 2, 2005, <https://wed.coe.int/ViewDoc.jsp?id=817413&Site=CM>

104 Hilary Brown (2003), *Safeguarding Adults and Children with Disabilities from Abuse*, Council of Europe Publishing, ISBN 92-871-4918-6

- over use of medication to control mood or suppress difficult behavior;
- failure to respond to everyday illnesses and acute pain such as tooth-ache, period pains, ear-ache and stomach upsets¹⁰⁵.

Studies indicate that, as a rule, in the case of persons with disabilities, emphasis is put on their disabilities, while the general problems of their health are ignored. For example, in the case of people with mental retardation, the diagnosis of malignant tumor is usually set extremely late, because care-givers ignore the symptoms.

The publication of the Council of Europe also indicates to the wicked trend of involving adults and children with disabilities in health care systems informally (on the basis of a close relationship or good will), despite the fact that, according to the 2008 standard of the European Committee for the Prevention of Torture¹⁰⁶, access to health care for persons held in places of restriction of liberty should be assessed by the extent to which the following formal criteria are met:

- access to an independent and appropriately qualified doctor;
- equivalence of care;
- respect for the patient's consent and confidentiality;
- access to preventive healthcare;
- professional independence of a doctor.

Accordingly, medical service that is provided informally and fails to meet the aforementioned criteria cannot be considered as adequate.

CASES OF ABUSE, ILL-TREATMENT, AND LABOR EXPLOITATION IN INSTITUTIONS ■

In the period of the monitoring, the Special Preventive Group met and interviewed more than 130 beneficiaries. Many of them talked about violent atmosphere in the institutions that manifested itself in the systematic exercise of physical, verbal, and emotional abuse.

*The Chiatura Public School No. 12*¹⁰⁷

In this institution, the experts of the Special Preventive Group revealed a number of facts of physical and psychological violence inflicted on the beneficiaries by the staff and, especially, the director, as well as cases of inter-beneficiary violence.

A 13-year-old child declared: "These teachers beat me; that woman is called N. Teacher L. also beats children. The director beats children with his hands, this way"; and s/he showed us an open palm. "Children are afraid of the director. If you do something wrong, they may not give you food or they may lock you up in a room. L. and N. lock [children] up."

According to a 12-year-old child, "three days ago we beat each other so hard that they could not stop us." The child blamed staff members T. and N. for inflicting violence on beneficiaries: "T. beats the boys; when they make them angry, T. and N. also beat the girls". The same child blamed the director of the institution for violence: "If director gets angry, he becomes very dangerous; he slaps [boys] when they make him angry; he also hits the girls."

105 Noted by organization Autism – Europe

106 Document (98) 12 of the European Committee for the Prevention of Torture

107 specialized boarding school for children with disabilities aged from 5 to 18, 27 pupils are enrolled.

“He drinks vodka and wine. They bring it from the outside; his friends also drink, and when they get drunk, they beat one another,” said one of the beneficiaries.

Beneficiaries’ labor is also exploited (“I cut firewood for a local inhabitant”). They wash director’s car, and director takes them to his father’s house in the village of Banikuri. “Once we cut firewood in the forest and brought it down to the director’s house. Director also takes girls to his house to work,” said another beneficiary.

As a ten-year-old child declared, “Teacher Sh. Hits me in my face, because I sneak out. Director beats boys and shouts at us. The director takes us to his home and makes us bring firewood. We help teacher N. in picking cherries; I climb the tree.”

A 17-year-old confirmed this: “Teachers beat children when they make them angry. The director beats [them] when they make him angry... I help the neighbors – I carry water for them, and they send me to the town to bring cigarettes, coffee, and cooking oil. Teachers from here also send me to the town. They give me 20 kopeks and I buy sunflower or a chewing gum.”

According to a 14-year-old, “the boys cut trees and the girls tidy up teachers’ houses.” The child denied that some teachers and the director had put pressure on the beneficiaries, though s/he let it out that s/he had been instructed by teachers to say that teachers took very good care of them. When asked which teacher had instructed him/her, s/he replied: “If I tell you, you will dismiss him/her.”

A 16-year-old pupil said that the director had beaten him “hard” several times, mainly with open palms. “As I didn’t listen to him, he was compelled to beat me.” He characterized the director as “very aggressive” and explained that he “often drinks here” [in the institution]. After he had beaten him, he told him: “I was drunk and I went too far.” The child also confirmed that the boys went to bring firewood.

At the time of the monitoring, the monitoring group noticed a (presumably) half-emptied bottle with an alcoholic drink in the director’s room that he put in the corner of the table as soon as he had entered the room (the aforementioned has been photographed).

*The Tbilisi Public School No. 202 (boarding school for children with vision loss and impairment)*¹⁰⁸

According to the pupils of the school, at present, facts of physical abuse do not take place in the institution. According to an 18-year-old, “previously, I found it hard to be here, one of the teachers pulled my hair and another one pinched me. Now they no longer work here.” However, the pupils name excessive consumption of alcohol by members of the administration in the working hours and on the area of the institution as a serious problem. According to them, the aforementioned has also caused verbal abuse of male pupils.

According to a 15-year-old, “teachers and pupils drink together.” The janitor of the institution is also often drunk.

The members of the preventive group also talked with several staff members and parents of beneficiaries who confirmed the facts of alcohol consumption in the institution.

*The Tbilisi Public School No. 200*¹⁰⁹

The experts of the preventive group received information about ill-treatment of beneficiaries in the institution. Specifically, according to the beneficiaries, some employees of the institution exert physical and psychological pressure on them. A nine-year-old child says that “employees of the institution, I. and N., beat children when they make them angry; sometimes, I. calls N. and asks him/her to come and help him/her calm the children down.” The children

108 specialized boarding school for children with vision loss and impairment aged from 5 to 18, 22 pupils are enrolled.

109 specialized boarding school for children with disabilities aged from 5 to 18 pupils are enrolled.

describe the means for punishment in detail: “I. beats [children] with a ruler, the ruler is bitter on the skin, made of plastic and transparent.” The aforementioned members of the staff beat children in the head, face, and hands, mainly with their hands, and also with a ruler; they also pull their hair. According to the same beneficiaries, “when children make teachers angry, they make them stand outside, in the corridor, for a long time.” According to the children, “if you leave the classroom without permission, they will make you stand in the corner from one meal time to another” (the interval between different meals is 2.5-3 hours). According to the beneficiaries, employees of the institution often beat a ten-year-old child who “refuses to go to bed; when they beat X., we go to bed.”

The ten-year-old X. confirmed the violence inflicted against him/her: “Teacher L. pulls my ears; s/he tore my ear away when I made him/her angry – I was not doing the tests and was scribbling” (the scar on his right ear was photographed). The beneficiary also mentioned violence by a person called I. who beats him and two other boys: “I. comes into the hospital room (he calls the bedroom a hospital room) and beats us.” The same beneficiary also named a teacher called N. who beats beneficiaries.

During an interview, when asked about possible ill-treatment of beneficiaries by the staff, an 11-year-old child became very nervous, which was manifested in the trembling and twisting of hands, a change in the tone of his/her voice, and blushing; s/he denied all kinds of pressure on beneficiaries, though s/he said that teachers had asked the beneficiaries who had left the interview room what the experts of the preventive group had talked to them about.

One of the beneficiaries (who was unable to name his/her age) declared during an interview: “The teachers do not get angry at us; they don’t beat us.” Then, without waiting for our question, s/he told us: “Now ask me what happens in the school.” When asked how s/he knew what we were going to ask him/her, s/he said that teachers had “instructed” him/her.

A nine-year-old child was nervous during an interview; s/he sat with his/her head hung and moving and touching his legs and clothes. At first, s/he didn’t want to talk about ill treatment, then s/he agreed and declared that “teacher I. quarrels with children and tells them not to stand up; s/he hits the boys with a ruler when they make him/her angry”. She also said that a person called M. “makes them stand in the corner.”

According to a ten-year-old child, teachers pull the hair and ears of one of the beneficiaries, X., who is distinguished with aggressive behavior and “often fights with children,” and make him stand in the corner. However, he said that he didn’t know the names of these teachers.

According to him, children often fought with one another; he also named two elder beneficiaries who bullied children; he was also beaten, but it happened “a long time ago” (he was not able to specify exact time).

According to an 11-year-old child, teachers slap children, while nurses pull their hair.

*The Tbilisi Public School No. 203 (former Boarding School for Children with Hearing Loss and Impairment)*¹¹⁰

Soon after the interview with beneficiaries started, when the staff of the institution learned that the group of experts included a sign-language interpreter hired by Public Defender, it became noticeable that the staff were agitated, nervous, and overly interested in the process under way in the interview room; the employees interrupted the interviews several times by entering the room, with the pretext that the beneficiary “was tired and it was necessary to end the interview”

As a result of the interviews with the beneficiaries, the group received the following information:

A 13-year-old child declares that beneficiaries often have conflicts with one another; there are also “bullies” who have a tense relationship with teachers. The teachers occasionally pull children’s hair and ears and slap them.

¹¹⁰ specialized boarding school for children with hearing loss and impairment aged from 5 to 18, 205 pupils are enrolled. The interviews with the beneficiaries were conducted with the help of a sign-language interpreter invited by Public Defender who ensured communication between the experts and pupils with the sign language, with full observance of confidentiality.

As a result of an interview with a nine-year-old child, it was found out that “two of the three nurses are aggressive; they beat children and pull their hair”; one of the nurses whose name the child was not able to name beats children with a big stick when they refuse to go to bed, and this stick is white, long, and made of plastic. To check the above-mentioned information, the members of the group of experts inspected the presumable place of the stick – the boys’ bedroom section where they found the aforementioned “stick” lying in one of the rooms; it was a long plastic water pipe (it was photographed). Later, the same child recognized the “stick” s/he had mentioned.

According to a nine-year-old child, when children make their beds untidy, teachers make them stand at the wall and hit them in the hands, making their hands become red by beating. A nurse called M. sometimes hits them in the legs with an iron stick.

A conversation with another nine-year-old revealed that a teacher called N. quarrels with him and shouts at him/her, because s/he does not obey her. The nurses make him stand in the corner, “one of the nurses is especially aggressive and slaps him/her in the head.” This nurse (whose name s/he did not say) has a habit of hitting children the face and pulling their ears and hair. The child said that this nurse (whose name s/he did not say) had hit another child with a stick; then s/he changed his/her words and blamed it on an elder boy. S/he described the stick as brown and made of iron.

The Akhaltsikhe Public School No. 7 ¹¹¹

In the Akhaltsikhe school, beneficiaries told the group about facts of ill-treatment by the staff.

According to a 17-year-old, nurses T. and N. shout at her; she dislikes the night nurse E., who is “aggressive”, the most.

According to the juvenile, the children tidy up rooms and toilets in the institution. She herself helps the neighbors in the kitchen garden and in tidying the house. Teacher D. took her together with the boys to cut firewood. “The boys cut it and we collected it. [Children] go to the teachers’ homes. Teacher L.’s daughter-in-law was pregnant, and I cleaned their floors. D. gets the children to cut firewood?”

According to an eight-year-old child, nurse E. hits him in the head with her hand; “Nurse M. also hits me.”

He is also beaten by elder children: “Merab made my nose bleed; I had called him names.”

According to a 13-year-old child, s/he dislikes E.: “She is constantly shouting; she does not let us watch TV and makes us go to bed immediately; she pulls my hair; she beats disobedient children – Alika and the Adjarians. [Another nurse] tells her not to beat children; she says that she must not do it, or else the director will dismiss her.”

According to a 14-year-old beneficiary, “M. beats children, s/he drinks alcohol; in May s/he drank at a funeral dinner for teacher E.’s mother, and when s/he came to the school, s/he quarreled with the teachers. The nurse made him/her drink a sleeping pill by force and they made him/her lie on the bed.” The director lets the boys drink a little; the wine is kept here, in the basement.”

According to a six-year-old, teachers M. and M. shout at him/her, while K. hits him/her in the head and pulls his/her ear.

The Dzevri Boarding House for Persons with Disabilities

From interviews with beneficiaries of the institution, the experts of the preventive group received information about physical and psychological abuse and labor exploitation used against the beneficiaries by some of the employees of the institution. From the beginning, the experts noticed behavioral manifestations of strong fear and distrust on the part

¹¹¹ Specialized boarding school for children with disabilities aged from 5 to 18, 31 pupils enrolled

of the beneficiaries. Specifically, on seeing staff members and other beneficiaries, they started to praise employees of the institution loudly, though, in confidential conversations, they provided the experts with contrary information about ill-treatment of beneficiaries by the same employees.

According to one of the beneficiaries, in the morning, while it is still dark, employees of the institution force him to get up from bed and quarrel with him. Because of this, employee O. hit him in the stomach; A. also quarrels with him and hits him. N.A. beats beneficiaries “when they defecate in their underwear.” The orderlies make him work by force and threaten him: “Do it quickly or I will beat you up.” The aforementioned beneficiary goes with N.A. to work in his house (N.A. also takes other beneficiaries in addition to him) and sweeps and cleans the floor, in return for which N.A. gives him some food.

Ill-treatment by the same employees, was also confirmed by a 27-year-old beneficiary. According to him/her, when beneficiaries break something, employees A., O., and N.A. shout at them and beat them. The aforementioned beneficiary also confirmed that N.A. and R.P. took beneficiaries to work in their houses.

When asked whether employees of the institution had carried out violence against him, one of the beneficiaries replied: “If I tell you, they will beat me after you leave; they beat us.” However, later he agreed to talk and said the following about the employee whom other beneficiaries had also mentioned: “O. has beaten me and I no longer speak to him; Temur [the director] got angry with him when I told him he had beaten me.” “The orderlies do not deserve being helped; they quarrel, shout, and hit.”

Another beneficiary named M.Ch. who had tied him with a chain and beaten him, as well as another employee of the institution, N.P., who had also abused him physically.

According to yet another beneficiary, “the orderlies beat us when we do not get up, they [beneficiaries] tear things up, orderlies make invalids clean the toilet and make them change the dirty underwear [of other beneficiaries], then they take it to wash.” (He didn’t give the names of the orderlies for fear: “I’m afraid of the orderlies, promise me that you won’t tell them anything.”) N.A. drinks together with orderlies every day, gets drunk, and goes to bed at night.”

The experts also received information about the Dzevri institution while they were visiting the Martkopi Boarding House for Persons with Disabilities. The beneficiaries who had been transferred from the Dzevri institution to Martkopi in March 2012 told us about the practice of ill-treatment in the Dzevri institution.

According to 56- and 42-year-old beneficiaries, they saw “orderly N.A. (the initials of the aforementioned staff member blamed for abuse) pulling the hair of M.S. (beneficiary), slapping him, and hitting him with a broom this big several times, swearing at him at the same time.” According to the 42-year-old beneficiary, he “saw N.A. removing a light bulb; I asked him why he was removing it; N.A. got off the chair and slapped me so hard that my head began to shake.”

Two beneficiaries also named a cleaning person D.B. who stole their personal items and acted violently towards other beneficiaries, pulling their hair and assaulting them verbally.

“We were freezing in winter; the door did not close entirely; they only turned on the heating for two hours; they took away the solar oiling fuel cans,” said one of the beneficiaries.

*The Senaki Institution for Children with Disabilities*¹¹²

From interviews with beneficiaries, the experts learned about ill-treatment towards beneficiaries by some of the employees of the institution.

The experts revealed facts of abuse and neglect towards an 11-year-old beneficiary. The beneficiary presumably has an acute mental retardation with behavioral disorder. It turned out to be impossible to interview the aforementioned beneficiary, due to his/her restricted function of speech.

¹¹² youth aged from 6 to 18, 22 are enrolled.

According to a 14-year-old beneficiary, “nurses, M., A., and N, beat an 11-year-old child who sometimes goes crazy. They pull the hair of other children when they make the nurses angry.”

According to an 18-year-old beneficiary, the nurses shout at him/her, pull his/her hair, and make him/her stand in the corner, while they beat aforementioned 11-year-old beneficiary. “A.M. (nurse) refused to let me go to have a meal twice” (S/he was not able to specify the dates).

A 15-year-old child declared: “They make us stand in the corner, telling us that it is the punishment we deserved; they pull his/her hair, all the three nurses beat the 11-year-old child, sometimes they don’t let him/her go for a meal as punishment. All the three nurses do so” (again the aforementioned nurses – M., A., and N.).

In connection with the visit of the preventive group, all the beneficiaries declared: “We knew you were coming; they told us to tell you good things.”

A 15-year-old juvenile declared that s/he didn’t have any guarantees that the administration would not learn about the results of the interview and, for this reason, refused to be interviewed by the members of the groups from the beginning.

In addition, a 13-year-old beneficiary declared: “the nurses shout at me, pull my hair, and make me stand in the corner.”

According to 13-year-old beneficiary, some beneficiaries who do not obey nurses are abused by other beneficiaries, which the nurses do not prevent; two girls pull other girls’ hair, slap them, and make them stand in the corner.

The Makhinjauri Infant House ¹¹³

Representatives of the institution expressed protest against the information about ill-treatment towards beneficiaries carried out by their co-workers that was published in the previous report¹¹⁴.

However, we again received information about abuse on the part of the staff during the current monitoring. According to a five-year-old beneficiary, “N., M., and M. beat children; N. has also beaten me.” According to a seven-year-old beneficiary, “N. shouts at the children” (information about ill-treatment of children by N.G. was also included in the aforementioned special report).

A five-year-old child declared upon entering the room that “s/he loves everyone,” though no one had asked him/her about it. Also, another five-year-old said during the interview that “the care-givers told me to tell you that no one beats me.”

In the opinion of the experts of the preventive group, the children were warned by care-givers before the interviews.

Public Defender of Georgia addresses the Minister of Labor, Health and Social Affairs of Georgia and the Minister of Education and Science of Georgia with recommendations to:

- inquire all possible cases of abuse and neglect of persons with disabilities and take measures envisaged by the Georgian legislation against the abusers; ensure the rehabilitation of victims of abuse;
- introduce an effective system of prevention, identification, and response to abuse and neglect of persons with disabilities which will ensure that such facts are revealed and responded to in a timely manner.

113 children up to 5 years, including children with disabilities are enrolled

114 Public Defender of Georgia, the National Preventive Mechanism, Special Report on the Monitoring of Residential Childcare Institutions (large children’s homes and small, family-type homes) for 2011

USE OF PHYSICAL RESTRAINT

According to the European Committee for the Prevention of Torture (CPT), every patient has the right to be free from all kinds of physical restraint unless it (physical restraint) is caused by urgent need. However, even in the latter case, means of restraints may only be used as the last measure and with accurate observance of all terms and procedures. The use of restraint may only be aimed at preventing and controlling violence in emergencies. Physical restraint cannot be considered as a part of a patient's treatment, since it constitutes a safety measure. Physical restraint must never be used with the aim of punishing a patient or changing/modifying his/her behavior¹¹⁵.

According to one of the beneficiaries of the Dzevri Boarding House for Persons with Disabilities, an orderly of the institution "R.B. hits everybody and makes them get up from bed at night; They are sleepy and don't want to get up." He also provided the group with information about a beneficiary living in his room, who gets undressed in the morning. For this reason, R.B. ties him to his bed and hits him in the face with an open palm.

The presumable victim of abuse confirmed the aforementioned information – "R.B. ties me." During the interview, he reacted with strong fear and started crying. He bore skin injuries on the lateral surface of his right forearm, near the wrist; Also, on the left edge of his bed sheet, where his hand had been presumably fixated, small dark red spots of (presumably) blood were detected. The first beneficiary demonstrated how R.B. tied the second beneficiary's hand¹¹⁶.

The special log of the institution did not contain any information about the physical restraint of the aforementioned beneficiary. There was no entry saying whether the physical restraint, that took place, had been caused by medical necessity, whether the norms envisaged by the Georgian legislation were complied with,¹¹⁷ when the beneficiary was restrained physically, and whether the restraint had a punitive character.

The monitoring experts also received information about physical restraint of an underage disabled person during their visit to the Senaki children's home. During the monitoring, the experts noticed that in one of the classes a teacher (or a nurse) had fixated 14-year-old B.S.'s hands with her own hands. According to staff members, the child's hands had been held (by his/her wrists) uninterruptedly for 8-10 hours, because otherwise the child would carry out a self-damaging action. When the experts asked the staff members whether they had any other method of managing children's self-damaging behavior, the monitoring group received a negative answer; The staff members said that uninterrupted manual restraint of a child's both hands by a teacher or a nurse was the only method used for this purpose. However, a few hours later, when the experts returned to the same class, they saw that B.S.'s hands were already being restrained by another beneficiary who was the same age. A few more hours later, the monitoring group obtained photos that show that the child's hands had been restrained (presumably) with a cloth or rope all day long. Other beneficiaries of the institution, independently from one another, confirmed that 14-year-old B.S. had been restrained physically all day long in the period before the monitoring.

The March 3, 2005 document of the European Committee for the Prevention of Torture (CPT) – Standards of the CPT on the Use of Restraints – indicates that the use of physical restraint of children remains a focus of the Committee in medical and social welfare institutions, since it is connected with a very high risk of abuse and ill-treatment, which is an area of particular concern to the Committee.¹¹⁸

A 2007 report of the same Committee says that restraint of patients in front of other patients (beneficiaries) is impermissible and must be prevented without delay.¹¹⁹

115 The European Committee for the Prevention of Torture, Means of Restraint in a Psychiatric Hospital (2006) 22

116 The injuries in the areas of wrists and forearms of both hands, as well as the spot on the bed sheet, have been photographed

117 The Law of Georgia on Psychiatric Assistance; Order 92/N of the Minister of Labor, Health and Social Affairs of Georgia of March 20, 2007, on Approval of the Instruction on the Rules and Procedures of Application of Methods of Physical Restraint of Patients with Mental Disturbance.

118 standards of the CPT on the use of restraints, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), march 3, 2005 <http://www.cpt.coe.int/en/working-documents/cpt-2005-24-eng.pdf>

119 Report for 2007 of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) <http://www.cpt.coe.int/documents/srb/2009-01-inf-eng.pdf>

Public Defender of Georgia addresses the Head of the State Care Agency with recommendations to:

- Prevent the use of physical restraint of beneficiaries which is carried out in violation of international and local norms;
- Ensure the adjustment of regulations and enhancement of qualifications of staff, so that they use physical restraint in emergencies in compliance with the respective standard.

EQUALITY BEFORE THE LAW

In accordance with the Article 42 of the Constitution of Georgia, “Everyone has the right to apply to a court for the protection of his/her rights and freedoms.”

Pursuant to the Article 13 of the European Convention on Human Rights and Fundamental Freedoms, everyone “shall have an effective remedy;” while according to the Article 14 of the same Convention, “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination.”

According to the Article 12 of the UN Convention on the Rights of Persons with Disabilities, “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. States parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”

During the monitoring, as a result of interviews with beneficiaries and staff of the institutions, Public Defender’s preventive group revealed serious facts of restriction of legal protection and support of beneficiaries. As a result of interviews with the heads of the institutions, it turned out that, in most cases, the State Care Agency and the Social Service Agency failed to provide beneficiaries with legal service, since, according to the agencies, they are not obliged to provide this service.

When discussing the aforementioned topic, it is important to clarify the issue of guardianship/custodial care of beneficiaries. Guardianship/custodial care of beneficiaries admitted to branches of the State Care Agency constitutes the obligation of the Social Service Agency; Accordingly, they, as legal representatives, are obliged to ensure the legal protection of children. As for the legal protection of persons and elderly persons with disabilities, both the Social Service Agency and the State Care Agency disclaim their obligations towards them, except for the cases when a beneficiary has been recognized as legally incapable by a court.

The only source of income for beneficiaries living in state residential institutions is the state pension which they receive as disabled persons. Accordingly, they cannot afford hiring a lawyer to protect their rights.

As a result of examination of the legal documents of internal regulation of the agencies, it was has been established that they do not contain an obligation to provide legal assistance for beneficiaries, due to which the State Care Agency does not provide beneficiaries with legal service. However, it should be noted that, in accordance with Article 27 of the Law of Georgia “on Social Protection of Persons with Disabilities”, “The conditions created in boarding houses or other inpatient facilities of social assistance for persons with disabilities shall ensure the exercise of their rights and lawful interests.”

The Case of L.B.

In June 2012, in the framework of the monitoring of institutions for persons with disabilities, during the visits to Dusheti and Martkopi, the group learned that beneficiary L.B. required legal assistance. Specifically, s/he had a problem with enforcement of a court decision related to a loan agreement. S/he could not afford hiring a lawyer, while the administration did not provide him/her with legal protection.

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The Office of Public Defender of Georgia immediately started studying the case on its initiative¹²⁰ and addressed the State Care Agency¹²¹ and the Social Service Agency with a request to provide the beneficiary with legal assistance.¹²² The reply letter sent by the State Care Agency on August 16, 2012,¹²³ says that the Legal Entity of Public Law (LEPL), State Care Agency, provides beneficiaries with assistance in the exercise of their rights when necessary and within its competence, though, in connection with the case of L.B., "...it is not within the Agency's competence to provide legal assistance for beneficiaries; the Agency has informed beneficiaries about organizations that provide free legal consultation about similar issues." In the definition of types of legal assistance, Paragraph 5 of Article 12 of the UN Convention on the Rights of Persons with Disabilities indicates that "Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit..." It is logical to conclude that disclaiming responsibility for protecting the aforementioned right by the State Care Agency constitutes a violation of the right to legal protection of persons with disabilities living in institutions. Furthermore, informing them about organizations that provide free legal consultation is not an effective measure, because the aforementioned persons' ability both to move around in the society (because the environment is not adapted) and to communicate on the telephone is often limited.

The Case of N.Ts.

In June 2012, in the framework of the monitoring of institutions for persons with disabilities, the monitoring group visited one of the institutions where the group learned that a beneficiary of the institution, N.Ts., required legal assistance. Specifically, she wants to divorce her husband, but is unable to do so without corresponding legal consultation and assistance.

The Office of Public Defender of Georgia immediately started studying the case on its initiative¹²⁴ and addressed the State Care Agency¹²⁵ and the Social Service Agency¹²⁶ with a request to provide the beneficiary with legal assistance. The reply letter sent by the State Care Agency on August 16, 2012¹²⁷, says that N.Ts. wants to divorce her husband and receive her share of the three-room apartment under her husband's ownership. The beneficiary also hired a lawyer for the aforementioned case, though she no longer has a lawyer due to financial problems. In the letter, the State Care Agency again indicated that it was not within its competence to provide the beneficiary with legal assistance on the issues raised. And the reply letter¹²⁸ of LEPL Social Service Agency says that, in accordance with Part 2 of Article 1275 of the Civil Code of Georgia, guardianship/custodial care shall be imposed to protect the personal and property rights and interests of those adults who, due to their health condition, cannot exercise their rights and fulfill their obligations independently. Referral to the aforementioned article by the Social Service Agency makes it clear that it is only possible to provide the beneficiary with legal assistance in the case of assigning a guardian, with the condition of recognizing her as legally incapable.

The Case of S.K. and A.B.

As part of the same monitoring, the monitoring group visited the Martkopi institution, where the group received information that beneficiaries of the institution, S.K. and A.B., have an underage child who lives in another state residential institution. The Social Service Agency was planning to restrict the beneficiaries' parenthood rights and involve the child in the program of foster care. The parents objected to the aforementioned. According to the head of the

120 Case No. 1364-12, July 31, 2012

121 Letter No. 3131/08-1/1364-12, August 3, 2012

122 Letter No. 3127/08-1/1364-12, August 3, 2012

123 Letter No. 08/854, August 16, 2012

124 Case No. 1365-12, July 31, 2012

125 Letter No. 3130/08-1/1365-12, August 3, 2012

126 Letter No. 3128/08-1/1365-12, August 3, 2012

127 Letter No. 08/854, August 16, 2012

128 Letter No. 04/49728, August 16, 2012

Martkopi institution, the beneficiaries addressed the State Care Agency with a request to provide them with legal aid. Despite the aforementioned request, the State Care Agency failed to provide the beneficiaries with a lawyer's service (the Agency did not explain the reason).

In all the aforementioned cases, the State Care Agency and the Social Service Agency directly refused to provide legal protection of persons with disabilities, which practically restricted their access to justice.

Public Defender of Georgia addresses the State Care Agency and the Social Service Agency with a recommendation to:

- **Ensure the protection of the rights and freedoms of beneficiaries living in state residential institutions at all levels, including in courts, by providing them with full legal consultation and legal assistance.**

RESPECT FOR PRIVATE AND FAMILY LIFE

The unity of the family is protected by a norm of international law – a universal agreement that the family, as a fundamental unit of the society, must be protected. Protection of the family by the state implies ensuring “the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.”¹²⁹

In accordance with the UN Convention on the Rights of Persons with Disabilities of 2006¹³⁰, “No person with disabilities, regardless of place of residence or living conditions, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence or other types of communication.”

In Public Defender's special report of 2010 which dealt with monitoring of institutions for persons with disabilities, a separate chapter was devoted to the issue of protection of and respect for private and family life of beneficiaries. This report contained concrete cases in which these rights of persons with disabilities were restricted.

Unfortunately, it should be noted that, according to the results of the monitoring of 2012, the situation in the institutions in this respect has deteriorated.

The majority of beneficiaries do not have a space where their right to private life is protected. Often, rooms in which they live have no locks. In connection with respect for the right to private life, the situation of beneficiaries of Public School No. 202 (with a boarding house service) calls for particularly attention. The pupils of the aforementioned school and the beneficiaries living in its boarding house belong to the category of children with vision loss or impairment. The school has an educational building in which the beneficiaries have classes. The institution also has an accommodation building in which the beneficiaries spend a considerable part of their life and which, in fact, constitutes their residence. At the time of the monitoring, a member of the preventive group saw a mandaturi (supervision officer) of the school in the beneficiaries' accommodation building where their bedrooms are located. As a result of an interview with the mandaturi, it turned out that the mandaturi is authorized to keep public order not only in the school, but also in the accommodation building for the children. In connection with this issue, the headmaster of the school explained that the mandaturi's authorities and obligations also extend to the accommodation building of the boarding house and they include supervision on the living environment. However, this explanation contradicts the authorities of the mandaturi of an educational institution determined by Article 48³ of the Law of Georgia “on General Education”; Specifically, in accordance with Paragraph 1 of this article, “A mandaturi shall be authorized to control the internal and external perimeters of an educational institution,” which, naturally, does not mean control of private space designated for living.

129 The Office of the UN High Commissioner for Human Rights, General Comment 19 on Article 23 of the International Covenant on Civil and Political Rights

130 The UN Convention on the Rights of Persons with Disabilities, Article 22 and 23

According to one of the male beneficiaries of the Senaki institution for Persons with Disabilities, he constantly feels embarrassed in the institution, especially when he has to ask the staff for help in observing personal hygiene. The embarrassment is caused by the fact that a female care-giver helps him in washing. As the beneficiary explained, he wanted to be helped by a male caregiver, though he knew that this was not possible, because no male care-givers were employed in the institution. For this reason, he constantly had to bear the aforementioned feeling of embarrassment.

As a beneficiary of the Tbilisi Public School No. 200 (with a boarding house service) explained, she had an attraction to one of the boys in the institution and wanted to have a relationship with him, but she was afraid to say this openly, because the school administration and staff had told them they were supposed to treat each other like a brother and sister and could not have a romantic relationship with each other.

According to a beneficiary of the Martkopi Boarding House, he “cut his hands” while he was in the Dzevri Boarding House, due to interference with his private life: “The cleaning person, D.B., asked me whether I had had good sex with I. whom I met secretly back then and who was not yet my wife.”

The Case of N.B.

The Dusheti Boarding House for Persons with Disabilities houses Mrs. N.B. together with her husband. As Mrs. N. explained, her underage child lives in St. Barbare Residential Institution in Zestaponi. The mother wants her child to live with her or, alternatively, to have him/her transferred to the Tbilisi Infant House, because, due to the long distance from Dusheti to Zestaponi, she cannot visit her child frequently. As representatives of the agencies declared in conversations with us, they had encountered serious problems with the head of St. Barbare Residential Institution, a clergyman, who had refused to transfer the child to representatives of the state agencies. In response to the mother’s lawful demand about the child’s transfer, he declared that the mother “has done nothing for the child till now” and, accordingly, he was not going to transfer the child.

On July 19, 2012, the Office of Public Defender of Georgia, on his own initiative, sent a letter¹³¹ to the Social Service Agency, requesting information about the underage child and the exercise of the disabled woman’s right to private and family life. According to the reply letter of the Agency¹³², work has got under way for the transfer of N.B.’s underage child to a state childcare institution, though, at this stage, the Agency has not been able to cooperate with St. Barbare Boarding House of Zestaponi.

Despite the fact that the aforementioned problem has already existed for many months, representatives of the state agency have been unable to protect the disabled person’s right to private and family life.

The Case of M.A.

The Martkopi Boarding House for Persons with Disabilities houses Ms. M.A. who has an infant child. Several days after the child’s birth, s/he was transferred to St. Barbare Residential Institution for Orphans and Children Devoid of Care in Zestaponi. While M.A. was living in the Kutaisi Boarding House for Elderly Persons, she visited her child once a month, as soon as she got the financial means (in the form of a pension) to do so. After she moved to the Martkopi Boarding House for Persons with Disabilities, her contact with her child almost ceased. She only manages to visit her child once in several months with the help of the head of the institution. At the time of the monitoring, M.A. pointed out that it had already been almost half a year since she last saw her child. Accordingly, in this case, too, the beneficiary’s family life is, in fact, restricted.

131 Letter No. 2883/08-2/1247-12, July 19, 2012

132 Letter No. 04/46107, August 1, 2012

The Case of P

The Martkopi Boarding House for Persons with Disabilities houses a marital couple who have underage children aged five and seven. The children live in St. Barbare Residential Institution for Orphans and Children Devoid of Care in Zestaponi. The parents manage to visit their children once in every several months with the help of the head of the institution. At the time of the monitoring, they said that they had not seen their children for several months.

The aforementioned cases make it clear that the right to respect and protection of private and family life of beneficiaries living in state residential institutions is often restricted.

Despite the standard established by the Constitution of Georgia and international law according to which everyone, including persons with disabilities, has an equal right to have contact with his/her children and live with his/her family, the aforementioned institutions, in most cases, fail to ensure the exercise of this right. The institutions also fail to ensure the protection of beneficiaries' honor and dignity, their private life, and integrity.

Public Defender of Georgia addresses the State Care Agency and the Social Service Agency with recommendations to:

- Ensure the protection of and respect for private life of beneficiaries, so that no unlawful interference with their rights takes place;
- Ensure that caregivers in institutions for persons with disabilities are selected in view of beneficiaries' gender, so that beneficiaries' rights are protected during the exercise of all kinds of care;
- Ensure beneficiaries' freedom of private life and contribute to their maximum involvement in the process of their children's upbringing;
- Proceeding from the children's genuine interest, create appropriate conditions to enable parents and children to live together;
- Respect personal feelings of adults/children with disabilities living in institutions.

REHABILITATION AND HABILITATION

In accordance with Article 26 of the UN Convention on the Rights of Persons with Disabilities, "States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability... To that end, State Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programs, particularly in the areas of health, employment, education and social services, in such a way that these services and programs begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths."

Despite the fact that the Georgian legislation envisages the provision of persons with disabilities with full and quality rehabilitation services, the current monitoring has revealed that the aforementioned safeguards are violated to a considerable extent in the residential institutions.

Specifically, in accordance with Article 13 of the Law of Georgia "On Social Protection of Persons with Disabilities", "The state shall organize and contribute to the formation and development of a medical, professional, and rehabilitation system for persons with disabilities, which constitutes a complex of measures aimed at recovery and compensation of impaired or lost functions of the body and of the ability to provide self-service and carry out various professional activities; It shall also enable persons with disabilities to lead full lives and to ensure the exercise of their rights and potential abilities." And Article 27 of the same law further specifies the state's role in relation to persons with disabilities living

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in state residential institutions: “The state shall provide persons with disabilities with accommodation in accordance with an individual rehabilitation program.”

During the monitoring, it became evident that employees of the institutions were often unfamiliar not only with the concrete method/process of rehabilitation/habilitation, but also with the main essence and aim of rehabilitation.

A publication of the World Bank and World Health Organization, 2011, “World Report on Disability”¹³³, gives the following explanation in connection with the concept of rehabilitation of persons with disabilities: “Rehabilitation outcomes are the benefits and changes in the functioning of an individual over time that are attributable to a single measure or set of measures. Traditionally, rehabilitation outcome measures have focused on the individual’s impairment level. More recently, outcomes measurement has been extended to include individual activity and participation outcomes [in social activities]. Measurements of activity and participation outcomes assess the individual’s performance across a range of areas – including communication, mobility, self-care, education, work and employment, and quality of life.”

Creating the possibility of achieving rehabilitation outcomes, according to the aforementioned publication of the World Bank, requires the provision of minimum conditions and opportunities of rehabilitation:

- Rehabilitation medicine which, according to need, includes doctors with specific expertise in medical rehabilitation – Psychiatrists, pediatricians, geriatricians, dieticians, orthopedic surgeons, etc.
- Therapeutic service of rehabilitation: A psychologist, occupational therapy, physical therapy, speech therapy, art therapy, social therapy, ergo therapy, etc.
- Assistive technologies: Prostheses, orthoses, hearing aids, communication boards, white canes, Braille printers, software for screen magnification, etc.
- Multidisciplinary teams of rehabilitation: Coordinated assessment by rehabilitation and medical workers of different fields; Making a plan for (individual and/ or group) intervention; Reflecting theoretic outcomes in the immediate living/ working/educational environment of a beneficiary; Improved monitoring of the quality of a beneficiary’s life.

The decisive role in the correct organization of the entire process of rehabilitation is played by the informed consent of the person him/herself and management of the entire process by him/her, which is only possible through an equal and partnership-based relationship with medical professionals. And adequately filled out rehabilitation documents and the degree of satisfaction expressed by the beneficiary constitute the main means for measuring the effectiveness of rehabilitation.

Unfortunately, none of the aforementioned criteria were actually met in the institutions visited at the time of the monitoring. Most of the institutions did not employ any of the aforementioned staff, while documents they kept were of such a low quality that it was impossible to monitor the real outcomes.

There is a serious lack of psychologists and other rehabilitation workers in the specialized public schools. This is confirmed by the scarcity of entries in children’s individual plans and the imperfection of rehabilitation programs.

A psychologist employed in Public School No. 200 showed us very scarce information about rehabilitation works done.

The institution does not carry out psychotherapeutic intervention with beneficiaries, despite the fact that the psychologist, in his/her own words, is informed about the psychological traumas sustained by children – mainly about domestic violence and other ill-treatment that takes place when beneficiaries are taken to their families.

According to the information provided by the psychologist, beneficiary “T.M. returned from home to the institution on April 17, 2012, with a bruise on her face; her mother had beaten her because she had applied manicure”; “On December 5, 2011, S.M. came beaten from home – with bruises on his/her face and legs; M.K. is forced to work at

133 http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf

home – they take him/her to the forest and make him/her collect things; PF is beaten by his/her father at home.” The psychologist had also failed to report about these facts, despite his/her well-founded doubts about abuse and neglect of children.”

As for abuse and ill-treatment of beneficiaries in the institution, the psychologist has no information about this. Accordingly, s/he does not take measures to reveal possible ill-treatment or, proceeding from this, to prevent abuse and neglect.

According to the psychologist of Public School No. 202, there are problems with exchange of information within the institution; S/he is not informed of the children’s psychiatric diagnoses (in cases when they exist); The multidisciplinary approach has not been introduced; Moreover, there is a lack of coordination among the employees: The teachers neglect the work done by the psychologist. In the psychologist’s opinion, the multidisciplinary team of the Ministry of Education and Science often assesses children incorrectly; For example, the medical report of the pupil V.Ch. says that the child speaks well, while, in reality, the child cannot speak at all; Some children’s medical reports describe them as “totally blind”, though they have a certain percentage of vision.

During the visit to the Akhaltsikhe Public School No. 7, the group documented that the institution does not have a material-technical base necessary for carrying out rehabilitation work; It does not have enough psychometric tests and the beneficiaries have not been given a psychiatric diagnosis; the psychologist assesses the beneficiaries based on his/her judgment; several children with serious forms of behavioral disorder are not given medicine-based treatment at all; According to the psychologist, s/he restrains some of the beneficiaries physically at the time of psychomotor agitation, which is not included in his/her functions.

During the visit to the Kutaisi Public School No. 45, the group noticed that one of the main problems in the institution is that the employees find it difficult to communicate with beneficiaries, because they have not been taught the sign language. The psychologist only assesses a concrete psychological function on the basis of a teacher’s referral to a problem, though she was not able to name the methodology she used; She was also unable to present documented materials. The Chiatura Public School No. 12 does not employ a psychologist.

WORK OF THE INTERDISCIPLINARY TEAMS

During the monitoring of the specialized schools, the monitoring group received information about shortcomings of the work of the multidisciplinary teams of the Ministry of Education and Science.

According to the letter sent by the Ministry of Education and Science¹³⁴, the Ministry of Education and Science of Georgia, together with the Ministry of Education and Research of Norway, has been implementing the “Development of inclusive education in the public schools of 10 municipalities of Georgia” project, since 2009. It was in the framework of the aforementioned project that the multidisciplinary teams were created; The teams assess pupils and help parents choose an educational space appropriate for the child.

According to the information provided by the Ministry of Education and Science, the activity of the multidisciplinary teams is regulated in the framework of the “Sub-program of Funding of the Multidisciplinary Team” of the “Program for Supporting Inclusive Education” approved by the Minister of Education and Science of Georgia.

It should be noted that the abovementioned regulating document does not contain concrete details of the activity of the multidisciplinary teams; However, this activity is described in general terms in the aforementioned letter of the Ministry of Education and Science, which is not a legal document. Accordingly, we can assume that the legal regulation of the activity of the aforementioned teams is not formulated in any legal document.

The letter sent by the Ministry describes the procedure of enrolling children with special educational needs (who are mostly persons with disabilities) in specialized schools on the basis of the assessment of a multidisciplinary team; This

134 Letter No. 990 of the Ministry of Education and Science of Georgia of August 10, 2012

description is very general and allows ample room for subjective interpretation. For example, the document includes such a passage:

“In order to be enrolled in a specialized school, a child must be characterized with retardation of development of all the aforementioned skills (sensory deficit, speech and mental operations, ability to communicate, functional skills) and the level of development of these skills must correspond with the criteria of moderate and severe mental retardation described in DSM IV?”

The analysis of the aforementioned provision reveals a lot of shortcomings whose practical exercise may violate a disabled child's right to live in and integrate with the society to a significant extent. Specifically, the provision does not specify what degree of “retardation of development” it refers to, by what objective criteria it is to be measured, and which of the dozens of diagnoses described in DSM IV it refers to and by what criteria.

In addition, it is also significant that DSM IV is the American Classificatory which is not used in Georgian Psychiatry (Only in scientific research). The classificatory system of the World Health Organization – ICD-10 is used instead.

The experts of the monitoring group also documented shortcomings of the activity of the multidisciplinary teams in practice. For example, in Public School No. 200, when a member of a multidisciplinary team was asked what objective criteria s/he relied on when enrolled a child in the specialized school (institution), s/he declared that there were no clearly formulated criteria and s/he decided this issue based on his/her own judgment. According to the administration of Public School No. 203, decisions on enrolling of the pupils in this school (for children with hearing loss and impairment) are also made by the multidisciplinary team, but they do not know the criteria the team uses. In addition, according to the administration, the multidisciplinary team does not include a specialist who knows the specifics of children with hearing impairment.

According to the administration of the Chiatura School No. 12, they often disagree with the decisions of the multidisciplinary team on enrollment/dismissal of children, though expressing a different opinion about this issue causes conflict situations and they are threatened with closing down the school.

The letter of the Ministry of Education and Science also confirms that, during 2012, the National Center for Examinations is in the process of standardizing three international instruments (tests); Accordingly, at the moment of the monitoring (June 2012), members of the multidisciplinary team were not using objective tests of assessment for enrolling/institutionalizing children in specialized schools.

The monitoring group documented several cases in which children's enrollment in specialized schools was not based on their educational needs.

The Case of L.Kh. and N.I.

Both pupils have been attending the Kutaisi Public School No. 45 (former Specialized Boarding School for Children with Hearing Loss and Impairment) since 2007. In his/ her explanatory note, the headmaster indicates that these children were enrolled in the school for children with hearing loss and impairment in 2007 because no other corresponding service was available in Kutaisi.

According to the assessment of the multidisciplinary team, **N.I. has no hearing impairment**. On the basis of an audiogram and according to the recommendation of the multidisciplinary team, s/he may not be attending Public School No. 45, though, as his/ her mother refuses categorically to transfer him/her to another school, the issue remains unresolved.

According to the assessment of the multidisciplinary team, L.Kh. has no need of attending School No. 45, but, due to his/her mother's objection to his/her transfer to another school, the pupil is given a recommendation to continue studying in School No. 45.

Unfortunately, neither the multidisciplinary teams nor the Social Service Agency have launched inquiries into possible cases of neglect of the best interest and educational needs of children by parents of children with disabilities. In contrast, the monitoring group noticed that, in most cases, the staff places the full responsibility for violating children's interest on parents. For example, according to the staff of the Public School No. 203, a parent of beneficiary T.Kh. prohibits him/her from using the sign language at home, as well as from communicating with other hearing impaired children in the school who use the sign language. Despite the fact that, according to professionals' assessment, this constitutes a violation of the child's genuine interest, the school staff has not taken any effective measures in this respect. According to the staff of the Public School No. 203, none of the university entrants with hearing impairment has passed the national entrance exams for the past five years, an important cause of which is a delay in learning the sign language and academic backwardness developed on this basis.

The aforementioned information and the cases discussed above indicate to important shortcomings of the programs of rehabilitation/habilitation that exist in the specialized schools, as well as to problems in the work of the multidisciplinary teams which can cause unfounded institutionalization of children with disabilities.

For the psychologist of the Kojori Institution for Children with Disabilities, this institution is his/her first employer after graduating from university. Accordingly, working with children with special needs without supervision is a particularly difficult challenge for him/her. There is no multidisciplinary team in the institution; For this reason, the work of specialists of different fields is not coordinated, the children's individual development plans are incomplete, and entries made by the psychologist are very scarce.

Due to the lack of resources in the institution, it is common practice for NGOs to offer certain services free of charge. However, as the monitoring group has documented, this practice may pose a danger of administering a low quality service and, consequently, of violating the beneficiaries' rights.

The Case of D.I.

During the monitoring of the Kojori Institution for Children with Disabilities, the group observed a massage procedure on nine-year-old D.I. which was conducted by a physical therapist assigned by one of the NGOs. (The child has severe mental retardation, ventriculoperitoneal shunting, pediatric cerebral palsy, right-sided hemiparesis, and epilepsy syndrome.) The physical therapist was not able to answer the monitors' question about the child's diagnosis. S/he was also unaware of such important details for the process of physical therapy as paresis side, condition of muscle tonus, the child's functional status, etc. The specialist was also unable to say what method of physical rehabilitation s/he was using. The preventive group verified D.I.'s full medical documents on-site; as it turned out, all necessary information about his/her medical condition was included in the medical file. The aforementioned case gave rise to a well-founded doubt that the specialist had not got acquainted with D.I.'s condition before starting the therapeutic intervention, which could have caused possible damage to the child's health.

In the Martkopi Boarding House for Persons with Disabilities, the psychologist mainly conducts the following activities: learning poetry, knitting and embroidery, table games, painting, ball games, etc. Despite the fact that the aforementioned activities may be generally useful for planning the free time of beneficiaries, they are not the only manifestation of a psychologist's typical work in institutions of this type. According to the psychologist, a large number of the beneficiaries have such severe behavioral disorders that s/he is not able to work with them at all. For the aforementioned psychologist, too, the Martkopi Boarding House for Persons with Disabilities was the first professional experience of this type.

During the monitoring, it was established that the psychologist of the Tbilisi Infant House had only worked in this institution for less than a month. According to him/her, programs of child habilitation are not implemented in the institution; there is no multidisciplinary team, and the work of the institution employees is not coordinated. The psychologist was not able to present documents describing his/her work.



Public Defender of Georgia addresses the Minister of Education and Science of Georgia and the State Care Agency with recommendations to:

- Ensure that the program of medical and psychosocial diagnostics and rehabilitation, the multidisciplinary team approach are introduced and supported in all institutions, together with allotment of corresponding financial and human resources;
- Correct the shortcomings of regulation of psychosocial rehabilitation and of the work of the multidisciplinary teams;
- Ensure that rehabilitation specialists of the institutions are retrained through corresponding training courses;
- Task all the institutions with the development and due fulfillment of individual plans for rehabilitation/habilitation of beneficiaries.

PROTECTION OF THE RIGHTS OF THE STAFF

In all the reports of the National Preventive Mechanism that deal with social houses, Public Defender of Georgia has paid particular attention to the protection of labor rights of the staff who are responsible for exercising care in institutions. As early as in 2010, the monitoring in the institutions for persons with disabilities revealed a lot of problems that prevented the staff from fulfilling their obligations effectively. These problems included inappropriate working conditions, low salaries, and the need to enhance qualifications.

Problems related to the protection of the rights of the staff are still important, according to the results of the monitoring of 2012. The inadequately small number of the staff is the main shortcoming that may pose a danger not only to the exercise of care towards beneficiaries, but also to their safety.

THE ISSUE OF SAFETY IN THE MARTKOPI BOARDING HOUSE

The Martkopi Boarding House for Persons with Disabilities, which houses 65 beneficiaries with mental health problems (moderate, profound, and severe mental retardation), employs only 13 care-givers and four assistants. However, only three female care-givers stay in a single shift to take care of 65 beneficiaries (one male care-giver controls the yard area, so that beneficiaries do not go out without supervision). During night hours, only one care-giver stays on a single floor in the four-store building of the boarding house. When beneficiaries have episodes of psychic agitation, one female care-giver is often unable to cope with their provocative behavior, and beneficiaries carry out physical violence towards other beneficiaries and the staff, which lasts until a psychiatrist's intervention.

An explanatory note given to a representative of Public Defender on June 23, 2012, which was signed by six members of the staff of the Martkopi Boarding House, reads:

“In April, M.S. was hit hard in the head by M.L.; in May s/he bit him/her twice and hit him/her in the head... S/he was kicked hard by S.G. and M.G....” This year, L.P. (care-giver) sustained a concussion during one of such incidents, due to which it became necessary to carry out a clinical intervention. “N.T. kicked D.Ch. several times, tearing her dress away entirely... The beneficiaries living in the boarding house are aggressive towards one another. N.T. throws everything and everyone that gets into his/her hands. L.M. tries to subdue beneficiaries who are weaker than him/her, and has tried to choke another person (beneficiary K.M.). R.A. is aggressive; s/he tries to jump out of the window and hits the bed with his/her head. N.T. breaks the doors and hits other beneficiaries (throws a chair at them)...” According to the staff, when beneficiaries start to act aggressively towards one another on a floor for which a concrete care-giver is responsible, the care-giver cries loudly for help (because there is no other means of communication that ensures security,

for example, an alarm button) and the remaining two care-givers leave their floors and go to help the third care-giver. At this moment, beneficiaries who remain on the floors left without supervision become victims of violence. The care-givers create a so-called “safety corridor” to hand food to beneficiaries who cannot come out of their rooms independently and to protect them from beneficiaries with behavioral disorders who try to grab their food and inflict physical damage on them. Despite the fact that the institution employs a psychiatrist, the situation described above makes it clear that s/he is unable to ensure the physical integrity and safety of beneficiaries. According to the staff, several days ago “at night, M. had a fit; the doctor gave him/her an injection of a sedative, but it didn’t help and s/he hit us all. [The ambulance] does not transfer him/her until s/he gets too agitated...”

According to the psychologist (for whom this position is the first job and who has never had contact with persons with disabilities or taken an internship in any type of boarding house or mental institution), she cannot work with “aggressive beneficiaries” at all. Consequently, there remain three care-givers, who point out in their explanatory note that if the existing situation remains unchanged, the care-givers and/or beneficiaries may sustain serious bodily injuries and be exposed to the danger of loss of life.

Upon receiving this information, on June 27, 2012, the Office of Public Defender of Georgia started studying the case¹³⁵ on its initiative. In response to Public Defender’s letter¹³⁶ which dealt with the proportion between the number of beneficiaries and the staff, as well as with issues of safety, we received the following information with a letter¹³⁷ of the State Care Agency:

“...We would like to inform you that the issue raised in your letter is not regulated by the legislation... As of today, one care-giver is assigned per nine beneficiaries. It should also be taken into account that in the institutions for persons with disabilities under LEPL State Care Agency, disabled beneficiaries are served by a physician-psychiatrist, a physician-therapist, an instructor of labor therapy, a psychologist, and a senior nurse in addition to care-givers.”

A simple logical analysis shows that the letter of the Agency contains an inaccuracy: during night hours, when, according to the staff, the risk of damage to beneficiaries’ health and violation of safety rules is the highest, none of the aforementioned members of the staff is in the institution (except three care-givers and one nurse). Accordingly, the number of beneficiaries per one care-giver is 21, not nine. It should be noted that the same care-givers wash and iron the beneficiaries’ clothes, feed them by hand, dress them, and tidy their wardrobes.

The aforementioned facts clearly refer to risks for the health and life of care-givers and beneficiaries in the Martkopi Boarding House; they also make it evident that the staff is under the risk of professional burnout and they cannot be expected to provide quality care, especially under conditions when their salary amounts to GEL 400 (net) and they have to work a night shift on every third day.

LACK OF MEDICAL INSURANCE BY THE STAFF

According to the staff, unlike beneficiaries, they do not have job-based medical insurance to get treatment for traumas they sustain.

The problem of lack of medical insurance by the staff also exists in institutions where staff often sustain physical traumas due to the imperfect system of care for beneficiaries. The majority of the care-givers of the Dusheti Boarding House note that they find it most difficult to take care for heavy-weight beneficiaries (weighing more than 100 kilograms) and to ensure their mobility. According to them, three female care-givers often have to take (transfer) a beneficiary from a bed to a wheelchair or from a wheelchair to a bath, at which time the majority of them sustain traumas of the spine. They note: “In fact, all we do from shift to shift is to get treatment for the spine.” The issue becomes even more serious if we take into account that in many countries of Europe, it is prohibited to lift and transfer beneficiaries manually in such institutions due to the increased risk of violation of the safety of beneficiaries themselves, since

135 Case No. 1249-12, June 16, 2012
 136 Letter No. 2941/08-2/1249-12, June 24, 2012
 137 Letter No. 08/812, August 3, 2012



staff who have spinal problems themselves are highly likely to fail to transfer a beneficiary safely, which may result in a fatal outcome.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- Ensure the protection of the rights of the staff working in the institutions, including insuring adequate number of staff in the Martkopi Boarding House for Persons with Disabilities, so that issues of safety that stem from the aforementioned problem are resolved;
- Ensure the prevention of professional burnout of the staff and introduce the regulation of healthcare, which will also increase the quality of healthcare and custodial care for beneficiaries.

DOMESTIC VIOLENCE TOWARDS CHILDREN DEVOID OF PARENTAL CARE

In accordance with Article 37 of the UN Convention on the Rights of the Child, the State Parties shall ensure that “no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Furthermore, Article 19 of the Convention provides that the states are obliged to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.” Thus, these two norms of the Convention on the Rights of the Child, which stem from the necessity to protect the lawful interests and rights of children, determine the parameters of states’ obligations in terms of protection of children from violence and ill-treatment.

In relation to children under state care, it is relevant to protect the rights guaranteed both by Article 19 (protection of children from violence) and Article 37 (protection of children from torture and ill-treatment) of the Convention on the Rights of the Child, since in this case it is the state that takes the responsibility for carrying out care for a child instead of a parent.

In accordance with the referral procedures for child protection¹³⁸, schools and specialized institutions for children are authorized to study and analyze cases in the framework of these procedures if there is doubt that a child was subjected to violence, to notify the police or the Social Service Agency of these cases, and to supervise the condition of the child who became a victim of violence in cooperation with the Agency.

The staff of almost all childcare institutions noted that children living in residential institutions were subjected to violence by their family members. For example, according to the psychologist of Public School No. 200, teachers tell him/her that some parents beat their children. The psychologist has also witnessed a fact of physical violence against a child by his/her parent at the time when the latter was visiting the boarding school. When asked what the school had done to protect the child from domestic violence, s/he answered that the school was not informed about a referral.

According to the information provided by the staff working in the institutions, the children do not talk about violence, but they say that they do not want to go home. “N.K’s grandmother probably wasn’t able to subdue the child and beat him/her; s/he is a disobedient child. The children put their hands on their head when teachers approach them, probably because they are beaten at home. The child who was beaten by his/her grandmother in the school yard has vision impairment,” said the psychologist.

According to the doctor of the Kutaisi Public School No. 45, “There have been cases when a parent brought a child with a small injury, but s/he told us that the child had sustained these injuries while playing. Accordingly, we didn’t check anything. We believe that this was the case. If a child sustains a considerable injury, we will notify someone...” The aforementioned issue is very problematic in the public schools (with a boarding house service) under the Ministry of Education and Science. The monitoring group received a large amount of information about alleged facts of domestic violence against children, who are in these institutions.

138 The Joint Order of the Minister of Labor, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Education and Science of Georgia No. 152/N – N496 – N45/N of May 31, 2010, Tbilisi; M. 4(4);

The practice that we have studied makes it clear that the school staff were, indeed, unaware of their obligation to report in the framework of the referral mechanism for child protection; specifically, in accordance with Paragraph 2 of Article 6 of the Joint Order No.152/N-496-45/N of the Minister of Labor, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia, and the Minister of Education and Science of Georgia on the Approval of Referral Procedures for Child Protection: “If there arises a doubt that a child was subjected to violence, the administrations of schools, medical establishments, and specialized institutions for children, as well as village physicians, shall be obliged to identify the urgent condition related to violence against the child and a well-founded doubt about violence against the child and manage the case within the competence determined by the referral procedures for child protection.” In accordance with Paragraph 3 of Article 6 of the same Order, the source of doubt about violence against a child may be the following:

a) Presence of signs of physical injuries on a child’s body (bruises, fresh wounds, fresh scratches, fresh sores, difficulty in walking, swellings on the body, fractures);

b) Suspicious behavior of a child (if a child is agitated or depressed, has fears, does not want to go to school, does not attend school regularly, does not do lessons, is uncared for, does not want to return home, is sexually developed beyond his/her age, has knowledge about sex that does not correspond with his/her age, has undergone a radical change in character, or cannot explain the causes of a trauma).”

Analysis of the information obtained during the monitoring and its comparison with the obligations imposed on the staff of child care institutions by the referral mechanism for child protection from violence makes it clear that in all the aforementioned cases the employees of the institutions were not only able, but also obliged by law to respond adequately to the safety needs of the children, which they failed to do.

Public Defender addresses the Minister of Education and Science of Georgia with recommendations to:

- Ensure the retraining of staff of public schools (with a boarding house service), so that they are able to fulfill the obligations envisaged by law to protect children who are victims of domestic violence;
- Ensure the activation of the referral system of child protection, so that, in every case when there is a well-founded doubt that a child was subjected to violence or neglect, the responsible state bodies are notified and all measures envisaged by law are taken to prevent violence.

THE RIGHT TO HEALTH CARE

Health Care in Infant Houses

The monitoring group has assessed the availability of medical services for beneficiaries of infant houses, provision of quality medicines, and other measures of health care.

The outcomes of the monitoring have shown us that the medical services in infant homes are limited to the services of primary healthcare.

The December 9, 2009 Resolution No. 218 of the Government of Georgia, which determines the measures to be taken with the aim of insuring the health of the population in the framework of state programs and the terms of the insurance voucher, says that beneficiaries of the State Care Agency shall be provided with insurance vouchers. Furthermore, Article 3 of the same Resolution determines the medical services covered by the voucher¹³⁹.

139 „a) Reimbursement of expenses of outpatient services:

a.a) Outpatient service (service provided by a family doctor or a district physician); outpatient service provided by specialists, urgent outpatient service; service provided by a family doctor, district physician, or a doctor’s assistant at the patient’s home, if necessary);

Medical service is provided by private insurance companies according to territorial principle, within the limits of insurance policies. The packages of different insurance companies are almost identical; They fail to take into account the age-related aspects of diseases, possible special needs of children with such common diagnoses as hydrocephaly, pediatric cerebral palsy, management and rehabilitation of its secondary condition, and different inborn defects and abnormalities.

At the time of the monitoring, several beneficiaries of the Tbilisi Infant House, including a brother and a sister diagnosed with diabetes mellitus and Down's syndrome, did not have an insurance policy, despite several requests. For almost a month and a half, it was impossible to provide them with insurance policies, despite the fact that notifications were made upon their admission to the Infant House (4/05/2012).

Insurance packages often fail to meet the health needs of beneficiaries of infant houses. There were cases when children diagnosed with pneumonia were transferred from the Tbilisi Infant House to a hospital to provide them with inpatient treatment. The Forms #100¹⁴⁰ indicated that the children required a consultation of a neurosurgeon and an otolaryngologist, which was possible to provide in the same pediatric clinic (in which the children were hospitalized to receive treatment for pneumonia), though the children were returned from the clinic without providing them with the consultation, because the code of the illness (primary illness) did not envisage the aforementioned types of consultation.

There are also cases when as soon as the sum covered by the code of the concrete disease is spent, children are returned to the Tbilisi Infant House, which has no resources to invite narrow specialists and provide consultations. The pediatrician of the Tbilisi Infant House has to address the insurance company again to substantiate the need of an examination or a consultation. Due to this, the process of setting a diagnosis and providing corresponding medical assistance gets protracted.

Children with Hydrocephaly¹⁴¹ – Lifespan Determined by Infant House

In his speech given on June 11, 2010, Regional Representative of the UN High Commissioner for Human Rights, Jan Jařab, noted: "Children born with spina bifida [spinal hernia] or hydrocephaly are human beings and they have human rights. If properly treated, a human being born with spina bifida should not develop hydrocephaly at all. We should never see images of small children with enormous heads who have become blind and intellectually impaired; children who suffer terrible pain before they die a slow, excruciating death, because they do not receive adequate treatment."¹⁴²

It is still very important location, where such a child is born. In some countries, doctors advise parents to leave their child in a children's home immediately, because such a child has no future – due to non-performance of surgical intervention at

- a.b) Electrocardiographic, echoscopic, and X ray examinations, and laboratory and instrumental examinations connected with planned surgery hospitalization based on a doctor's prescription;
- a.c) Clinical-laboratory outpatient examinations with a doctor's prescription: general blood test, general urine test and creatinine, peripheral blood glucose, pregnancy test, hemoglobin, analysis of faeces for concealed bleeding;
- a.d) Examinations required for the social assessment of persons with disabilities, specifically, examinations required for the assignment of the disability status, except for highly technological examinations (computer tomography and nuclear magnetic resonance examinations);
- a.e) Issuance of all types of medical certificates and prescriptions at the outpatient level (except for Form NIV-100/A connected with starting a job, a driver's license in LEPL Service Agency of the MIA, and certificates required for receiving the right to keep/bear arms);
- b) Reimbursement of expenses of inpatient services:
 - b.a) Urgent inpatient services, including hospitalization connected with complicated pregnancy, childbirth, and post-natal period;
 - b.b) Planned surgeries (including daytime inpatient unit) – annual insurance limit – GEL 15,000;
 - b.c) Expenses of chemotherapy and radiation therapy – annual insurance limit – GEL 12,000;
 - c) Expenses connected with childbirth – GEL 400;
 - d) Expenses of medical products – according to the list of medical products. The insurer shall reimburse these expenses within the annual insurance limit of the policy, GEL 50, with a 50% co-payment, while from September 1, 2012, for women aged 60 and above and men aged 65 and above (population of pension age) as determined by Paragraphs a and a1 of the terms of the voucher, the annual insurance limit shall be set at GEL 200, with a 50% co-payment.

140 A health certificate

141 Hydrocephaly – a medical condition in which there is an abnormal accumulation of cerebrospinal fluid in the cavity of the brain

142 <http://www.europe.ohchr.org/Documents/Speeches/RightsForPersonsWithSpinaBifida.pdf>

an early stage, the child develops a severe condition of hydrocephaly with inborn injuries and inevitable death follows at an early age.

The same is the case in several countries of the Eastern Europe and, obviously, in many other countries of the world. Poverty and violation of the rights of persons with disabilities often combine to pass a death sentence. In these countries, the healthcare system does not ensure the placement of a ventriculoperitonealshunt for these children, while poor parents cannot pay for this procedure; often, parents are not even told that such a procedure exists and they can save the life of a child with such a diagnosis.

In developing countries, the statistical figures of children diagnosed with hydrocephaly range from 0.2 to 0.8 per 1,000 newborns. The causes of congenital hydrocephaly are divided into primary (idiopathic) and secondary (acquired) causes, of which idiopathic causes are considerably dominant. Natural development of the disease without a surgical intervention causes progressive cognitive deterioration and an early death – as a rule, before the person reaches the third decade¹⁴³¹⁴⁴¹⁴⁵. However, the perfection of neurosurgical and diagnostic methods has enabled these people to live much longer and improved lives.

There are about 750,000 people diagnosed with hydrocephaly in the world, and, each year, 160,000 ventriculoperitonealshunts are implanted in them.

Before the 1940s, when the method of ventriculoperitonealshunting was introduced, only 20% of children diagnosed with hydrocephaly reached adulthood (without the surgery), while 50% of those who survived developed permanent brain damage. These statistical figures improved significantly after the introduction of the shunt systems by Nulsen and Spitz in 1952 and by Holter and Pudenz in 1960.

As of today, the majority of children diagnosed with hydrocephaly reach adulthood. The 20-year-long scientific research has shown that more than half of the children who received shunting in the 1970s have graduated from high school¹⁴⁶.

In 2005, researchers of the Department of Neurosurgery, Neurology and Pediatrics of the University of California published a study¹⁴⁷ according to which the mortality rate of children diagnosed with hydrocephaly decreased by 60% from 1979 to 1998 in the United States. The decrease was distributed almost proportionally across all the three groups of people with hydrocephaly: the mortality rate of people with congenital hydrocephaly decreased from 8.9% to 3.1% (in 100,000 cases); the mortality rate of people diagnosed with hydrocephaly together with spina bifida decreased from 4.9% to 0.6% (in 100,000 cases); and in the case of persons with acquired hydrocephaly, the death rate decreased from 2.3% to 0.5% (in 100,000 cases). The study was conducted on the entire population of the US; the data were taken from the National Center for Health Statistics.

SITUATION IN GEORGIA

The National Preventive Mechanism has paid particular attention to the rights of children diagnosed with hydrocephaly.

The experts found quite a large group of children with hydrocephaly in the Tbilisi Infant House, though practically no children with this diagnosis were housed in other children's homes (with one exception) or in the institutions where beneficiaries of infant houses are transferred after they reach the age of six (the institutions for children with disabilities in Senaki and Kojori). According to the data of the Social Service Agency, children with this diagnosis are seldom taken into foster care or adopted. This gives rise to well-founded doubts about the fate of these children, since, as the aforementioned international practice indicates, the lifespan of these children is not limited to six years.

143 51 Laurence KM (1958). The Natural History of Hydrocephalus. *Lancet* 2: 1152-1154;

144 Laurence KM (1960). The Natural History of Hydrocephalus. *Postgraduate Med.J* 36:662-667

145 Laurence KM (1960). The Natural History of Hydrocephalus. *Postgraduate Med.J* 36:662-667

146 <http://emedicine.medscape.com/article/937979-overview>

147 John H. Chi, M.D., M.P.H., Heather J. Fullerton, M.D., M.A.S., and Nalin Gupta, M.D., Ph.D. (2005), Time Trends and Demographics of Deaths from Congenital Hydrocephalus in Children in the United States: National Center for Health Statistics data, 1979 to 1998, *Journal of Neurosurgery (Pediatrics 2)*; 103:113-118.



In January 2012, Public Defender of Georgia, on his initiative, started to study the state of the rights of the children with hydrocephaly in the Tbilisi Infant House¹⁴⁸. He also addressed the Social Service Agency with a recommendation to conduct an inquiry into the case¹⁴⁹. The reply letter of the Agency¹⁵⁰ gives the following dynamics of the children with hydrocephaly: in the period of January-June 2012, 15 children diagnosed with hydrocephaly lived in the infant house; as of June 2012, five of them had died.

During the monitoring, the experts monitored six children diagnosed with hydrocephaly on-site. In the cases of all the six children, the clinical manifestations of hydrocephaly were quite complicated (particularly large amounts of cerebrospinal fluid in the brain ventricles and subarachnoid space, significant increase in head sizes, etc.) and the intracranial pressure had increased. The clinical evidence was manifested in the following: each child had a very strained, pulsating anterior fontanel, ophthalmoplegia, with classic manifestation of sunset syndrome, with considerably increased strain in the muscles of both the torso and the limbs, with typical manifestations of suppression of the nervous system – the children were in a lethargic state (in a weakened, powerless state), with visual and auditory disorders, with symptoms of gastroesophageal reflux¹⁵¹.

According to the assessment of the monitoring group, the aforementioned state of the children was caused by inadequate medical service. The aforementioned was, first of all, connected with ineffective performance of essential and necessary neurosurgical intervention or with a neurosurgeon's decision not to perform a surgical intervention on purpose. The lack of essential neurosurgical intervention also implied restriction of palliative intervention whose major function was to decrease the clinical symptoms caused by the disease and to place a ventricular shunt. According to the staff, the failure to perform the aforementioned intervention was caused by neurosurgeons' decisions. The medical professionals of the infant house noted that the neurosurgeons based their decision on one factor only: how "prospective" the child was, to what extent the child would have a chance of developing and having a positive dynamics if a shunt was placed.

The failure to perform the aforementioned intervention turns these children's lives into a waiting for death, regardless of how many days, months, or years they have left to live. The period of waiting is made even more grave by pain and discomfort caused by an increase in intracranial pressure; and medical specialists fail to perform intervention (including neurosurgical) to alleviate this discomfort of beneficiaries of the infant house, because, according to the common opinion, "these children don't feel the pain" even when their skull and face become entirely deformed and slowly lose their original form due to accumulation of fluid. Dozens of medical specialists watch this condition of children passively, not even considering it necessary at least to alleviate their pain and enormous discomfort in the framework of palliative care. In the opinion of the foreign members of the monitoring group, the aforementioned practice contradicts entirely with international clinical practice in this direction. According to them, the absolute majority of children with hydrocephaly or with the risk of developing hydrocephaly receive shunting within several days or months of birth, which, in most cases, gives the children a positive chance to develop and grow up. Even in those few cases when a child is expected to die due to a complicated medical diagnoses, the child receives shunting in the framework of palliative care to decrease the pain and discomfort connected with accumulation of fluid during the progress of the disease, so that the quality of the child's life until his/her death (however short this time may be) is normal and the last period of his/her life does not turn into a source of suffering.

The National Preventive Mechanism assessed the practice in the Tbilisi Infant House as a serious act of ill-treatment which may even be equivalent to torture and inhuman treatment in its severity.

CONTINUITY OF MEDICAL SERVICE FOR INFANTS

Article 3 of the Law of Georgia on Health Care indicates that continuity of medical service implies uninterrupted exercise of preventive, diagnostic, treatment, rehabilitative, and palliative measures.

148 Case No. 1587-11

149 Letter No. 83/08-1, January 9, 2012

150 Letter No. 04/3112, January 23, 2012

151 A condition when food or fluid gets pushed back from the stomach

In accordance with Article 4 of the Law of Georgia on Health Care, the principles of the state policy in the field of health care are as follows:

- “a) Universal and equal access to medical care for the population in the framework of the obligations taken by the state through state medical programs;
- b) Protection of human rights and freedoms in the field of healthcare; acknowledgement of the honor, dignity, and autonomy of the patient;
- c) Responsibility of the state for the amount and quality of the medical service envisaged by the program of mandatory medical insurance;
- d) Priority of primary healthcare, including urgent medical aid; participation of state and private sectors in it; development of family medicine and the institution of family doctor, and ensuring access to medical care on its basis.”

As a result of the monitoring, it has been found out that the medical care in infant houses is mainly limited to provision of primary medical assistance and anti-symptom medicines.

The multidisciplinary teams of doctors do not conduct examinations, apart from individual exceptions.

Beneficiaries of infant houses belong to the vulnerable category of children who often become ill and, accordingly, require repeated hospitalization. Despite the fact that the insurance package covers hospitalization, it is often difficult to achieve. During the monitoring of the Tbilisi Infant House, the monitoring group learned about a case of restriction of urgent medical care for beneficiary S.B. In connection with this, Public Defender, on his initiative, launched an additional inquiry (Case No. 1271-12) and sent the information for response to both the State Regulation Agency for Medical Activities (No. 2940/08-2/1271-12) and the Social Service Agency (2939/08-2/1271-12) – the body of guardianship and custodial care determined by the national legislation.

The case of S.K. – Refusal to provide urgent Medical Service

On January 2, 2012, by 8:00 P.M., S.K., who was then a year and two months old, had severe adynamia¹⁵², breathing rhythm disorder, and immediate apnea¹⁵³. The child’s limbs were pale-colored and cold; s/he responded passively to irritation; the heart sounds were deafened, and the pulse on the periphery felt weak; the child was not crying; temperature – 35⁰; pulse – 100; breath frequency – 24. Due to the generally complicated diagnosis (microcephaly, spastic tetraparesis, post-pneumonia period, slight cramps), the duty doctor N.G. considered it necessary to call an ambulance crew after providing first aid. A doctor of the ambulance crew gave the child an injection and oxygen; according to the duty doctor of the infant house, the child required transfer to hospital (“In fact, a dead child was lying in front of me”), through s/he was not hospitalized. According to an entry made in medical card no. 614 of ambulance crew no. 809, “The patient requires inpatient treatment. I contacted the hospital manager. All pediatric clinics refused to admit the aforementioned patient.”

By 10:00 P.M., S.K.’s condition was still severe: the child gave almost no response to irritation; the breathing was superficial; the heart sounds were deafened; hypothermia; despite putting hot water bags, the temperature remained at 35⁰; the look was bleary, with periodic eye deviation (uncoordinated movement of eyes). The duty doctor called the hotline of the Ministry of Labor, Health and Social Affairs and the Alfa insurance company. In several hours, the same ambulance crew was called again, and, already on January 3, at 01:00 A.M., the child was transferred to the intensive care unit of the academic clinic.

The medical report drawn up jointly by the Social Service Agency and doctors and administration of the Infant House indicates that it took five hours to transfer the child from the Infant House to the inpatient unit.

152 Adynamia – (Greek: a –negative prefix, dynamis - strength) – loss of strength, intense weakness

153 Apnea (Greek: a - negative prefix; pnoē – to breathe) – a temporary suspension of breathing; develops as a result of blood depletion from carbonic acid (for example, at the time of intensified artificial or natural breathing).



According to the administration and medical staff of the Tbilisi Infant House, due to the health condition of beneficiaries, it often becomes necessary to transfer children to pediatric clinics, which has been a serious problem in the recent period. In concrete cases, there is a risk of a lethal outcome. In connection with the aforementioned, on January 11, 2012, the Director of the Tbilisi Infant House addressed the Head of the State Care Agency in writing. However, the aforementioned problem is yet to be resolved by the Ministry of Labor, Health and Social Affairs.

In the cases when, with the intervention of the Head of the Agency, beneficiaries of the Infant House are transferred to an inpatient unit, they are usually provided with medical care with a delay, which can no longer be considered as timely access to medical care. This pertains to newborns and children before the age of three when pathological processes develop very fast and there is even a probability of a lethal outcome (death).

The above discussed violates Article 24 of the Convention on the Rights of the Child according to which, “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Article 133 of the Law of Georgia on Health Care indicates “Management of the medical aspects of decreasing of child mortality and illness rate and provision of children with the highest attainable standard of medical care, first of all with primary medical assistance, shall be a priority task for the healthcare system.¹⁵⁴ Analysis of the case of S.K. in accordance with international and local legislative standards makes it clear that S.K.’s right to receive complete healthcare services was violated.

Maintenance of Medical Records in Infant Houses

The obligation to maintain complete medical records is envisaged by Article 56 of the Law of Georgia on Medical Activity, which indicates -“An independent provider of medical activity shall be obliged to maintain medical records for each patient with the procedure established by the Georgian legislation... The medical records shall be complete. An independent provider of medical activity shall fill out each part of the medical records file (personal, social, medical and other data of the patient) completely; The information in the medical records shall be entered in a timely manner and within established terms; The medical records shall equitably reflect all details related to the medical service provided for the patient.”¹⁵⁵

However, it should be noted that Forms #100 contained in the children’s medical development cards, that the Infant House sent us, indicate to the contrary. The forms were filled out superficially and do not contain essential information about examinations conducted. The forms often contain entries like this: “General blood tests taken and roentgenography of the chest conducted”; they say nothing of the results of examinations, which would be very valuable for the pediatricians of the infant house and help them in the monitoring of further medical assistance.

Provision of Infant Houses with Medicines

As a result of the monitoring, it has been established that the institutions under the State Care Agency are provided with medicines in a centralized manner, though there are individual cases when it becomes necessary to order additional medicines that were not included in the annual list and the advance estimates. In such cases, the institutions address the Ministry of Health and the latter provides assistance, which may sometimes come too late. In such a case, the heads of the institutions have to purchase the medicines with their own funds.

A beneficiary of the infant house, five-year-old A.B., who, according to Form #100 included in the child’s medical card, was diagnosed with “residual motor disturbances caused by pediatric cerebral palsy, deep tetraparesis, and

154 The Law of Georgia on Health Care, Article 133, Paragraph 1

155 The Law of Georgia on Medical Activity, Article 56

symptomatic generalized epilepsy,” often has serial cramps (convulsions); The cramps are only removed by giving the child the prescribed dose of a combination of Carbamazepine and Difinin. Difinin is not included in the list of the State Care Agency.

It is also necessary to pay particular attention to medicines received as a humanitarian gift. A physician-pediatrician of the Makhinjauri Infant House, DJ, gave the institution 200 mg. of Carbamazepine (250 tablets), whose price was estimated as GEL 0 and 40 tetri in the acceptance-delivery act, and Percindol ointment estimated at GEL 15. In both cases, the production and expiry dates were missing, which gives rise to doubts in terms of children’s health.

In conclusion, we would emphasize that it is necessary to conduct monitoring on the health of newly borns, infants, and children at an early age and to ensure that the multidisciplinary teams conduct assessment and develop individual development plans, or introduce programs of further rehabilitation/habilitation. Particular attention should be paid to early diagnosis of diseases (hydrocephaly) and timely and purposeful surgical intervention with newly born children.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with recommendations to:

- Ensure the assessment of newly born children in the case of hydrocephaly and other serious inborn diseases and disorders in the framework of the State Program of Prevention of Diseases with the aim of carrying out timely and complete intervention;
- Develop and introduce unified electronic systems, taking into consideration the health and psychosocial condition of children with disability status, with the aim of improving their further rehabilitation and social integration from their birth to adulthood;
- Exercise effective control and supervision on the health condition of beneficiaries of infant houses and on the quality of medical care provided for them;
- Ensure the assessment of all beneficiaries in infant houses by a multidisciplinary team and implementation of programs of rehabilitation/habilitation in the framework of an individual development program;
- Ensure fast and timely provision of medical service by simplifying the procedures of communication with insurance companies;
- Ensure that beneficiaries of infant houses are provided with a different insurance package of medical services that are tailored to their needs with the aim of increasing access to medical care;
- Ensure that infant houses are provided with all necessary medicines included in the insurance packages, taking into consideration the age-related specifics of diseases and the disability status.

HEALTH CARE IN SPECIALIZED BOARDING SCHOOLS

The Internal Rules of the Akhaltsikhe Boarding School indicates that “The nurse shall ensure that all treatment, preventive, and recovery measures are taken, maintain order and cleanliness in the medical isolation ward, and provide primary medical care for children.” In spite of this, the members of the monitoring group were practically unable to obtain information about the health condition of the beneficiaries and medical assistance provided to them (the nurse was absent at the time of the monitoring).

School No. 202, which serves children with visual impairment, does not employ an ophthalmologist. Consequently, in this case, the children who require an ophthalmologist’s consultation most often are provided with this service with considerable delay.



Interviews with the medical staff made it clear that they had not taken any training on issues of provision of medical service to children with special needs. They think that participation in such educational activities and familiarization with new approaches to medical service and habilitation/rehabilitation of children would help them a great deal in their daily activities.

The medical rooms in the boarding schools are very small; the institutions (the Akhaltsikhe Boarding School, the Chiatura Boarding School, Boarding School No. 202) do not have a medical isolation ward for temporary placement of beneficiaries in the case of a contagious disease. Medical units adjacent to the medical rooms are non-functional (the Akhaltsikhe Boarding School), and the medical rooms are not equipped with weighing scales and a height measure, which makes it impossible to conduct monitoring on physical development (the Akhaltsikhe Boarding School).

The monitors found expired medicines (ampules of Dimedrol and Analgin) in the medical rooms (the Akhaltsikhe Boarding School, Boarding School No. 202). The logs on the use of medicines were not maintained (the Kutaisi Boarding School No. 45, the Akhaltsikhe Boarding School No. 7) or were maintained in a non-standard manner.

MAINTENANCE OF MEDICAL DOCUMENTS

The boarding schools do not keep logs of cases of hospitalization, unfortunate accidents, injuries, and other issues. They maintain logs of daily medical services differently from one another (without observing a common standard); The documents do not contain necessary basic information (the Akhaltsikhe Boarding School, the Tbilisi Boarding School No. 202). The staff of the institution often do not have a list of beneficiaries that includes their diagnoses and disability status.

The Akhaltsikhe Boarding School No. 7 does not have a single complete medical case file. None of the case files includes assessment of retardation of mental development (with the exception of one child). There are no logs on injuries, treatment, or supervision.

In Boarding School No. 202, there are no logs on acceptance and transfer of medicines; there are also no logs on hospitalization, contagious diseases, and vaccination.

Several boarding schools do not maintain logs on medicines subjected to special control, and these medicines are issued together with other medications (the Tbilisi Boarding School No. 202, the Chiatura Boarding School No. 12). Boarding School No. 200 also fails to maintain a log on injuries and self-injuries.

In the boarding schools, medical cards are maintained incorrectly; in some of them, entries are only made once a year, and even these entries are incomplete and the information does not reflect the dynamics corresponding with the diagnoses (boarding schools of Akhaltsikhe No. 7, Kutaisi No. 45, and Tbilisi No. 202 and No. 203).

In the case of chronic diseases, the progress of the diseases is not supervised adequately (boarding schools of Akhaltsikhe No. 7, Kutaisi No. 45, and Tbilisi No. 202 and No. 203).

The medical history of a beneficiary of Boarding School No. 202, 16-year-old A.Ch., diagnosed with diabetes mellitus type A and diabetes insipidus, does not include entries about insulin treatment. The same is the case with a beneficiary of the same boarding school, S.M., diagnosed with diabetes mellitus type A, decompensated form, severe form (Wolfram Syndrome). In both cases, the monitors saw the diagnoses in Forms #100 issued by Givi Zhvania Pediatric Clinic. The medical cards issued by the boarding school did not contain this information.

Thus, lack of information by the medical staff, on the one hand, and their failure to fulfill their obligation as doctors to make entries, on the other hand, cause ineffective maintenance of medical documents.

MEDICAL SERVICE IN THE FRAMEWORK OF INSURANCE POLICIES

Different insurance companies in the framework of the state medical insurance program provide medical service. Different institutions use the services of different insurance companies that are distributed by territorial principle. Despite the fact that insurance policies are issued based on an ID card number, two beneficiaries of the Akhaltsikhe Boarding School, who do not have ID cards, have insurance policies.

In the Kutaisi Boarding School, six beneficiaries had expired policies of Aldagi BCI. There are cases when the insurance policy cannot cover health care costs: ten pupils of Public School No. 200 diagnosed with epilepsy needed to undergo an electroencephalogram, but the insurance company did not cover its costs.

The children with chronic diseases who attend the boarding schools occasionally need to be placed in an inpatient unit for further examinations and treatment. However, when they return to their institution (or are transferred to another similar institution), they do not have Forms #100 with them, or the Forms #100 are incomplete and do not say what type of treatment they received in the hospital. This indicates to the poor quality of the service provided by the medical institutions, on the one hand, and to the impossibility of providing the children with complete medical service by the residential institutions, which they are obliged to do according to legislative acts and by-laws, on the other hand.

In several institutions (the Akhaltsikhe Public School No. 7, the Tbilisi Public School No. 202), preventive examinations have never been conducted on-site.

Thus, the medical service provided for disabled children who live in the boarding schools is incomplete, and the medical records are made so incompetently and incompletely that they do not make it possible to make an on-site assessment of the effectiveness of the medical service.

Public Defender of Georgia addresses the Minister of Labor, Health and Social Affairs of Georgia and the Minister of Education and Science of Georgia with recommendations to:

- Ensure coordinated work with the aim of improving the monitoring on the medical service provided for children with different types of disabilities;
- Introduce a procedure for the functioning of medical rooms in boarding schools; determine the rights and obligations of medical staff;
- Ensure the development of common systems of maintenance of medical documents and introduce them in boarding schools for children with disabilities, taking into consideration children's illness rate and needs;
- Ensure the retraining of medical staff in boarding schools, taking into consideration the children's special needs;
- Ensure the expansion of the insurance package according to the medical condition and needs of children with disabilities;
- Extend Order No. 6/61 of LEPL State Care Agency of the Ministry of Labor, Health and Social Affairs of Georgia, issued in 2011, on the Approval of Forms of Medical Documents to boarding schools for children with disabilities.

2012

HEALTH CARE IN INSTITUTIONS FOR CHILDREN WITH DISABILITIES

In the institutions for children with disabilities, beneficiaries with chronic diseases often require inpatient care.

Patients are often discharged from inpatient units inappropriately early, which is caused by the expiration of the insurance limit.

A beneficiary of the Kojori Institution for Children with Disabilities, G.T., born on 05/07/2004, was admitted to the Kojori Institution for Children with Disabilities on November 29, 2010, with the diagnosis of pediatric cerebral palsy, profound mental retardation, and acute bronchitis (bronchospasm). At the time of admission, the child's condition was grave, with respiratory insufficiency; S/he was transferred to an inpatient unit in an ambulance car. On December 2, s/he was discharged from the inpatient unit, though, at the end of the same day, s/he was transferred back to the unit in an ambulance car. On December 6, s/he was discharged again, and on December 7, s/he was returned again to the unit. Due to frequent complication of the disease, s/he requires inpatient treatment. By the time of the monitoring, the beneficiary was in hospital.

The 2010 Report on the Monitoring of the Rights of Persons with Disabilities by the National Preventive Mechanism devoted considerable attention to the inadequacy of medical service provided for children with disabilities. As a result of response to materials sent to the structures of state control, several medical workers had their licenses of professional activity suspended/revoked.

Unfortunately, at the time of the monitoring of 2012, the issue of inadequate medical service was still relevant in the aforementioned institutions. In this respect, the situation in the Senaki children's house was particularly difficult.

The Case of Sh.K. – Late and Inadequate Medical Service

On May 15, 2012, a representative of Public Defender received a phone call about deterioration of the health condition of beneficiary Sh.K., which, according to the author of the phone call, had been caused by inadequate medical assistance. As soon as Public Defender initiated the case on his initiative¹⁵⁶, he requested information from LEPL State Care Agency. According to the letter¹⁵⁷ sent from the State Care Agency, six-year-old Sh.K. had died on April 26, 2012, in the Kutaisi Regional Medical Diagnostic Center for Mothers and Children.

However, the real circumstances of the case were as follows:

On April 26, 2012, six-year-old Sh.K. (diagnosed with pediatric cerebral palsy, spastic paraplegia, and severe psychomotor retardation) was in the Senaki Institution for Children with Disabilities.

The child had been admitted to the Senaki children's house on April 2, 2012¹⁵⁸. According to the entry made by a pediatrician, at the time of admission, the child's condition was of average severity; In addition to low functional status (s/he was unable to sit and walk, constantly lay in bed, was unable to speak and come into contact), his/her health problem was thin, spotted rash (nettle-rash) on his/her neck, body, and limbs which his/ her parent could not relate to intake of food. Other data, according the pediatrician's entry, were as follows: temperature –36.8⁰, pale-colored skin, coronary sounds clear when hearing on the lungs, vesicular breathing.

Two months after the child was admitted to the institution, his/her health condition changed sharply. According to Form #100 issued by the Kutaisi Regional Medical Diagnostic Center for Mothers and Children:

“Six-year-old Sh.K. has been hospitalized in the inpatient unit with:

156 Case N.0853-12, May 17, 2012

157 Letter N.08/584, June 6, 2012

158 The aforementioned is confirmed by documents provided by LEPL State Care Agency on June 11, 2012 – a sheet on the examination of the patient, a pediatrician's consultation sheet.

- Acute respiratory insufficiency;
- Acute bronchitis, bronchospasm;
- Acute swelling of lungs;
- Pediatric cerebral palsy.”

The child’s condition was assessed as extremely severe. The child died on May 26, at 2:15 A.M.

The preventive group conducted an inquiry into the condition of Sh.K. in the framework of the current monitoring and, in order to find out what had caused the sharp deterioration of the child’s health two months after s/he was admitted to the institution and whether medical assistance had been provided in a timely manner, the monitors interviewed the local medical staff and other involved persons.

When asked about the development of pneumonia and swelling of the lungs, the director of the institution answered: “S/he had phlegm, the phlegm was accumulated, and it’s impossible to take out phlegm here.”

According to the local pediatrician, the medical staff of the institution prescribed Sk. K. anti-convulsion treatment (against epileptic cramps) (Finlepsin, Diazetex) only on the basis of the words of the child’s mother who had said that the child had epileptic cramps. The medical staff of the institution had not seen the episode of cramps; the child had been admitted without a neurologist’s consultation sheet or documents confirming diagnosing or examination for EPI syndrome.

The medical staff also prescribed Sh.K. Normokid (to remove vomiting), though the child had not had a single episode of vomiting during his/her stay in the institution. No examination had been conducted on the child to establish the cause of vomiting (if such had taken place) before the aforementioned medicine was prescribed.

According to the pediatrician, on May 6, 2012, the child’s temperature rose to 39⁰, and s/he was transported first to the Senaki inpatient unit and then, on the same day, to the Kutaisi hospital. According to the pediatrician, despite the fact, that the immediate cause of the child’s death was connected with acute bronchospasm and swelling of the lungs, Sh.K. had not had any types of respiratory (connected with breathing) problems during his/her entire stay in the children’s house.

It should be noted that the child’s medical history also includes a sheet of paper with the results of the general blood test of Sh.K., on which the data were entered by hand; it is an ordinary sheet of paper without a stamp or official requisites of any establishment. A person called L. Kharbedia on April 27, 2012 did the test.

It is these data that exposed the hidden details of the case. A person from the institution who had been present when Sh.K.’s condition deteriorated told a different version of the story to the monitoring group. According to him/her, Sh.K. did not have a medical insurance policy, and, for this reason, s/he was not hospitalized for 20 days, despite the fact that s/he needed to be transferred to hospital. When the child’s condition became extremely severe, the administration took the child to a hospital in the car of the Senaki children’s house, though, as s/he had no insurance policy, the blood test was taken in the institution’s car, under non-medical conditions (see the aforementioned document with the results of the blood test on a piece of paper without the requisites of the medical establishment which was obtained by the monitoring group). According to the person, the process of taking the blood test in the car was attended by N.L. – the music teacher, S.K. – the nurse, N.Ts. – the caregiver, Z.K. – the driver, and him/her himself/herself.

A member of the preventive group talked independently to the nurse who had accompanied Sh.K. when the blood test was taken; She confirmed that, due to the lack of insurance policy, they, indeed, had to take the blood test in the car and, with this aim, L. Kharbedia had actually violated a regulation established by law and taken the child’s blood covertly, without registration. The laboratory examination of the blood was also conducted unofficially.



After the monitoring group had notified the aforementioned details to the administration, the director of the institution declared that, due to the lack of insurance, Sh.K.'s blood had really been taken in a car. S/he also acknowledged that the agency staff had not been able to find the child's data in the insurance database before the hospitalization, and the policy arrived late. A week before the hospitalization, the child was already in a grave state and received food in an unstable manner. "I only lacked insurance policy for this child; all the other children had insurance, and I told it to the administration of the agency when the head of the administration of the agency, Bela Gogua, arrived in Senaki a week before." The director of the institution showed us an email confirming the notification about the lack of insurance policy.

The conversation with the director revealed one more important detail: Despite the fact that Sh.K. had an extremely severe syndrome with respiratory insufficiency, on May 6, 2012, s/he was first transported to the Senaki Children's Hospital where they already knew it would be impossible to solve the child's problem, because the Senaki hospital does not have the medical equipment necessary for the management of respiratory complications. As the director explained, the child was transferred to the Senaki hospital because the ambulance crew is only allowed to transfer patients to the Senaki hospital. Afterwards several hours later, the Senaki hospital called an ambulance from Kutaisi and the child was transferred to the Kutaisi hospital where it is possible to manage respiratory problems. When asked "What intervention was performed on the child in the Senaki hospital if they were unable to resolve the respiratory problem?" the director of the Senaki children's house answered: "As they were unable to intervene and said they didn't have any equipment, they called an ambulance from Kutaisi ..."

The inquiry into the aforementioned details of the case has made it clear to the Special Preventive Group that Sh.K. was provided with medical assistance late and in an inadequate manner. Accordingly, investigatory bodies must inquire whether the delay (with at least one week) of provision of qualified medical assistance to the child with respiratory problems was connected with his/her death; whether it was possible to avoid the lethal outcome if the State Care Agency had taken an action as soon as it received the notification (a week before the child was transferred to the inpatient unit); How seriously the medical staff of the children's house violated the law by neglecting the child's medical needs; and whether the information was hidden deliberately.

Public Defender of Georgia addresses the Office of the Chief Prosecutor of Georgia with a recommendation to:

- **Investigate the fact of death of Sh.K. and take adequate measures if the guilt of the aforementioned persons is confirmed.**

HEALTHCARE IN BOARDING HOUSES FOR PERSONS WITH DISABILITIES

The monitoring conducted in the houses for people with disabilities in Dusheti and Martkopi, has shown that here, as in the other institutions for disabled persons, the beneficiaries' right to health is not protected. The violations of the stated right are complex and are connected both with shortcomings of the work of inpatient facilities in relation to disabled persons and ineffective communication among different state agencies.

The Case of D.S. – A shortcoming connected with the process of admission to a Boarding House

On June 20, 2012, during the monitoring of the Dusheti Boarding House for Persons with Disabilities, one of the beneficiaries developed diabetic coma. As an explanatory note of a doctor of the Dusheti Boarding House makes it clear, beneficiary D.S. was admitted to the boarding house on June 19, 2012, at about 2 P.M., with a diagnosis of diabetes mellitus type 2, angiopathy, diabetic foot, and collapse of both retinas. The patient had received treatment by taking 30 units of Insulinretard and 20 units of Actrapid once a day. Since the Social Service Agency did not pay proper attention to the beneficiary's health condition (to the contents of medical document Form #100) when s/he was being admitted

and the regime of insulin therapy was not taken into account during his/her transportation, s/he twice developed diabetic coma accompanied by loss of consciousness for a considerable period, first, during the transportation in a vehicle and, for a second time, several hours after the admission to the boarding house. The aforementioned fact posed quite a serious threat to his/her life and health and was a strong stressogenic factor. For further management of the patient's condition, the director of the boarding house contacted the Dusheti medical center of Geo-Hospitals LLC, though representatives of the clinic told him/her that the endocrinologist was not available in the hospital. Accordingly, the patient came under the risk of not being able to receive necessary medical consultation for at least three days (the endocrinologist would be available for consultation after three days). In spite of this, based on the director's personal contacts, after negotiations over the phone, the patient was sent to the Mtskheta Center for Primary Health Care on the same day. S/he was provided with an endocrinologist's consultation and, as a result, his dose of insulin therapy was changed.

The aforementioned case highlights the responsibility of the Social Service Agency for making an adequate assessment when beneficiaries are admitted to care institutions. Since the assessment did not indicate properly to the potentially dangerous condition (diabetes, the risk of development of coma), this factor was not taken into account when the beneficiary's transportation was organized; the receiving care institution was not informed of the attendant medical risk. The Form #100 that accompanied the patient had not been filled out completely.

In the Martkopi institution for disabled people, the preventive group learned that there were serious problems related to the quality of medical service for beneficiaries; according to the administration, the Martkopi Boarding House for Persons with Disabilities is served by the Ambulance Service of the Gardabani District. Due to the small number of crews, the ambulance service only manages to arrive at the boarding house an hour after a call is made. One more formality makes this situation worse: Both in the cases of somatic and psychic diseases, patients are first hospitalized in the Geo-Hospital of the Gardabani District and then transferred to Tbilisi by the Disaster Service. This scheme of hospitalization prolongs the route (from Martkopi to Gardabani – 50 km, from Gardabani to Tbilisi – 25 km), increases fuel expenses, and hinders timely provision of medical service.

The Case of L.M. – Late Hospitalization

A beneficiary of the Martkopi institution for disabled persons, M.G., diagnosed with hypothyreosis and Prader-Willi Syndrome with respiratory insufficiency, who was strongly agitated, was transferred to the Geo-Hospital of the Gardabani District, though, due to his/her severe mental health condition, s/he was brought back from the clinic to the boarding house, as the aforementioned clinic did not have the resources to manage the condition of patients with mental health problems. The patient's condition became so severe that s/he was transferred in the same evening first to the psychiatric unit and then to the intensive care unit of the Tbilisi Referral Clinic. Other beneficiaries also had to travel a long way: L.M. – diagnosed with epilepsy and mild mental retardation; and S. Sh., with exacerbated psychiatric symptoms, who had to travel for four hours before s/he was provided with adequate medical assistance.

The situation described above violates right of the patient to accessible and quality medical service envisaged by the Law of Georgia on the Rights of Patients and contradicts the concept of social integration of persons with disabilities in issues related to accessible medical treatment.

The Case of Z.D. – Refusal to Provide Medical Service

A beneficiary of the Martkopi institution for disabled people, Z.D., who has a diagnosis of post-epilepsy mental retardation and bronchial asthma, has been recognized as legally incapable. The condition of the beneficiary often becomes acute and s/he develops asthma attacks.

Z.D. developed another asthma attack on 21/06/2012; Despite the assistance provided onsite (Inhalation with Salbutamol and a Dexametazon injection), his/her condition remained severe. In agreement with the Irao insurance company, the Disaster Service transferred beneficiary Z.D. to the intensive care unit of Samgori Medi. On 22/06/2012, when

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the director of the Martkopi institution was in the inpatient unit, the patient's condition, according to the physician-reanimatologist, was still severe, while, on 23/06/2012, by 1 A.M., the doctor of the intensive care unit, Jumber Bolkvadze, notified the doctor of the boarding house, T. Bedianashvili, that "the patient has recovered and has been discharged from the clinic". He also told him/her that the Irao insurance company refused to transport the patient from the clinic.

In the presence of the members of the monitoring group, the director of the Martkopi institution made another phone call to the duty doctor who said, "The patient requires continued treatment in the therapeutic unit which the insurance company refuses to fund."

The members of the monitoring group visited the patient on-site and, after their intervention, it became possible to leave the patient in the inpatient unit for two additional days.

The refusal to continue funding of the patient's treatment was caused by the small number of beds in the intensive care unit, on the one hand, and the patient's psychic condition, on the other hand. The staff of the clinic said that the clinic did not have properly qualified caregivers with experience in communicating with and providing care for patients with mental health problems, which prevented them from carrying out adequate medical intervention.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with recommendations to:

- Ensure the retraining of hospital nurses and care-givers with the aim of improving the medical assistance and care for persons with mental health problems;
- Ensure that medical establishments have adequately qualified staff and resources to manage somatic diseases of persons with disabilities;
- Ensure control on the provision of quality medical service and maintenance of medical documents;
- Exercise control and permanent monitoring on the conditions of admission of persons with disabilities to corresponding institutions; Pay particular attention to the health condition and concrete needs of beneficiaries at the time of admission;
- Ensure the expansion of insurance packages to increase the funding limits for consultations of narrow specialists in different fields and medical products for beneficiaries of institutions for persons with disabilities;
- Ensure the simplification of the process of hospitalization with the aim of increasing the accessibility of medical service for beneficiaries of institutions for persons with disabilities;
- Conduct an inquiry into every individual case of failure to provide adequate medical service for children and adults with disabilities and take measures envisaged by the Georgian legislation to respond to and prevent such cases in the future.

ORGANIZATION OF NUTRITION

Nutrition of Infants and Diversity of Food Products

In order to ensure children's full growth and development, it is necessary that the principles of full and safe nutrition be taken into account. As indicated in the standard #10 of the State Standards of Child Care, "The service provider shall

provide the consumer with safe food which meets the consumer's physiological requirements for food and energy and, at the same time, take into account the consumer's individual requirements."¹⁵⁹

When assessing the food menus of infant houses, we noticed the lack of fruits; In June, children were given 150-200 grams of apple – for five days only, and in the Tbilisi Infant House – for three days only.

The doctor, accountant, administrator, and director of the institutions draw up the menus jointly. The distribution of food rations is supervised, though it is not documented whether a child really received the norm of albumens, fats, and carbohydrates established according to his/her age. The latter makes it practically impossible to monitor whether infants receive a sufficient amount of food.

The Alimentary Units of Infant Houses

The repeated monitoring in the infant houses has made it clear that these institutions only fulfilled those recommendations on the sanitary rules and norms of the organization of nutrition that were relatively easy to implement.¹⁶⁰ The boards and knives were marked in the institutions, and garbage was collected in a foot-pedal garbage bin. However, the institutions still failed to keep a log on checking the hygienic condition of the staff employed in the kitchens. At the time of the monitoring, the institutions did not keep a log on the assessment and control of cooked food (the Tbilisi Infant House), because, as the administration explained, “there is no such demand from the Agency?”

The physical environment and equipment in the kitchens of the infant houses have not changed. In the Tbilisi Infant House, as at the time of the previous monitoring, the staff is still preparing to renovate the food preparation sections of the kitchen, because the infrastructure is in need of repairs. The alimentary unit of the Makhinjauri Infant House is also in need of repairs.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with recommendations to:

- **Ensure the organization of child nutrition with adequate quality;**
- **Ensure the provision of food with adequate nutritional value according to the norms determined by children's age needs for the beneficiaries of infant houses.**

ORGANIZATION OF NUTRITION IN BOARDING SCHOOLS

The menus of the Akhaltsikhe Boarding School were not diverse, with surplus nutrition with carbohydrates; The beneficiaries consumed vermicelli or macaroni soup with 600 grams of bread on a daily basis. The menu in the Chiatura Boarding School is incomplete and does not contain fruits; One beneficiary consumes 500 grams of bread on a daily basis. The same trend is observed in Kutaisi.

Food is not checked organoleptically (with outward signs) in any of the boarding schools, or only dinner is checked (Kutaisi).

¹⁵⁹ The Standards of Child Care.

¹⁶⁰ The recommendations contained in the 2010 report of the National Preventive Mechanism were developed in accordance with the norms established by the November 12, 2003 Order No. 280/Nof the Minister of Labor, Health and Social Affairs of Georgia on Approval of the Sanitary Rules and Norms of Organization of Nutrition in Children's Pre-school Institutions.

HYGIENIC CONDITION OF THE ALIMENTARY UNITS

In the Akhaltsikhe Boarding School, the kitchen is an average-sized room, which requires repairs; The room has no ventilation system; The floor is covered with tiles, but the tiles have partly come off and the concrete surface is visible. A plastic sheet is attached to the ceiling. There are a lot of insects in the kitchen and canteen. The canteen is also in need of repairs; it has a cobblestone floor, with stones off in some places. The menu for the children is written on a small board in the room.

At the time of the monitoring, repairs had been completed recently in the kitchens and storerooms of some of the boarding schools, though they did not meet the necessary requirements for safe preparation of food products. Specifically, the alimentary unit in the Kutaisi Boarding School is divided into food preparation and washing sections, though there are no separate tables for processing vegetables, raw meat, and fish in the food preparation section.

There are no anti-insect netson the windows (the Chiatura Boarding School, the Kutaisi Boarding School, School No. 202), and there are no foot-pedal garbage bins for food waste in the kitchens (the Chiatura Boarding School, the Tbilisi Boarding School No. 200).

CLEAN WATER

It should be noted that the boarding schools in Georgia's provinces are often supplied with water with schedule (the Akhaltsikhe Boarding School, the Kutaisi Boarding School), or they use water collected and provided in water tanks. However, at the time of the monitoring, none of the boarding schools were able to show us a certificate confirming assessment of usefulness of drinking water.

CONDITIONS OF STORAGE OF FOOD PRODUCTS

The boarding schools purchase food products on the basis of agreements concluded by the school directors with sole entrepreneurs. However, there are cases when the rules of acquisition and storage are violated.

In Akhaltsikhe, the storeroom is damp, old, and in need of repairs. The procedure of marking and storage of food products was not observed. The refrigerator in the storeroom contained 10 semi-smoked "Kolkhiduri" sausages; 3 boiled "Sagazapkhalo sausages" (6 kg) produced by Tao-Food LLC, without production and expiry dates; 8 kg of frankfurter sausages – the so-called "Tkatsuna" (according to the letter of the school director) – without an inscription; and 2 packages (5 kg) of Turkish macaroni "Guild", without an indication of the expiry date. The freezer contained frozen fish and chicken that were kept together.

The storeroom of the Chiatura Boarding School contained dry food products, vegetables, and old furniture – all kept together. The monitoring group saw unmarked products – macaroni produced by Goliatebi LLC in 5-kg packages, without a production date, with a storage period of 12 months; and Lux premium quality vermicelli, in 5-kg packages, without production and expiry dates.

The newly renovated storeroom in the Kutaisi institution does not have a ventilation system or a small window for natural ventilation; for this reason, vegetables are kept in a refrigerator to keep them from spoiling.

In addition, the acceptance-delivery acts do not contain information about the validity of food.

Public Defender of Georgia addresses the Ministry of Education and Science of Georgia with a recommendation to:

- **Ensure the introduction of the principles of full, diverse, and safe nutrition in the boarding schools for children with disabilities.**

NUTRITION IN INSTITUTIONS FOR CHILDREN WITH DISABILITIES

During the monitoring in the Senaki Institution for Children with Disabilities, the experts constantly expressed their concern about the inappropriate nutritional status¹⁶¹ of children. Weight of the several children was extremely small, which, in its turn, was also manifested in the deterioration of the children's functional status.

The Case of B.I.

At the time of the monitoring, eight-year-old B.I. weighed 12 kilograms, though, according to the experts' visual assessment, s/he suffered from considerable insufficiency of protein-enriched food.

According to the administration, the child's weight was quite good when s/he was admitted to the institution. As they later learned from the child's mother, she squeezed her hands on the child's nose when she gave him/her food, forcing him/her to take enough food in this way. As the director explained, the staff of the institution, naturally, could not use this method and, for this reason, the child could not or did not receive enough food. The person responsible for the nutrition process (the pediatrician) never suggested feeding him/her with a nasogastric tube, though in conversations with the experts, s/he constantly declared that B.I. received the nutritional norm that was appropriate for his/ her age – with appropriate amount of proteins.

The experts of the monitoring group were suspicious of the accuracy of the aforementioned assertion and, with the aim of verifying the facts, attended the full process of feeding B.I. As a result, they found out that after receiving 70-80 grams of the 300 grams of the food portion, B.I. was no longer able to receive it and refused to eat. As the nurse explained, the aforementioned happened every time B.I. was given food.

Later, the members of the National Preventive Group found a bowl with 300-400 grams of pieces of meat, which lay separately from other products on a table in the locker room for the staff (cooks), instead of being kept in the refrigerator or other room; It was covered with a white cloth. When the experts asked the staff why the aforementioned pieces of meat were in the locker room, they declared that it was waste meat that was useless for consumption (however, on visual inspection, the experts did not assess the pieces of meat as spoiled). When asked why the meat was not in the garbage bin, they were unable to answer. A few hours later, when the experts returned to the aforementioned room, the meat was no longer on the table; The staff said that they had thrown it into a garbage bin. The experts checked the garbage bin, but could not find the pieces of meat there. The aforementioned fact gives rise to doubts about possible causes of the deterioration of the nutritional status of the children, which should become an object of adequate examination and response by the responsible agencies.

Public Defender of Georgia addresses the Ministry of Labor, Health and Social Affairs of Georgia with a recommendation to:

- **Ensure the introduction of the principles of full, balanced, and safe nutrition in the institutions for persons with disabilities.**

ASSESSMENT OF PHYSICAL ENVIRONMENT

The Issue of Accessibility in Boarding Schools

Of the aforementioned institutions, the Tbilisi Public Boarding School No. 200 has been fully rehabilitated, the public boarding schools of Tbilisi No. 202 and 203, Chiatura No. 12, and Kutaisi No. 45 have been rehabilitated partially,

¹⁶¹ Nutritional status – correspondence of food products for metabolic needs and processes

while the Akhaltsikhe Public Boarding School No. 7 is yet to be rehabilitated. At the same time, all the aforementioned public boarding schools except School No. 203 have the status of an inclusive school.¹⁶²

As a result of the assessment, it has been established that in terms of organization of adjacent areas, entrances to yards, and yards, only one school out of six (Boarding School No. 202) partially meets the norms¹⁶³ established by the construction standards. Likewise, in terms of penetrability of the buildings, only one boarding school (N 200) partially meets the established norms. The school building is equipped with a wheelchair ramp, though the angle of slope is less than the norm by 1-1.5% (<6%), and the movement area from the door of the central entrance to the ramp is less than 150 cm (<150 cm). The central entrances of the rest of the buildings are mostly unequipped with wheelchair ramps, have high-step staircases, and lack handrails, which creates a dangerous, uncomfortable, and/or impenetrable environment for a person with any mobility.

Unfortunately, the administrations of the institutions often have a mistaken opinion that if a building is equipped with a wheelchair ramp, it is accessible for persons with disabilities. Naturally, the level of penetrability of a building is very important, but, often, it is decisively important what means of movement there are inside the building. None of the buildings of the boarding schools is equipped with an elevator, which means that persons with disabilities can only use one particular floor. In the majority of the institutions, the first floor is occupied by the administration, whereas the aforementioned area is considered as the most accessible for persons with disabilities under conditions of limited accessibility. Restriction of movement inside the building is particularly visible in the Kutaisi Public Boarding School No. 45, despite the fact that the building is being renovated fundamentally, because, in this building, even corridors are connected with one another with high-step stairs, which are also without handrails.

In terms of the accessibility of living rooms of beneficiaries and renewed interior and implements, the situation is relatively good in the boarding schools of Tbilisi (No. 200) and Kutaisi (No. 45). In most of the remaining institutions, the living rooms contain old implements (in some institutions, the rooms are only furnished with beds); the interior is also old. In almost all institutions, the doors to the living rooms do not have locks, are non-functional, or can only be locked from the outside. In this respect, the situation is especially disturbing in the boarding schools of Akhaltsikhe (No. 7) and Tbilisi (No. 202). In the latter, the entrance door has glass panes and is covered with a curtain. It should also be taken into account that the beneficiaries of the aforementioned institution have visual loss or impairment. In one of the living rooms of Boarding School No. 203, the distance between the beds was 45 cm, while in the Akhaltsikhe Boarding School No. 7 this distance amounted to 28 cm. All institutions are characterized with the absence of ventilation systems and the means to call a caregiver (helper), as well as with weak lighting.

All the sanitary facilities (toilets and bathrooms) without exception are impenetrable (door width <85) and/or inaccessible for use – toilets without toilet seats and, if toilet seats are in place, without a supportive handrail and surface, insufficient space – less than <150. The majority of the showers and taps are out of order, or they are absent; The doors cannot be locked, and the lighting is weak. Despite the fact that reconstruction works were carried out in the boarding schools of Tbilisi (No. 200) and Kutaisi (No. 45), unfortunately, we still saw toilets without toilet seats in their buildings.

The plumbing systems, taps, and sewage systems are in a need of repair and replacement. The majority of the canteens in the boarding schools (five out of six), meet the necessary standards of accessibility to some extent, though, unfortunately, this only pertains to the internal environment of the canteens, while the front areas and entrances to the canteens still remain inaccessible.

THE RIGHT TO PRIVATE ABODE AND SPACE

In a number of cases, the monitoring group documented violations of the beneficiaries' right to use private space and abode in the boarding schools. For example, the door to the living room of Boarding School No. 202 has glass panes,

¹⁶² The website of the electronic catalog of educational establishments (eCatalog) created by the Ministry of Education and Science of Georgia - <http://catalog.edu.ge>

¹⁶³ Order No. 1 of the Ministry of Urban Planning and Construction of February 3, 2003 which approved: "Living Environment for Invalids, the Standards of Planning Elements" and "The Standards of Planning Elements of Public Buildings and Facilities for Invalids".

but not curtains; The doors to the living rooms, toilets, and shower rooms of the majority of the boarding schools are only locked from the outside, or they do not have locks at all.

The distance between 15 beds in the living room (area – 49.14 m²) of Boarding School No. 202 was 46 cm (3.28 m² per beneficiary), while in the Akhaltsikhe Boarding School No. 7, this distance was 23 cm, which is a clear violation of a person's right to private space.

RESTRICTION OF ACCESS TO MEANS OF COMMUNICATION AND EXCHANGE OF INFORMATION

In none of the boarding schools do beneficiaries enjoy full access to means of communication to receive and impart information, communicate freely with the outside world, and not be isolated from the society.

There are no common use telephones in the boarding schools, which could be available to beneficiaries for 24 hours a day.

The computers are located in the educational part of the buildings; The computer rooms mostly open at 9 A.M. and close at 4 P.M., and they are closed on weekends. The computers are often occupied by teachers themselves; The situation is made worse by the small number of computers, their poor technical condition, and limited access to the Internet. A beneficiary of Boarding School No. 203 told us that s/he had last used a computer two months before and only for a very short time, while a beneficiary of Boarding School No. 202 declared that there was a queue for using a computer and the Internet. It is also noteworthy that, according to official data, Boarding School No. 203 has 41 computers and Boarding School No. 45 has 13 computers, whereas, in reality, Boarding School No. 203 has 10 computers and Boarding School No. 45 has 3 computers.

Under the existing situation, mobile phones remain the only means of communication for beneficiaries, but not everyone has his/her mobile phone and can afford paying for this service.

The boxes for complaints are unsealed in every institution, which makes it impossible to check when they are opened and closed and whether a complaint reaches the addressee.

RESTRICTION OF ACCESS TO MEANS OF PROTECTION FROM RISKS CAUSED BY NATURAL DISASTERS

“States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”¹⁶⁴

The staff and beneficiaries of the boarding schools have practically no information about risks (dangers) caused by natural disasters and about the means of avoiding and decreasing them. The majority of the institutions do not have an evacuation plan, or their evacuation plans are outdated. The staff and beneficiaries have never taken theoretical and/or practical training on these issues. The majority of the staff was not able to tell the difference between the actions that should be taken at the time of a fire and an earthquake.

The staff do not know in what form and by what means they should inform beneficiaries (Persons with visual impairment, those using a wheelchair or other subsidiary means, and those with hearing impairment, restricted mobility, or mental restriction) in the case of this or that disaster and with what procedure, sequence, and means beneficiaries should be evacuated from the building.

The majority of the institutions (four boarding schools out of six) are not equipped with fire safety equipment.

¹⁶⁴ The UN Convention on the Rights of Persons with Disabilities of December 13, 2006, Article 11

Public Defender of Georgia addresses the Ministry of Education and Science of Georgia with recommendations to:

- Ensure that the sanitary facilities and living rooms of the institutions are equipped with locks, so that beneficiaries are able to use their private space;
- Ensure that the institutions allot space for common use, where a telephone will be installed and function for 24 hours a day (with the observance of the right to confidential conversation);
- Equip the institutions with an optimal number of computers, with Internet access, so that beneficiaries living in the institutions are able to use the aforementioned for a reasonable period of time;
- Ensure that the heads of the institutions organize experts' assessment of the infrastructure of the buildings, so that the shortcomings, that hinder the exercise of rights to movement and other rights of the persons with disabilities, are revealed and eradicated in a consistent manner;
- Provide the staff of the institutions with training on the management of risks of natural disasters; Develop evacuation plans, which both, the staff and beneficiaries, will get acquainted with; Equip the buildings with means of safety – fire extinguishers, medicine bags/boxes, alarm systems (auditory and visual), etc.;
- Ensure that senior officers of the administrations seal the boxes for complaints with the corresponding procedure;
- Ensure that central ventilation systems are installed and put into operation in the buildings and facilities;
- Ensure that plumbing systems, taps, and sewage systems are repaired and replaced;
- Ensure that the equipments are repaired and replenished.

THE ISSUE OF ACCESSIBILITY IN BOARDING HOUSES FOR PERSONS WITH DISABILITIES

According to the information posted on the official website of LEPL State Care Agency, in the Dusheti Boarding House for Persons with Disabilities, “in 2012, the first and second floors of the main block were fully rehabilitated, and construction works of open balconies were carried out.” In spite of this, the central entrance to the institution still has a staircase whose step height amounts to 27 cm (the norm is no more than 12 cm); in addition, the staircase has no handrails, which makes it quite uncomfortable and dangerous to use. The same is the case with the wheelchair ramp attached to the left side of the staircase whose width (< 120 cm) and angle of slope (< 6%) make it dangerous to use.

In the two remaining boarding houses, the central entrances are penetrable, though there are also some shortcomings in these institutions. Specifically, the central entrance path to the Dzevri Boarding House is covered with concrete, but the concrete has come off in some places, which hinders movement with a wheel chair. In the Martkopi Boarding House, which has been fully rehabilitated, there is a wheelchair ramp leading to the central entrance, though the ramp does not have a 150-cm plat format any of its ends as determined by the norm; The four-step staircase at the entrance does not have a handrail and its height does not correspond with the established norms. The aforementioned does not create an impenetrable environment for wheelchair users or persons with restricted mobility, though it hinders their free movement.

As for the areas adjacent to the boarding houses, in Dusheti and Martkopi they are covered with asphalt and leveled, while in Dzevri the asphalt cover is uneven and has come off in some places. The squares of all the three boarding

houses are surrounded with high (<12 cm) kerbs, which makes it impossible for a wheelchair user to move around without another person's help.

As for the possibilities to move around inside the buildings, in the boarding houses of Dusheti and Dzevri, it is only possible to move between the floors using the staircase, with the step height exceeding the established norm and amounting to 16 cm, while the boarding house of Martkopi is equipped with a modern elevator which is turned off not to allow beneficiaries to use it, and, here too, people mainly move between the floors using the staircase, with the elevator used only in emergencies.

We must also note the positive changes that followed the full rehabilitation of the boarding houses of Dusheti and Martkopi. The façade, interior, and implements of the buildings have been renewed. The living rooms are equipped with new and comfortable furniture, TV sets, and central heating systems. A large part of the sanitary facilities have also become accessible.

At the same time, it has been documented that a large part of the TV sets in the living rooms are non-functional; The administration declares, that they do not have corresponding antennas. The living rooms of the Dzevri Boarding House, apart from rare exceptions, contain nothing but beds. The doors to the rooms cannot be locked; Three rooms of the institution have no doors at all. According to the caregivers of the institution, the doors were removed from the rooms of "agitated" beneficiaries to make it possible to pay more attention to them.

None of the living rooms of the boarding houses is equipped with an alarm button and/or a button to call a helper.

The boxes for complaints are unsealed in every institution, which makes it impossible to check when they are opened and closed and whether a complaint reaches the addressee.

None of the institutions has a functioning library; There is a small number of old books in the psychologist's rooms or resting rooms.

The canteens of the boarding houses of Dzevri and Martkopi are penetrable and accessible despite certain incompatibility with the norms. In the Dusheti Boarding House, the canteen is located in a separate building, and the beneficiaries have first to leave the building of the boarding house through high-slope stairs (> 12 cm) and then to reach the canteen through another set of high-slope stairs. There are unsanitary conditions in the canteen toilet, and it is entirely unadapted and damaged. As the monitoring group found out, the Dusheti Boarding House is planning a full rehabilitation of the canteen; The head of the institution is receiving consultations from NGOs for disabled persons to obtain the construction norms necessary for the arrangement of the canteen.

The **sanitary facilities** in the Martkopi Boarding House are accessible, though they are arranged in violation of the established norms. Some toilet seats do not have a surface, and the supportive handrails are located in the wrong place. The sanitary facilities in the Dusheti Boarding House are penetrable, though most of the toilet seats are either without a surface or rickety; In addition, the doors to the sanitary facilities cannot be locked. As for the Dzevri institution, the sanitary facilities there are impenetrable and inaccessible, and most of the common use toilets are without toilet seats and have high thresholds at the entrance.

The boarding houses of Dzevri and Martkopi do not have a stock of subsidiary means (wheelchairs, crutches, etc.). A large part of the beneficiaries use damaged wheelchairs. Despite the fact that the Dusheti Boarding House has a stock of mobility assistance equipment, the beneficiaries still use damaged wheelchairs. The beneficiaries in all the institutions express concern about the locally produced so-called "all-terrain wheelchairs".

Specifically, they point out that these wheelchairs come out of order soon, do not have a hand support, and a cushion cannot be attached to them, due to which they prefer to use damaged wheelchairs.

Common use telephones and computers are not available for beneficiaries of any of the institutions, with the exception of the Dusheti Boarding House where beneficiaries have Internet-connected computers under individual ownership.

Considering that the vast majority of the beneficiaries cannot move around independently outside the territory of the institution, it can be argued that technical means of communication remain the only way for them to communicate with the outside world. Furthermore, under the existing conditions, the majority of them are completely isolated from the society, which makes them even more alienated.

MEANS OF SAFETY FOR CASES OF NATURAL DISASTERS

None of the members of the staff and beneficiaries are informed about dangers caused by natural disasters and methods of avoiding or decreasing them, including the means available in the institution.

The boarding houses either do not have an evacuation plan or their plans are outdated. The staff and beneficiaries have never taken theoretical and/or practical training on these issues.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- Ensure that the administrations of the institutions seal the boxes for complaints in compliance with the corresponding procedure;
- Ensure that central ventilation systems and elevators are installed and put into operation in the buildings and facilities;
- Ensure that plumbing systems, taps, and sewage systems are repaired and replaced;
- Ensure that the implements are repaired and replenished.

ACCESSIBILITY IN INFANT HOUSES

Yards of Institutions – The adjacent areas are asphalted and accessible, but the existing squares are surrounded by high kerbs, which create an obstacle for nurses who walk children in baby carriages, on the one hand, and are impenetrable for persons with disabilities who use the institution, whether they are parents or staff members, on the other hand.

The building of the Tbilisi institution is impenetrable for disabled persons, as it has a high staircase without a handrail **at the central entrance to the building**. On the back of the building, there is a mobile (wooden) wheelchair ramp through which one cannot reach the central wing of the building. The Makhinjauri institution has a high threshold at the central entrance which creates an obstacle.

In most of the institutions, persons with disabilities cannot move around **inside the building** without assistance. The Tbilisi Infant House does not have an elevator; The Makhinjauri institution has an elevator, but it does not function. Accordingly, in both of the institutions, it is only possible to move between the floors through the staircase, the height of whose steps is also out of line with the established norms.

The **living rooms** are penetrable and accessible, despite the fact that they are also out of line with the construction norms. The institutions have no rooms for meetings with parents, while the existing rooms in which a parent can be alone with his/her baby are impenetrable and inaccessible for parents/guardians with disabilities.

The children in the institutions have meals in the living blocks; There are no separate canteens for them.

The sanitary facilities in the institutions are penetrable and accessible, though they are not in conformity with the established norms.

The Tbilisi Infant House has a stock of subsidiary means, while the Makhinjauri Infant House does not have any stock of subsidiary means.

The shelters for mothers and infants organized in the institutions are located on the top floors of the buildings, and they are impenetrable and inaccessible for persons with disabilities (parents), which discriminates those who may need to use the shelter.

There are no common use means of communication (telephones and computers connected with the Internet) in the institutions, including the shelters for parents. Due to non-observance of the sanitary norms, there are a lot of insects in the Tbilisi Infant House.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- Take into account the needs of people with disabilities (parents and guardians) who use a wheelchair or have visual or hearing impairment when organizing meeting rooms and shelters for parents;
- Ensure that the administration seals the boxes for complaints in compliance with the corresponding procedure;
- Ensure that central ventilation systems are installed and put into operation in the buildings and facilities;
- Ensure that plumbing systems, taps, and sewage systems are repaired and replaced; ensure that the implements are repaired and replenished;
- Ensure that anti insect nets are attached to the windows of the Tbilisi Infant House.

ACCESSIBILITY IN INSTITUTIONS FOR CHILDREN WITH DISABILITIES

The territory of the Senaki Institution for Children with Disabilities is covered with uneven asphalt on which a wheelchair user or a person with restricted mobility would find it hard to move around. On the territory of the Kojori children's home there is a square with attractions; the square is a long way from the building of the institution, while the road leading to it is covered with gravel, and a child who uses a wheelchair would not be able move around on it independently.

The central entrances to the children's homes are penetrable; They are equipped with wheelchairs ramps which are arranged in violation of the established norms. Inside the Senaki institution, it is impossible for a wheelchair user to move around without assistance; There is no elevator, and one can only move from one floor to another through a staircase with high steps. The corridors are connected with small stairs and wheelchair ramps, which are also out of line with the established norms and absolutely useless for beneficiaries with disabilities. In the Senaki institution, beneficiaries live on every floor, and, due to the existing environment, their ability to communicate with one another is severely restricted. All this restricts their right to private life.

The living rooms of the institutions cannot be locked and are equipped with old implements (furniture). In the Senaki institution, the light switches for the living rooms are installed outside the rooms.

The sanitary facilities in both institutions are arranged in violation of the established norms; They are penetrable, but inaccessible. The space in the toilets is not sufficient for a wheelchair (< 150 cm); The toilet seats are either without a surface or rickety; the supportive handrails at the toilet seats need reinforcement. The doors to the toilets and shower rooms cannot be locked.



The canteen in the Kojori institution is under repairs. The canteen in Senaki is penetrable and accessible, though it is arranged in violation of the established norms. A large part of the beneficiaries receive food in their living rooms. The staff takes food to the rooms by hand.

In both institutions, the beneficiaries use amortized implements. None of the beneficiaries uses special cushions for the wheelchair. The beneficiaries of both institutions are dissatisfied with the locally produced wheelchairs, despite the fact that, according to them, the wheelchairs were tailor-made for them.

None of the institutions offer beneficiaries accessible common use means of communication – telephones and Internet-connected computers. There are no computers in the Kojori institution, while there are only three computers in the Senaki institution; Only one of these computers is in working condition and it is also without Internet connection. Only the so-called “overgrown” beneficiaries use Internet-connected computers under individual ownership. There is no central heating system in the Senaki children’s home.

OBSERVANCE OF SAFETY AT THE TIME OF NATURAL DISASTERS

None of the staff and beneficiaries of the institutions has any information about the dangers caused by natural disasters and the methods of avoiding or decreasing them, including the equipment available in the institution.

The Kojori children’s home has fire safety equipment, but it does not have an evacuation plan. The staff and beneficiaries have never taken theoretical and/or practical training on these issues.

Public Defender of Georgia addresses the State Care Agency with recommendations to:

- Provide beneficiaries with subsidiary means in accordance with their individual needs;
- Ensure that beneficiaries can move around freely inside the institution;
- Ensure that the administration seals the box for complaints with the corresponding procedure, since, in this case, there will be more guarantees that the complaints reach the addressees with the procedure established by law;
- Ensure that central ventilation systems are installed and put into operation in the buildings and facilities;
- Ensure that plumbing systems, taps, and sewage system are repaired and replaced;
- Ensure that the implements are repaired and replenished;
- Ensure that a room is allotted for a library and it is replenished with new literature.

Monitoring results of Small Group Homes for Children

In December 2012, Public Defender's Special Preventive Group carried out its monitoring in the section of small group homes for children. Specifically, they checked small group homes for children in Khashuri (2 houses), Chiatura, Zestafoni, Khoni, Bajiti, Kutaisi (3 houses), Ambrolauri, Tsalkajikha (2 houses), Ckhorotsku, Lanchkhuti, Ozurgeti (2 houses), and Batumi. Public Defender's Special Preventive Group consisted of the Ombudsman's Office Prevention and Monitoring Department staff (lawyers), as well as National Preventive Mechanism experts – one psychiatrist, one psychologist, and one expert in childcare.

During the monitoring, checks were conducted on the environment where children were housed, the standards according to which they were looked after and the quality of the service, as well as the house infrastructure and the level of sanitation and hygiene.

Two members of the Special Preventive Group – the psychiatrist and the psychologist – held a confidential interview with the beneficiaries. The other members of the group interviewed the foster parents, the minders, and in some cases the members of the Special Preventive Group also spoke to the social worker or to the house manager. During the monitoring, a great deal of attention was paid to the children's psychosocial state, how they were treated and to their accessibility to medical assistance.

All this led to revealing problems which will be elaborated in detail below and that necessitate special attention, chiefly from the side of the Ministry of Labour, Health and Social Affairs of Georgia.

It is evident, there is no uniform control mechanism established by the state over the matter. Despite the fact that closing down big institutions was a step forward and bettered the children's conditions, there is an impression that the state has passed over the management of the Small Group Homes for Children to private organisations to an extent that it lost interest in further developing and bettering underprivileged children.

Until today, a core of problems needs to be addressed, for instance the care for a child's psychological and physical health is not fully ensured. Yet these aspects are vitally important, as most of the children, who live in these houses, are victims of violence, including by their parents. Such children need regular and highly qualified psychological and oftentimes also psychiatric help, and that is of course not ensured on spot. Until today instances of small scale violence from teachers and/or school staff signify the inadequate training they have received, as well as inappropriate mechanisms of control.

Like in previous years, at present, the paperwork is not fully and properly completed (form IV-100/a) or the forms are only filled out at a superficial level (individual development plans).

It has to be emphasised that the beneficiaries of children homes face an uncertain future that the state takes care of them until they are 18 and there is no further life plan for them after that age. In other words a plan for their subsequent education, development and work placement is simply non-existent.

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Against this background, the initiative of the Georgian Brewery “Natakhtari”, which is to take care of the Khashuri Children Home’s past and present beneficiaries, ought to be warmly welcomed: during the monitoring of the Khashuri Small Group Home for Children, three girls were taking courses in a college in computing and another two girls were studying Russian and English. Out of the past beneficiaries, thanks to the support of „Natakhtari“ one girl was studying towards a stylist diploma and another boy was an apprentice as car mechanic. It would be desirable other private companies in Georgia to follow Natakhtari in such initiatives and support children’s homes, as well as that the State to show more initiative with this regard. In most of the cases the State and private companies pay attention to the children’s homes during festive periods and provide them either with sweets or some sort of household appliances. This has to be supported; Nevertheless such activities are not aimed at fostering the long-term development of children’s homes and their beneficiaries.

PHYSICAL ENVIRONMENT

In 2012 out of all the changes that were made in childcare institutions the most notable are infrastructural ones: the change from large institutions to small group homes. This was carried out in the entire western Georgia and small group homes were opened in Sachkhere, Ambrolauri, Khoni, Tsalenjikhi, Lanchkhuti, and Ckhorotsku Municipalities. These homes were added to those small group homes, which had been operating before 2012. The management of the newly opened small group homes was undertaken by various organisations, more specifically by “SOS”, “Momavlis Khidi”, and “Biliki”. It is commendable that small group homes continue to exist under the management of organisations such as “Bres Saqartvelo” and the “Young Teachers Association”.

The newly opened small group homes are based on Polish and British Models and envisage the service of 8-10 beneficiaries. The houses are identical as regards the internal make up and facilities; But the two models differ in their management, financing and upbringing rules of the beneficiaries.

It has to be seen in the positive light that almost all of the houses have central heating system (the heating is either provided by big wood burning ovens or gas ovens), necessary and adequate furniture, and appliances; In addition to this they have all the necessary prerequisites for hygiene, telephones as well as good ventilation and natural light flow thanks to big windows. The bathroom and dining facilities are well equipped. During the monitoring, in all of the facilities the expected standards of cleanliness were met. All of the beneficiaries have their own space and compartments to store their belongings.

In all of the small group homes the beneficiaries have adequate rooms to sleep: 2 modern bunk beds with adequate linen, closets, night tables, and study desks. The flow of natural light into the room is sufficient and all the windows have curtains that give additional cosiness to the rooms. All room measurements in the small group homes range from 11 to 17.6 m².

In addition to this, all of the small group homes have various sized patios and yards with trees and plants. All the houses have adjacent small concrete footpaths. The yards are encircled with fences of between 1.30 and 1.55 meters.

It is noteworthy that in Ozurgeti the backyard part of a small group home for children under the management of the “Young Teachers Association” was isolated from a small river with a concrete wall.

Despite the positive changes that were presented above, in some small group homes there are problems that need to be dealt with in a timely manner, so that the interests of the beneficiaries and the staff of such homes are protected.

Out of all problems, one ought to single out the inadequacy of the canalisation system, which as it turned out was due to a wrong calculation done when constructing the homes. To be more specific, in a number of small group homes where the canalisation system is not planned accordingly, oftentimes it breaks down and results in a fast filling up of the system, as well as in its blocking; This in turn results in the malfunctioning of toilets and in some houses there was also bad smell detected. This was the case in the small group homes of Sachkhere Municipality, Bajiti village, and Lanchkhuti municipality, Lesa village.

In some of the small group homes the water supply system presents a major problem. All of the houses receive water according to a timetable that exists in that area, be it a village or a city. In the cities the water supply aspect is more or less dealt with, but in the villages where some of the small group homes are located the water supply problem is apparent and still remains to be settled. In almost all of the houses, there is a well, but the problem with the water supply still persists. In Bajiti village, Sachkhere Municipality, where a small group home is located, water supply is not fully done via the central supply system, and only 4 to 6 buckets of water is being generated from the well thanks to an electric motor. This is the reason that small group home staff is forced to bring drinking water from the village spring. At times they also call the village fire fighters and the fill up the water tank that is installed near the house.

Various types of problems are detected in the Batumi small group home. The house is located in a two-storey building, where access to the second floor is only possible from the staircase installed outside. In general, the house needs repairing due to the climate and weather conditions in Batumi; The boys' sleeping room is badly affected by mould. The house has no central heating and the beneficiaries are forced to be in a common space room, where a wooden oven stands. The children's sleeping rooms are not warmed at all.

It is equally significant to stress the importance of beneficiaries' leisure time planning and the necessary equipment and environment. Despite the fact that the houses are well equipped with all the necessary appliances and have adequate infrastructure, in none of them there is internet and in some places, like in Khoni small group home, the PC was broken. In addition to this, during the monitoring the TV service was also inadequate due to the satellite dish not being properly set up. It is important that the beneficiaries have toys according to their age, the shortage of which was evident in all the small group homes. Equally important is the facilitation of sports activities and provision of adequate toys (for instance in some places the beneficiaries were complaining about not having footballs).

Based on the above and due to the peculiarity of the nature and aim of small group homes as well as their level of occupancy, it is important that all problematic issues are dealt with in time. It is also important to establish constant control over the infrastructure of the houses, so that problems do not worsen or spur anew.

PSYCHOLOGICAL ENVIRONMENT

Public Defender's Special Preventive Group (Psychiatrists and Psychologists) interviewed 103 beneficiaries, out of which 40 children were interviewed again.¹⁶⁵ During the monitoring process special attention was paid to revealing possible instances of violence, inhuman or degrading treatment, as well as negligence.

The interviewing of the beneficiaries was done in private and confidentially, voluntarily. In case the beneficiary consented to the interview, the interview was done in a familiar, friendly environment, using semi-structured interview method. The child could suspend the interview at any time. Additional information on beneficiaries was obtained via studying the documentation available at children's home and by interviewing those responsible for foster care (workers, foster parent, house managers etc.).

With informed consent the interview was audio taped. The used documentation during the assessment was photographed.

During the monitoring phase, the Special Preventive Group paid extra attention to those children who underwent the de-institutionalisation process painfully.

During the monitoring period, the Special Preventive Group experts revealed that in a comparison of the big institutional care with small group homes, children who had experience with big institutions now had a positive experience with small group homes. This was especially connected with the everyday living conditions, described in words such as: "it is cosy and warm", "it is clean", "it is renovated and new", "we are being fed as we would like", "we have clothes to wear", "we are looked after, cleaned and clothes are washed" etc. Nevertheless, none of the children has experienced close, family type of relationship or support, which are qualities that enable to differentiate between small group home

¹⁶⁵ These youngsters were interviewed by the special preventive group during last year's monitoring as well.

and institutional care. Of course there were instances of lip service in favour for some upbringers and this in turn raises suspicion that children were made to speak so.

Out of all small group homes, Ozurgeti small group home (Young Teachers Association) should be singled out with a life style that is calm and interesting. Beneficiaries are well informed and aware, and they can freely debate and discuss issues of child rights; They take decisions as a team, are concerned about other children who are forced to live in their biological families in dire conditions, and would like to see more interest and active participation from society and social services, so that these children have “normal and adequate living conditions” as well.

In 2011 the human rights defenders assessed the condition of one of the beneficiary of the institutional care, M.T., as grave and stated that the child was a victim of family violence as well as of inhuman treatment. At this stage it was not possible to interview the child due to him/her being at additional classes at schools. According to the child’s foster parents, the child’s behaviour had considerably improved and it was participating in an inclusive education programme, though it was lagging behind in the school programme in comparison to his/her age. The child, at this stage, did not need psychological intervention.

Khoni small group home children are in a different situation. They are unhappy about not having access to mass media information, leisure and sports facilities. They have no access to internet, footballs or tennis, the TV shows only 4 channels and fun times are spent playing cards or domino, or playing football with a borrowed ball. They say the following: 14 year old G.K.: “ – what shall I watch on TV, there are 4 channels in total, why is it so complicated to install the satellite dishes... the computer crashed down, and they did not fix it... and it costs only 15 GEL to fix it... we play cards, or domino, or play football with the borrowed ball”; 9 year old M.J. recounts: “of course I am interested in football, but we do not have the ball... I was told they would buy one for us, but they did not... On the pitch we play football with a borrowed ball”.

In the majority of small group homes, it is apparent that children are rather cautious and keep their distance from the up bringers. Some beneficiaries say they will never fully be frank and open about their problems with the up bringers, as they do not trust them or do not expect that the up bringers would actually take interest in their problems. Most of the children do not trust the foster-mother and prefer to open up about their problems with their peers or siblings, or not to speak at all with anyone about their feelings and problems.

The beneficiaries who have experience in the institutional care to closely work with psychiatrists underline the lack of psychological help available in small group homes.

Apart from children’s distrust towards the up bringers/foster parents, oftentimes, in the up bringers notes, one can encounter observations of children’s silence that expresses their sufferings and hardships: “...does not speak about his/her mother”, “...does not want to speak about the biological family”, “...they have negative feelings towards their family members, do not mention neither their mother nor their father. They only speak about their grandmother”.

INAPPROPRIATE TREATMENT AND VIOLENCE AGAINST CHILDREN

Violence against children and child protection referral procedures

Pursuant to Article 19 of the Convention on the Rights of the Child, the state is obliged to protect the child from all forms of violence while in the care of parent(s), legal guardian(s) or any other person who has the care of the child and for this reason the state is obliged to take appropriate legislative, administrative, social and educational measures.

Obligation to protect children from violence is upheld by Article 11 of the Standards for Child Protection. This applies to all of the beneficiaries, not only during their stay in these homes, but also outside the stay period. To be more specific, the child care provider should be familiar and use the local law for child protection against violence such as Georgia’s Law on “Prevention of Domestic Violence, Protection of an Assistance to Victims of Domestic Violence” <http://codex.ge/1390> and “Establishing Child Protection Referral Procedures” (Joint Decree of Georgia’s Minister of Labour,

Health and Social Affairs, Minister of Internal Affairs, and Minister of Education and of Sciences of Georgia, 31 May 2010, N152/N-N496-N45/N). The decree aims to establish a system for child protection through a referral procedure unit coordinated work and identifying an effective mechanism for speedy reaction in case an instance of violence against a child occurs. Pursuant to the referral system, revealing cases of violence against children is the obligation of all entities that have contact with a child.

Article 4, para 4 of the said decree reads that in case there is suspicion that the child is a victim of violence, the child care entity specialised units, within the framework of referral procedure analyses in such instances, and in case of necessity, refers it to the police and to the social services for adequate reaction. In addition to this, in close cooperation with the agency, they have to check on the child's further condition.

During the conducted monitoring, the special preventive group learnt that the beneficiaries had become victims of violence in their own families, and despite the fact that guardians knew about this, no legal measures were taken against it. In Kvaliti village, the small group home foster mother C.I. informed that in May 2012, small group home beneficiaries K. C. and I. C. were visiting their father, B. C., but they left his place earlier than expected and returned to the small group home due to their father's physical violence. Despite the fact that the children complained about this fact to the small group home foster parents, the latter did not communicate this neither to the police nor to the social services agency. It has to be noted that not only was this instance not recorded in the violence or injury incidents journal, which ought to have been run by the small group home staff, but such a journal was even non-existent. Such a reaction should be considered as a violation of the standards for child protection against violence and abuse, as well as negligence, not only towards the process of children's rehabilitation, but also from the standpoint of failing to adopt legal measures against the reoccurrence of such a case and against the abuser himself.

In small group homes there is no mechanism that would reveal the acts of violence/inappropriate treatment recording, bringing those culpable to justice and internal monitoring system. In addition to this, no steps are taken towards eradicating child discrimination and the prevention of inhumane treatment.

Documenting facts of violence/inappropriate treatment is not done in any of the children care homes, as a fact gathering and documenting journal simply does not exist. Despite the fact that the National Preventive Group members, during last year's monitoring, recommended that "big" and "small" institutions staff open such journals – a recommendation seen in Public Defenders reports as well – in small group homes this recommendation was not taken into account.

Recommendation to Georgia's Ministry of Labour, Health and Social Affairs:

- **To make aware the small group home staff and to ensure their training and requalification according to Georgia's Law on "Prevention of Domestic Violence, Protection of an Assistance to Victims of Domestic Violence" and "Establishing Child Protection Referral Procedures" (Joint Decree of Georgia's Minister of Labour, Health and Social Affairs, Minister of Internal Affairs, and Minister of Education and of Sciences of Georgia, 31 May 2010, N152/N-N496-N45/N).**

INAPPROPRIATE TREATMENT ON BEHALF OF FOSTER PARENTS/UP BRINGERS ■

During 2012, instances of inappropriate treatment from foster parents/up bringers were reported by the beneficiaries to the National Preventive Group from the following childcare homes:

1. Kvaliti Children's home, 4 beneficiaries recounted their stories: 10 year old N.D. said that „the mother pulls his/her ear up;“ 12 year old K. Ch. said that he/she was „under constant beatings, when uncle Vakho becomes angry with him/her, he goes to K. Ch. and usually gives him/her a kick with his foot“; 15 year old I. Ch. says: „Tsitso beats K.Ch., a couple of times she raised K. Ch. and dropped the latter on the bed, Dato, the so called „foster father“ verbally insults and shouts at the two, i.e. K-Ch and the brother, and Tsitso closes the door to the room and says that until I do not

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finish studying home work for school she will not open the door, they know how to push around, they shout, and they pull the ears“; According to 15 year L.M. „It is often that Dato and Tsitso shout“; 18 year old O.G. says that the beneficiary’s brothers, K.CH. and I.CH. are shouted at, locked in the room by the „parents“.

2. In Kutaisi Children’s Home, 2 beneficiaries were interviewed: 13-year-old N.B said: “when the senior management is upset, he is shouted at and sometimes his ears are pulled up”; According to 18 year old T.Z: “up bringers sometimes shout”.

3. Tsalenjikha Children’s Home, 3 beneficiaries gave the recount: 11-year-old G.Sh. said “that Maia, the up bringer, shouts, pulls up the ears, she usually pulls Mari’s ear, Tengo (the up bringer) pulled Lasha’s ears up...”; 12 year old T.Sh: “Maia is stricter, she easily gets mad and shouts about everything”; According to 11 year old L.S: “Maia gets mad easily, she is always shouting, pulling the hair, slapping and beating, pulling the ears out, slapping in the face and shouting happen frequently... Tengo usually pulls the ear out and shouts”...

4. Qutaisi SOS Children’s Home, 5 beneficiaries: 10-year-old L.R says: “I sometimes upset aunt Nana and she pulls my ear and shouts at me... other aunties are also doing the same, they pull ears and shout... I do not like Tiko as she pinches my ears, she has long nails...”; According to 7-year-old M.R: “Aunt Nana knows how to hit hard at the head, mostly aunt Tiko slaps ones cheeks, aunt Shoka hits on the head, and Salome hits on the legs...”; 10 year old N.D and 7 year old R.D say: “Aunt Tiko vaccinates us (pinches us), she hits me in the head... Most of all shouts Tiko, Shoka shouts as well...”; G.M who is 10 says, “Marina pulls my ear up and pulls my hair, she shouts at me and tells me off, she treats the other children the same way as well...”

5. Batumi Children’s Home, 2 beneficiaries: 8-year-old S.Q says: “Bachuki hits me, Mzia, Nunu and Otari do the same... I fear them a lot ... and they beat Luka often (this is the child who is mentally underdeveloped and is not diagnosed); According to C.Kh who is 16 years old “in Urekhi children’s home the children were beaten”. On our question if the same happens here, C.Kh responded: “I have not seen that someone was beaten... if you asked in Urekhi, I would respond that I have not seen that someone was beaten...”

6. Khashuri Children Home, 3 beneficiaries: 11 year old N.M “Marina gets after her, once when she was mad at her she beat me up...,” N.M steals “malako” (Russian word for milk) and this is why N.M is beaten; N.M continues: “then me and Megi we beat each other, and then teacher Nona beat us both...”; 13 year old M.R: “when we make them mad, all of the teachers shout”. According to M.M: “The teachers lock N.M inside the room...”.

As regards other children’s homes, out of the surveyed beneficiaries only two of them complained that the foster father would hit them in the head (14 year old G.K. in Khoni small group home) and pull their ear at school and at home (9 year old G.V. from Lanchkhuti small group home). Majority of the children say the up bringers “give them advice”, “talk to us”, “all of them shout, but nothing more”.

Hence, in parallel with other problems, in small group homes for children still there are cases of beneficiaries being the victim of inhumane treatment of the small group home staff, more importantly “petty abuse”, which manifests itself mainly in pulling of ears and shouting, though during this past year there are also instances of child beating. On the whole, cases of inhumane treatment and intensively of such actions are diminished in comparison to previous years.

We will touch upon some reasons that, to our mind, in most of the cases established such a malpractice. Despite the fact that in each small group home the number of beneficiaries does not exceed 10 children, violence between the beneficiaries and violence and inappropriate treatment from the up bringers still occurs. One of the reasons is that in some homes beneficiaries can be having various emotional and behavioural problems/violations. In case of inadequate treatment, home beneficiaries create conflicting and strenuous situations and the up bringers cannot deal with such instances other than physical and psychological violence.

The Special Preventive Group, in a number of institutions, identified beneficiaries with specific emotional and behavioural problems, who were not properly diagnosed and had no treatment or could not receive adequate treatment neither in the form of medicine nor psychological help. When the experts interviewed the beneficiaries, it was known

that that psychologists were coming with various intensities and that most of the beneficiaries did not avail themselves of such service for specific reasons. In addition to this, one could not get hands on the documentation that would depict psychologist's work. Apart from the said institutions, beneficiaries with emotional and behavioural problems were encountered in practically all of the institutions.

The said problem probably stems from the state's de-institutionalisation programme process error and inefficiency. More specifically, during the transit period from big institutions to small ones, the general criteria for assessing problematic beneficiaries' need for medical-psychiatric assistance and receiving psychological help was not established, and this is undoubtedly one of the reasons of the above mentioned problem.

VIOLENCE BETWEEN CHILDREN

Physical and psychological violence between children were revealed in practically all of the institutions. This was mainly seen in older children, physically and psychologically abusing younger ones. Those who are managing and working in child care institutions when speaking to the Special Preventive Group do not single out this occurrence as a problem, probably because they regard such violent relationship among beneficiaries to be normal. These instances of violence are not documented and it is impossible to discern if the staff is informed about these issues, if they do not want to make it public so that no appropriate measures are taken, or if they fear that it will show their inability to manage such situations, or if this mere negligence, or if this is something else. More importantly, they do not see the need that those children who are violent receive psychological help and undergo psychiatric assessment. Instead of sorting these problems as well as making them public, the institution staff tries to present the children's violent behaviour as irrelevant, thereby making the problem irrelevant with such phrases as: "everybody is disobedient", "they have a fight and calm down soon", "nothing serious" etc.

The reasons for violent behaviour among children, apart from discriminative reproaches, are the following: a child's uncontrollable aggressive behaviour and responses, using offensive language or raising concerns over hygiene of other children, trying to gain access to the computer, as well as support or protect older siblings. Often times, violence – heteroaggressive or auto-aggressive behaviour in a changed stresogenic psychosocial environment – represents a tool for self-assertion for the adolescent, who has no stress overcoming techniques or is characteristic of the behaviour of a child with mental problems. All this points to the fact, that not only have children with difficult behaviour a hard time adapting, but it also hinders the rest of the children's physiological adaptability to the environment.

Based on the Special Preventive Group monitoring results, we have ground to consider that physical violence amongst children has appallingly spread. Based on the monitoring results, physical violence has become systematic in the small group homes and if during previous monitoring there were only a few complaints by beneficiaries, now complaints on "bullying" are made by majority of them.

Apart from physical violence, often times, children engage in verbal conflicts and react to each other's actions with rage. This was especially evident in the case of Khashuri. One young person's, L.G, problems were documented by the up bringer in the house monitoring journal. From there, we learn that L.G had mental problems and due to his childish behaviour is often laughed at by his/her peers, and this causes aggression and a revenge mode. Mari Tumanishvili, the up bringer, writes the following about L.G in the monitoring journal: 16 year old L.G "in comparison to his age is mentally significantly behind... he/she is very worried about the situation he/she is in. L.G says that everyone laughs at him... L.G also says: "I want to study so I can become a Judge, so I can arrest everyone who makes me angry"... L.G is worried that no one loves him/her: "...I bathed in the water that is gathered behind the house, I was so interested..." L.G went there secretly and was bathing there and children were mocking him... L.G was aggressive".

Unfortunately, the Khashuri example is not an exception, rather an instance clearly showing children's behavioural problems in childcare institutions. Instances of beneficiaries engaging in mutual violence, more or less, were practically found in all childcare institutions. Below we will elaborate on one of the major causes of this problem.

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TREATMENT OF BENEFICIARIES FROM SMALL GROUP CHILDREN HOMES IN PUBLIC SCHOOLS

Based on the monitoring results, special attention needs to be paid to instances of teachers in public schools resorting to “petty violence” (pulling of ears, putting the child in the corner). These are not the sole examples, as most of the children complain about such treatment, irrespective of their mental state and geographical location. It is of high concern that children try to ignore such treatment and perceive this as a normal fact.

During the monitoring phase, cases of beneficiary discrimination by school teachers and their classmates were revealed. The social level of the beneficiaries or their physical disability are the cause of them falling into rage and create tension and bullying between the children. It seems that those working in the child care system cannot manage this problem or are not even informed about this matter. Furthermore, such facts are not documented or staff prefers not to speak about them.

16-year-old beneficiary K.A. from the Tsalenjikha children’s institution is a stark example. According to him, children from the small group home are addressed by both the teachers and the classmates in an inferior manner, and which subsequently triggers his aggression and usage of bad language. According to K.: “the society thinks, since we are in children’s home, we do not know anything... they make up thousand things... they let us hear: ‘you walk around so smelly, we cannot even pass by close to you...’ Then I fight...” In case he plays football and sweats, he says, “what, your children do not sweat? As if they are everything and we are nothing... We are human as well, aren’t we? We are human as well!”

Another victim is 13-year-old M.K from the same children’s home. M.K is the former beneficiary from Tsalenjikha big institution children’s home, who during the 2011 monitoring period was qualified by the Special Preventive Group experts as the victim of inhumane treatment, a beneficiary whose safety was not ensured by the Tsalenjikha children’s home, as the child lost the finger phalange and did not receive the appropriate medical care. Still today, his psychophysical health is neglected, which was the reason he moved to a small group home and where during the adaptation period he became a victim. Because M.K had such a physical deficiency his peers started to call him “you nine and a half”, “you chicken breasted”. On the other hand, the youngster tries to assert himself with violence and falls as a victim as well. M.K has to defend his older sister against offensive behaviour and addresses, since M.K has no positive support from the up bringer and cannot find anyone to support him in such an environment.

15-year-old G.K., who is M.K.’s sister and confirms the existence of discriminatory treatments at school, says that they fight often, and she herself gets upset easily, but tries to contain herself. She says: “I have a different temper, one week I can cry but later I can jump... M. is called ‘nine and a half’ and he shouts and fights all the time... at school as well”. As it can be seen, to this date M.K.’s safety is not ensured. Violence and cruel treatment can lead us to a fatal result, as M.K. suffers from his physical disability and is desperate to end the cruel treatment by his environment, he does not see a way out from the existing situation.

POLICE PHYSICAL AND PSYCHOLOGICAL VIOLENCE AGAINST ONE OF THE BENEFICIARIES

Special Preventive Group Experts spoke to 13-year-old L.K., one of the beneficiaries of the children’s home, and revealed that L.K. had suffered physical and psychological violence from the Police in the beginning of Winter 2012, before L.K. would actually come to the small group home (the beneficiary could not recall the exact dates of the violence suffered). L.K. was living in a socially deprived and poor family with his mother, in Gori municipality, Shindidi village. L.K.’s 18-year-old brother is in prison. Since L.K. was 10 year old, he/she worked in the garden. L.K said that at the age of 12 “a couple of times I stole something” and for this reason the Variani police showed up at his door step and put him in a pick up truck and drove him around the village in order to obtain certain information from him. L.K said: “...they were asking me and if I did not respond, they would hit me, especially our district officer Dato Dojashvili hit me on the head with hands or with a book. Twice a day they would pick me up and beat me, because they would beat me in the head, it would get dark in the eyes and I would faint.” On one of such occasions of picking up, L.K

was forced to sit on a chair from 10am until 7pm. “Different police officers would come in and insult me, swear at me. Once these police officers took me to the Liakhvi River along with a neighbour, a 32-year-old man, who was a previous convict, and made us kneel down. They hit me with a stick and beat the man brutally. They were threatening they would drown us in the river Liakhvi”. According to L.K: “after this the police officers were forcing me to cooperate with them and furnish information; They told me to tell of people what they were doing, and if not, they would put me in the room with rats, they would give me money and telephone, they put they saved their phone numbers into the phone, so I could call them, but I deleted that number. I was hiding from them, when I saw the police officers I would start to cry, I was scared, and they still caught me”. Due to such pressure and violence, L.K was forced to leave his house and seek refuge in a children’s home. Due to fear, L.K never reported the torture he/she suffered. After L.K suffered beatings in the head, he/she started to lose conscious and faint, had nightmares with the suffered traumatic scenes and phobias. Furthermore, L.K needs adequate medical, psychological and legal aid, which L.K does not receive in the institution. It has to be underlined, in all of the institutions there are beneficiaries who in past have experienced and suffered severe traumatic stress either at home in childcare institutions or on the street, and who cannot receive the necessary rehabilitation services. Such a situation and system failure ought to be dealt with expediently.

CHILD SECURITY

Members of the Special Preventive Group have also detected facts of child security negligence; children independently go to school and there are cases when without any due supervision they skip school and do not return home, and the up bringer does not know about this and about the child’s whereabouts. There are cases when the child/young person leaves the small group home to have a walk in the street, or during weekends visits the biological family or “old friends” in the neighbouring cities and the up bringer/foster carer/foster parents cannot control such a behaviour and cannot ensure child’s/young person’s security.

KHASHURI SMALL GROUP HOME

13 year old L.G says: “I like to walk around, here as well I cannot sit still on one place, I go outside a lot or I go to the park”. He sneaks out from school and goes either to the park or goes to see his friends”. L.G found studying to be hard, and this was the reason why he/she skipped school, now L.G tries to catch up with peers. In the past L.G would sneak out from home, and travel from Gori to Tbilisi, spend the night on the street sleeping in the park and the family got him back via police search. L.G denies any theft, denies administering psychotropic substance, or suffering violence.

12-year-old D.J openly speaks about the difficulty he/she faces in following school programme, and is lazy to study and often skips school. Speaking to the expert psychiatrist, DJ admits skipping school for 150 hours and does not know what marks he/she will have at the end of the school year. DJ skips school as to have fun and wonder around. The up bringer, when speaking to the monitoring group, says DJ cannot follow the school programme and considers engaging DJ in an inclusive education system.

Based on the up bringer’s/foster parent’s/institution staff notes and primarily based on the interviews with children, it is evident: children/young persons often miss school, walk in the streets freely, or visit their friends in other schools in a manner that their up bringer is not aware of, and that children/young persons missing school has a negative impact on their academic development. Ultimately, it is of high concern that the security of such children is not provided for.

During the Special Preventive Group’s visit, 16-year-old E.K was not at home. According to the foster carer and other beneficiaries, E.K is a “musician”, a “rapper”, and “even now he is with the band rehearsing and will be back home late” and this was the reason that the group could not interview the young person.

From the personnel documents we learn that E.K., started “coming home late”, the school teacher said E.K. is “not acting normal... at times he laughs without any reason and is greening”, “ still makes the teacher angry”, “goes off from the last class”, “then hangs out in the school yard, and does not even attend the class”, “was skipping school and

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had problems because of this”, “shouts in the middle of the night and uses bad language”. According to the “Medical Park Georgia” issued form NIV-100/as note from 29.06.12, E.K. is healthy, no mention is made about E.K. difficult behaviour and the issue to assess the latter’s psychological/psychiatric conditions was not raised.

There are activities that would develop the young person’s educational skills and no psycho-rehabilitation activities are envisaged for difficult behaviour.

16-year-old L.G, who has mental problems, proudly says that he takes permission from the up bringer and goes for a walk “in a park... wherever you want, on Rustaveli, or to friends...” and sometimes his “buddies” let him drink beer. L.G who is mentally retarded and has behavioural problems, on his own initiative visits his family and says: “the up bringer let me go to Brojomi”, “I went and came back by myself”, and on 31.05.2012 from the up binger’s notes it can be learned that “L.G called the latter and quite irritated and highly emotionally asked to be given permission to leave the biological family, saying: “my parents do not love me, take me away from here” ... he demanded”.

During an interview with the Special Preventive Group expert psychiatrist the young person says that he does not want to go back home, as he does not love his mother: “she was beating me with a stick and kicked me out from the house.” He does not even want to cross her, but loves his father as he treated him nicely.

According to the Special Preventive Group members in this concrete case the young person’s right to security was violated when he went to another city/rayon without any accompanying person; He was also not protected from the mother’s violence. Hence, the young person is re-traumatised which is seen in his emotional instability and not wanting to socialise with the biological mother – the young person became the victim of inhumane treatment. Apart from this story, 16 year old L.G has a long experience in living in the institution; According to him, he smoked, stole things, had fights, in the institution he was locked into his room so that he would not get out into the street, but he still managed to sneak off, in the street he was detained by the police and returned to the institution, sometimes he would spend the night either in one of the parks or in one of the tunnels. He says there were no instances of violence from the police and he is proud that “the police could not even lay a finger on him”.

He is cross with D.J, one of the beneficiaries as “once, as a joke, I told D.J. I was gay and he went and told everyone about it”. He then tries to explain “who is gay”, what kind of external characteristics they have, as when sneaking off from the institution he came across gay persons “on Rustaveli avenue, in Nakhlovka district, or in a park”, but he has not witnessed any intercourse between the gay men and says he has not been the victim of sexual violence. After being relocated to Khashuri small group home for children, because he did not have cigarettes he smoked paper, he does not deny that if he gets hold of cigarettes he will smoke again.

In light of the above, there is a high probability that in case this young person is without any adequate supervision, and when he finds himself in psycho traumatic environment, it is possible that the youngster will again act with deviational patterns.

According to the up bringer’s notes, 16-year-old L.G is undergoing an inclusive education programme, but often breaks the school rules: “he did not get up early to go to school... Maia got him up and made him leave for school, and then he hid from other children and was late for the first class... He says he does not want to go to school.”

From the foster carer’s notes the following can be learnt about 16-year-old E.M.: E.M has school attendance deficits and problems to keep up with the study curricula. The foster carer notes that he/she spoke to E.M.’s class teacher as well as with the head teacher and learnt “that they do not show up often at school and all of the teachers are helping with doing mandatory tests”, “they will not finish the year”, “they somehow need to even out their absences with scores and they ought to see they pass all the subjects”.

Speaking with the Special Preventive Group E.M is not that concerned about school problems and that he/she is behind with the school curricula. E.M says: “I do not study that well and it is not worth to continue studying”. Currently, with two other girls, E.M is attending web design courses in a college and thinks he/she will continue to study in one of the colleges.

In Khashuri small group home for children, the Special Preventive Group learnt that 16-year-old beneficiary E.M. was constantly suffering from psychological violence by family members. The up bringer did not take care of the matter and on the contrary, often let E.M go alone and at times with another young person to E.M.'s biological family, which according to the monitoring team does not represent a safe environment for the beneficiary.

According to the up bringer N. Suleimanashvili's child monitoring journal (child's monitoring page), E.M. along with another beneficiary, 14-year-old M.S., often goes to a neighbouring city to visit their biological family, to visit her mother's grave, see her brothers as well, who systematically call on him/her and ask for money. If the brothers receive a no from E.M., then they address her with bad words, become angry with and blackmail her. They also tell E.M. "not to come home anymore". They do not even keep the promise to take E.M. home for New Year's festivities. The journal states that the child is very nervous about what is going on and the situation she has in the family. The small group home staff also knows that E.M.'s brother borrows money from relatives and "spends it prodigally". There are cases when E.M goes home and the brother is simply not there, so she waits for him, the latter never shows up and she then comes back.

KHONI SMALL GROUP HOME FOR CHILDREN

G.Ch, a 16-year-old beneficiary, rarely sees old friends. Nevertheless G.Ch does manage to do so when he/she independently travels to Kutaisi to his/her family.

Another beneficiary, 13-year-old T.D, seems to have problems at school. From the up bringer's notes we learn: "T. skips school and his/her class attendance is not satisfactory".

TSALENJKHA SMALL GROUP HOME

Those who are responsible for children in small group homes let children independently travel to schools or colleges that are located in other cities. From children's dossier as well as based on the conducted interviews with them, we learn that they independently travel to their biological families, or visit their friends in other cities who live in other small group homes. Hence, apart from crude information that is being provided by the up bringers and foster parents in their monitoring journals, it is apparent that they are not taking any action or pertinent measures to protect children and young persons' physical security, as well as shield them from violence. The up bringers and foster parents do not recourse to specialists for their qualified help; the problem is not multidisciplinary assessed and ways for its overcoming are not sought; what is more appalling, they do not consider such acts to be a problem, and neither does the interaction of the up bringers and foster parents with the children's school teachers look successful or pedagogically right.

The social and economic destitution that plagues these children's biological homes and families, leaving children without adequate care; most often psychological and physical violence; neglect and stress infliction on these children and young persons in the caring institutions, as well as the social-pedagogical neglect of their education; failure to provide services that would be tailored and adapted for children's and young person's psychosocial rehabilitation; and a deficit of study skills – all of the reasons made small group home beneficiaries, who are practically without any psychological problems, have low academic development and with a knowledge inconsistent with the level of class they are in. All this, clearly, is not encouraging and it should be anticipated that when these children and young persons reach 18 years and start living independently, they won't be able to endure life competition. This, again, will lead to a failure.

It is salutable that small group home staff devotes time to the beneficiaries' professional development, based on their skills and interests in the subjects. Due to the insufficient knowledge and decline of the interest in studying, some beneficiaries see their way out in acquiring professional and handcraft skills. Nevertheless, the choice of professional schools is limited due to small group home's financial problems and because schools are not located in the desired region, and in some cases children have to independently go from one region to another, which itself is dangerous.

Note: social-pedagogical negligence and defectiveness, knowledge deficit in comparison to age and schooling will be assessed on an individual basis for each beneficiary's psychological and psychiatric needs (see below).

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NON-ADEQUATE PSYCHOLOGICAL/PSYCHIATRICAL ASSISTANCE/INHUMANE TREATMENT IN SMALL GROUP HOMES FOR CHILDREN

The State Standards for Child Care encompass a healthy lifestyle, ensuring healthy environment as well as ensuring beneficiaries' good health. The conditions existing in the small group homes do not meet the State Standards. This is especially evident with regards to creating a healthy psychological climate for looking after beneficiaries' health.

During the monitoring phase in the small group homes, the Special Preventive Group revealed a number of cases of neglecting children and inadequate and inhumane treatment. Furthermore, when the adolescent's right to psychiatric health is not satisfied the beneficiary cannot receive full psychological/psychiatric assistance or such assistance is not adequate, therefore the children's inclusive educational issues are also not settled. In Public Defender's 2011 Report, the de-institutionalisation process was characterised as imperative and of aggressive nature, and development of "syndrome of deinstitutionalisation" in small group home beneficiaries; This was due to the fact the social services did not take into consideration the beneficiaries' interests and individual needs, nor inform them about positive aspects of such a process. This caused the process of beneficiary integration into the small group homes to be stressful. The beneficiaries who were planning to move to small group homes developed a feeling of objection and thus their integration process became complicated.

In developing adaptation dysfunction, apart from major life events, particular importance is given to individual disposition and vulnerability. In older children/juveniles adaptation dysfunction is seen in behavioural problems (aggressiveness or anti-social behaviour), and in young children in regressive phenomena (for instance night urination/enuresis). In addition to this, adaptation dysfunction, that is, subjective distress and emotional stress situations hinder social functions and productiveness to deal with stress (changed psychosocial environment, for instance changing of domicile, school, up bringers, teachers, classmates etc.) and adaptation period with others.

The small group home beneficiaries belong to the stress-prone group. Most of the beneficiaries have a negative experience of living in big institutions where their vulnerable condition was not taken into account. Hence, they did not receive adequate psychological/psychiatric help, nor did they acquire the necessary techniques to manage stress. Furthermore, for this reason they could not adapt to the changed environment (which was better and more humane than the one their biological parents were in or the environment of the big caring institution). This, on its part presents psychosocial stress. Adaptation dysfunction was visible among children, as expected, and resulted in emotional and behavioural dysfunction. This is characterised by anxiety, nervousness, stress, anger, night urination etc.

Adaptation dysfunction took an unmanageable form amongst the small group home beneficiaries who were psychiatrically vulnerable, and as mentioned above violent/aggressive behaviour became a common stereotype in their relationships.

Within the frame of the conducted monitoring, the Special Preventive Group revealed and analysed several psychological/psychiatric problems, based on the interviews results with small group home beneficiaries and a synthesis of the results of the beneficiaries' personal files. The group assessed the adequacy of psychological/psychiatric help that beneficiaries received from the persons working in childcare.

The Special Preventive Group members drew attention to children's health assessment during the child enrolment process and in most of the cases to the complete negligence of their psychiatric health. It has to be specifically mentioned that the social service workers, during the social preliminary assessment, in most of the cases describe a child's psychiatric disorders and problems and in the same assessment sheet state "that he/she does not have any problems related to health", or that "psychophysically, he/she is healthy". As an argument for this, they cite either the doctor's or the nurse's verbal statements or a health certificate issued by them (Form NIV-100/a). The latter document does not really depict an accurate psychophysical state of the child. Nevertheless, the recommendation issued is that the child is (practically) healthy and can attend school.

Those who are working in childcare institutions and social services could not identify the signs of psychiatric problems the beneficiaries had, or in most of the cases they neglected such problems and did not initiate psychological/psychiatric

checks; With the exception of a few cases, when through psychiatric assessment mental retardness and behavioural violations were diagnosed, even there recommendation was issued that the child continues to go to school without assessing his/her abilities and skills, and no recommendation was made as to whether or not the child needed to be engaged in an inclusive education programme.

A social worker is not qualified to assess a child's physical health and psychiatric state, but the data available to them gave them the opportunity and they were even obliged to bring such issues to the doctor and in case of necessity initiate the child's psychological/psychiatric assessment. With this it would be possible to grasp a child's psycho-biosocial problems and its individual development plan would be focused on the child's multifactorial needs and a multidisciplinary settlement.

Hence, the small group home beneficiaries' psychiatric problems have to be analysed in a single bio psychosocial model and their management is only possible in a multidisciplinary assessment and assistance system.

In practice, we only see pro-forma and insufficiently filled out individual development plans, short of individuality and not tailored to a child's specific needs. Aims, events, and deadlines are copy-pasted from one child's form to another, and reasons and indicators of both success and failure are not provided and analysed.

Negligence of assessment and proper planning, at times even incompetency, negligence of a child's psychiatric problems and no proper paper work on child's problems, serve as the basis for complicating children's adaptation to small group homes, thus exacerbating their behavioural problems and contributing to the rise of violence in their relationships.

It is particularly disturbing to identify the rising number of mental handicaps and study related disabilities among small group homes beneficiaries. The up bringers and staff of small group homes unexpectedly did not bump into mental and behavioural problems, about which they were informed, nor had the professional skills to deal with.

In Public Defender's 2010-2011 reports, special attention was paid to professional psychologist's work in children's upbringing and caring institutions; to children as the most vulnerable group; to psychological problem identification and subsequent management; to initiation of psychiatric assessment and help; to psycho-education of children and their consulting; to research and analysis; and management and uniform standards for documenting and tracking the conducted work, none of which was not carried out after the de-institutionalisation into small group homes by the childcare supervisory bodies.

It became evident to the Special Preventive Group that in small group homes children have no access to adequate psychological and psychiatric assistance.

In small group homes for children, the beneficiaries' access to psychological assistance is not organised and has only formal character. One part of up bringers does not recognise that children need psychological/psychiatric assessment and help, but they do say that in case the up bringers need consultation they call the psychologist from Tbilisi. Another part contends that the small group home beneficiaries have access to psychological intervention, but fail to provide evidence that would document such access. This raises questions and concerns and in some cases recourse to such help could not be confirmed. This was also evident when interviewing some children. Only Ambrolauri and Tsalenjikha small group home beneficiaries confirm sporadic help received from psychologists.

The results of the monitoring of the small group homes, done by the Special Preventive Group, give us ground to make the following conclusions/findings:

- During a beneficiary's enrolment in a small group home, a child's social assessment and medical certificate (in case such exists) does not speak about a child's mental health problems, does not consider a child's traumatic experience and vulnerability, signs of psychiatric problems are neglected and the child is not duly assessed psychologically or psychiatrically.
- The child development plan is formal and superficial, ignoring a child's peculiar problems and intellectual abilities. Hence, it is not individually tailored to a child's real needs.

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- Small group home beneficiaries are not supported with adequate psychological assistance, that matches their problems.
- Small group home for children management units did not draft standards that would deal with a state-protected child's psychological assistance or that would take into consideration the beneficiary's traumatic experience, stress and psychological vulnerability.
- In most of the small group homes, the up bringer/carer invites a psychologist according to the "need" from the association "Georgia's Children", but as the monitoring results show such necessity arose "last time in Summer", "one month ago", "yesterday, but has not spoken with the children" or, in best case, "one week ago"; or psychological intervention has remained a one-time occasion.
- The claim by Ambrolauri, Tsalenjikha, Bajiti small group homes staffs and up bringers that beneficiaries avail themselves of psychological assistance was only confirmed in Tsalenjikha and Ambrolauri small group homes by a couple of beneficiaries. As for Bajiti small group home residents, they denied this fact; Psychological assessment of the small group home beneficiaries, and the help they received, is not accordingly documented. This in turn makes it impossible to assess and monitor assistance received by children.
- In Public Defender's 2011 Report there is data about shortcomings of the de-institutionalization process and special attention was paid to the inability of small group home staff to manage beneficiaries with psychiatric problems and their massive exiting from such homes. Nevertheless, there are a large number of beneficiaries with psychiatric problems who are a burden to the small group homes and to their work.
- The up bringer, foster parents, care taker, leader or some other person who is engaged in childcare work either cannot grasp a child's/young person's psychiatric problems or ignores this problem and does not see to the fact that the child/young person receives qualified psychological/psychiatric assessment and assistance. Some cases are of course an exception, e.g. when a psychiatric assessment is done but psychiatric assistance is not dynamically rendered to a child/young person. Furthermore, there is no expertise and assessment that would deal with a child's/young person's psychosocial function ability assessment. Ensuring that the beneficiary has access to all the services and benefits and undergoes psychological/social/pedagogical rehabilitation, the non-existence of which gives ground to spurring of violence not only against, but between the beneficiaries as well, is key.
- Academic non-development of the Small group home beneficiaries; low school curricula knowledge and the frequency of their mental problems, which completely leave them out school competition and make their integration complicated; teacher's negligence; lack of interest and motivation to study; not having the necessary social skills and problematic behaviour – all these are due to the deficit and lack of psychological/psychiatric/pedagogical assistance and rehabilitation programme.
- It is incomprehensible why Lanchkhuti and Khoni small group homes have only male children/young persons as their beneficiaries. Such gender segregation is not recommended – neither from a pedagogical nor from a psychological perspective, nor with children who have completely no psychological problems. If there is no vital argument from the small group home management/organising staff that would refute the presented arguments, such a state of affairs is not permissible. Furthermore, such segregation hinders social skills development and identification of the sex of persons, both in girls and boys.
- Based on the close study of the beneficiaries' files, the Special Preventive Group, with experts/psychiatrists interviewing the beneficiaries, reached the following results: out of 54 beneficiaries that were interviewed, 23 of them (approximately 42.6 %) are mentally retarded; 12 children have adaptation related problems in their behaviour and emotional state; in 7 of them, post-traumatic stress related symptoms were seen; 21 cases revealed problems in behaviour, both characteristic of beneficiaries with or without mental retardation; 4 cases of night enuresis; and 1 case of epilepsy.

Hence, based on the above:

- The situation in the Bajiti small group home is as follows: out of 6 beneficiaries, 3 have mental retardation, and 2 of them have accompanying night enuresis; 1 beneficiary was diagnosed epilepsy in a neurological clinic; 2 beneficiaries have visible post-traumatic stress symptoms, 1 child has adaptation disorder (in difficult days the child has eating disorders) and 2 beneficiaries have accompanying retardation with behavioural problems.

Only in one case did they recourse to psychological help and despite the foster mother's statements that the children have access to such help, neither was such an information verified with the children themselves, nor could the foster mother provide with adequate paperwork evidencing psychological intervention. Despite the need of such help, psychological assessment initiation and access to pertinent psychological/social/pedagogical programmes were not ensured. The children cannot receive adequate psychological/psychiatric assistance.

- Ambrolauri small group home: out of 6 interviewed beneficiaries, 2 have mental retardation, another 2 adaptation distortion and problems, and 3 beneficiaries have behavioural problems. According to the foster mother, the children receive psychological help. The children confirmed this during their interviews. Nevertheless, there is no paperwork that would confirm that such help was given to the children. Despite the need of such help, psychological assessment initiation and access to pertinent psychological/social/pedagogical programmes were not ensured. The children cannot receive adequate psychological/psychiatric assistance.
- Khoni small group home: despite the assertion of the small group home up bringer that its beneficiaries do not have any psychological problems, of 7 beneficiaries that were interviewed, 2 had behavioural distortion and emotional problems and 5 had mental retardation with behavioural distortion and with 2 cases of night enuresis. Here too, psychological assessment initiation and access to pertinent psychological/social/pedagogical programmes were not ensured.
- Kutaisi small group home: out of 7 beneficiaries, 3 have mental retardation, 2 have visible post-traumatic stress symptoms, 1 has adaptation disorder, and 1 shows behavioural problems. Only in one case (May 2011) did they recourse to psychologist's assistance, and despite the social worker making them aware that all of the beneficiaries had psychological issues, the children are not provided with psychological help and no psychiatric assessment was initiated.

Great attention was paid to the case of 14-year-old T.G., when her mental retardation was diagnosed with a behavioural disorder. On 17.05.11 a concern was revealed to the house manager that when T.G. was enrolling into the small group home, T.G. was sexually abused. According to the human rights defenders, those persons who were involved in child protection did not take adequate steps. Only psychological and gynaecological checks were done. The child's psychological/psychiatric assessment, as well as pertinent psychological, social, and pedagogical help was neither provided, nor were legal actions taken and the right to legal remedy did not arise.

- Tsalenjikha small group home: 8 beneficiaries were interviewed. Out of this number, 1 child has mental retardation, 1 has signs of post-traumatic stress, 3 of the beneficiaries have adaptation disorders, with behavioural and emotional problems, 1 child demonstrates behavioural problems, 3 children state that the school children and teachers discriminate and use discriminative language against them either because of their dire economic and social conditions, or because of their physical deficiency, which contributes towards children's emotional distress and violent behaviour. From this group only 2 beneficiaries said they received pertinent psychological help (one month ago). The paperwork of such intervention and assistance could not be generated. Hence, the children are not ensured with adequate psychological/social/pedagogical programmes and assistance. There is no work being done with the school itself in order to provide these children with a favourable psychological environment that would facilitate their integration into the school environment. The beneficiaries of the small group home simply do not receive adequate psychological/psychiatric assistance.

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- Lanchkhuti small group home: in all 8 beneficiaries mental retardedness was revealed, along with significant behavioural dysfunctions.
- Khashuri small group home: 7 beneficiaries were interviewed, out of which 4 cases of adaptation distortion with emotional anxiety and 1 case of mental retardation with accompanying somatic disease (celiac disease, hypothyreosis) were established. The latter child is engaged in an inclusive education programme. But despite the fact that his up bringers are well aware of his/her health issues and problematic behaviour, they could not provide the child with adequate medical assistance and treatment. The child did not undergo complete somatic disease assessment or treatment, and no pertinent psycho-rehabilitation assistance was included. No special diet or meal plan was made available to the beneficiary. This worsened the child's psychophysical situation. The child's ability to study at school is limited as well, demonstrating difficult behaviour and he is a constant victim of discrimination and aggression. The child also demonstrates violence towards other children in the small group home. It is of utmost importance to assess the child's psychophysical health state and the assessment of his/her level of psychosocial function constraint so as to provide the child with adequate benefits and services.

Khashuri small group home children cannot manage to positively adapt to the changed psychosocial environment. They are characterised by a deficit of study motivation and no skills to study at school. They are characterized to be overwhelmingly independent, for instance, they can independently leave the small group home and go to their biological families, skip school and miss lessons and wonder about in the city or in the park. Male small group home beneficiaries try to adapt to the environment by auto- and hetero aggressive violent behaviour, whereas female beneficiaries see the problem to be solved by attending professional schools. The persons working in the childcare system and up bringers simply do not know and have no adequate skills to handle and address problematic situations such as these as described above. With this they neglect the children's problems. No initiation was made to assess children's and young persons' psychological/psychiatric state and provide them with adequate psychosocial and pedagogical rehabilitation.

Recommendations to Georgia's Ministry of Labour, Health and Social Affairs:

- Adopt and implement small group homes for children beneficiary thorough multidisciplinary assessment and identified problem handling adequate, tailored to every child individual psychological/social/pedagogical rehabilitation programmes, ensure and facilitate to young person's professional education according to individual skills and interests.
- Ensure the training of all the staff members - who work in childcare and small group homes – psycho-education via intensive psychological consultations, trainings, and by providing them with necessary material, so that they can identify signs of psychiatric problems and comprehend related symptoms, as well as provide the child with adequate psychological/psychiatric assistance initiation and further support;
- It has to be ensured that small group home beneficiaries receive psychological assistance without any disruptions and that beneficiaries have full access to such support. Drafting of uniform standards and guidelines for psychological intervention and documentation is a must, and in case of psychiatric problem, initiation of psychiatric assessment so as to provide adequate psychiatric help. In addition to this, if necessary and on a case by case basis, the level of psychosocial constraint and the functional ability must be determined and the beneficiary must be ensured with adequate services;
- In order to foster a child's integration into the micro - and macro - level social environment, from one side strengthen the ability to manage a child's complicated behaviour as well as his/her emotions, raise the child's aspiration and motivation to study and develop academically, providing with individual pedagogical services, constantly encouraging them; In addition, from another side develop psychosocial environment - protecting a child from discrimination, stigmatisation and violence;

- To adopt and implement uniform standards for documenting all cases and instances of state protected children's violence/inhumane treatment and such action prevention, as well as psychophysical violence/inhumane treatment.

SGH CHILDREN'S RIGHT TO (RECEIVING) EDUCATION

According to article 28 of the "Convention on the Rights of the Child", a child is entitled to receive education and the state has to support realization of this right on equal footing.

Article 2 of the "Law on General Education" sets the principle of open and equally accessible education. In this regard, implementation of inclusive education program in public schools foreseeing inclusion of children with special needs into general study process along with their peers has to be considered as significant achievement of the reform of general education executed by the Ministry of Education and Science of Georgia. According to the "Law on General Education" pupil with special needs is a person who has difficulties studying as compared to his/her peers and who is in need of modification of the national study plan and/or adaptation with study environment, drafting and implementation of an individual study plan.¹⁶⁶

"Student with special need" is identified by the Ministry of Education and Science's multidisciplinary team which assesses the student and selects the best education form relevant for him/her.¹⁶⁷ Furthermore, the school is charged with drafting individual study plan for a student with special needs fitting within the frames of the national study plan.¹⁶⁸

According to Article 8 of the "Child Care Standards" approved by Order N01-59/N of the Minister of Labor, Health, and Social Protection from 30 August, 2012 (hereinafter "Child Care Standards"), service provider has to provide for inclusion of the beneficiary in pre-school and general educational process, as well as support him/her in receiving professional or higher education; In addition, service provider has to refer a child with special educational needs to relevant educational institution or specialist. Service provider's duty to create adequate environment for beneficiary to receive education, *inter alia*, implies children's inclusion in educational/professional study process taking note of their age and opportunities.

In the process of monitoring, special preventive group identified several beneficiaries of SGHs, who despite their special educational need, were not included in the process of inclusive education acquisition and no individual study plan was drafted for them.

Following recommendation from the psychologist, beneficiary of the Chkhorotskhu SGH, V. B., is currently undertaking special exercises; Previously the child had low school performance and had difficulty enumerating numbers. Despite his/her special need no special individual study plan was devised for V.B. during the period when monitoring took place.

Social servant's visit form included in the personal profile of B.B. -beneficiary of the same SGH. - indicates that the child is observed to have light mental difficulties, difficulties in studying, is unable to read; He/she also lacks functional skills relevant to developed age, cannot count money. Consequently the child is in need of adapted simplified material for studying but no such individual plan was drafted at public school. According to SGH caregivers - mother T.B. and father A.K. the child quit receiving education at public school and continued training for acquiring the profession of stylist at a vocational school pursuant to the decision of social worker and psychologist. It has to be noted, that relevant decision was not reflected in the personal profile of the beneficiary.

A case of beneficiary with special educational need was noted at Kutaisi SOS Children's Village N2 children's SGH; according to SGH's caregiver - mother N.V. – G.R. and M.R. need inclusion in the public school inclusive education group as beneficiaries have practically not received any education prior to moving to children's SGH; this is further certified with relevant individual development plans of children, according to which correction pedagogue is working

166 Law on General Education, article 2, para „B²⁴“.

167 Law on General Education, article 2, para „B³“.

168 Law on General Education, article 5, para 11.

with G.R. three times per week helping the child in improving his/her reading, writing and math skills. Despite intensive work, beneficiary is significantly behind relevant age group in terms of academic level. Need for inclusion of said children in the inclusive education program is also confirmed by school teachers, yet no individual study plans were developed. According to SGH's foster mother N.V., school teachers demonstrate support for beneficiaries by being less strict when assessing their academic performance.

Educational Development Plan for Kutaisi children's SGH beneficiary N.B. indicates that the child is behind the programme in all subjects taught. According to information provided by caregivers, they have addressed relevant public school with a request for drafting individual study plans for beneficiaries, but the school did not respond.

Abovementioned practice, when special education needs of the child is not assessed by multidisciplinary team of experts, when the public school fails to develop individual study plan, or when in other cases relevant decision of authorized person on discontinuing the process of acquisition of general education is absent, can be qualified as restriction of child's right to education.

With regard to supporting vocational education, one has to note that foundation "Natakhtari" supports majority of children's SGH beneficiaries' vocational studies for professions of beauty stylist, computer technology, nursing, car repair specialist, etc, as well as, their further employment. Nevertheless, problem with territorial accessibility of vocational education was observed with regards to Chkhorotskhu children's SGH; In particular, beneficiaries of this house have to be trained in Kutaisi vocational education colleges as there is no such institution available for beneficiaries in Chkhorotskhu. Problem often times is caused by nonexistence of transportation funds for teachers, circles, or even children because children's homes budget does not provide funding for such component. It has to be underlined also, that although majority of SGHs for children are equipped with computers, they are not connected to Internet, which hinders SGH beneficiaries' performance of schoolwork, as well as their professional development.

Recommendations to the Ministry of Labor, Health, and Social Protection (MoLHSP):

- **To ensure children's access to education in public schools in relevant form and level, with due regard to their individual needs;**
- **To ensure linkage of beneficiary with special educational need with multidisciplinary team and general education institution with an aim of developing individual study plan;**
- **To ensure access to vocational education by children's SGH beneficiaries in accordance with territorial accessibility principle.**

EMOTIONAL AND SOCIAL DEVELOPMENT

Pursuant to the Article 5 of the "Child Care Standards" referring to emotional and social development of beneficiaries, in-service environment should provide for emotional and social development of beneficiaries, support their social integration and strengthen their contact with the family, provided latter does not contradict best interests of the child. Service provider should support beneficiary's legal representative and the family in retaining close relations with the child and in realizing parental obligations.

Above standard, to a certain extent, is an implementation of requirements of Article 9 paragraph 3 of Child Rights Convention into national legislation; In particular, according to the Convention, state-parties respect the right of a child of divorced parents to retain regular personal relations and contacts with them, insofar as it does not contradict child's best interests. In some cases close contact with biological family is not granted adequate attention at children's SGHs.

For instance, according to SGH foster mother M.J. from SOS Children's Village children's SGH N12 – beneficiary G.M. does not have official exit person, in contrast to information indicated in child's individual development plan

(CIDP) according to which regulation of relations with biological mother is important for improving child's emotional situation; one of the ways indicated for such improvement was child's visit to the family, or finding alternative ways of meeting with biological mother. According to said record, social worker has been informed about the issue, yet no close contact was established with the mother.

Several beneficiaries of Chkhorotskhu children's SGH have been restricted right to have relations with parents as because of severe financial situation the latter often does not have enough funds to cover transportation costs to SGHs. It has to be noted that SGH budget does not include funding of this component; Neither does it include relevant funding to cover costs of child's visit to biological family for retaining contact with parents accompanied by SGH foster mother/father.

Access to telephone at children's SGHs is limited (in some cases children have their own cell phones). Homes are equipped with MAGTIFix network phones, yet because of arrears to provider, outgoing call function is restricted most of the time, thereby creating obstacles for children to contact their parents over the telephone. Contact over telephone is especially problematic for those beneficiaries whose parents are working abroad, as fees for calls abroad are high.

Recommendation to the Ministry of Labor, Health, and Social Protection (MoLHSP):

- **To ensure, in the best interests of the child, maintenance of regular personal relations between beneficiaries and their biological families to the extent possible by providing relevant procedural and material-technical support.**

SUPPORT FOR INDEPENDENT LIVING OF BENEFICIARIES

According to "Child Care Standards" one of the aims of service provision is to prepare beneficiaries for independent living. Beneficiaries should leave the SGH for children according to plan for starting independent living, drafted in advance with the participation of social worker, service provider, beneficiary, child's legal representative/family and other persons.

It has to be noted, that while conducting monitoring, several beneficiaries were almost turning 18, this causing inevitable necessity of having to leave the SGH by the end of the year. Often these children have very vague and undeveloped vision of the living conditions they will be facing upon exiting the SGH. One of the components for preparing for independent living is receiving appropriate education and acquiring adequate professional skills. Part of beneficiaries representing relevant age group are trained towards future professions, yet, because these professions are low paid it is doubtful that these latter professions can serve as sole guarantee of adequate standard of living for beneficiaries after moving away from SGHs. This uncertainty and fear of the future cause irritation and emotional instability in beneficiaries.

In terms of positive practice, one has to note "Independent Living Support Program" for beneficiaries of SOS Children's Village Georgia, consisting of different stages. According to the said program, children's SGH beneficiary moves to the Youth House (YH) at the age of 15-16, i.e. a community integrated apartment or private house; This house is shared by up to 15 young person's; It has its own supervisor and four teachers.

The aim of the Youth House is to ensure preparation of the young person for independent living, support development of his/her skills, capacities and potential. At this stage youth can undergo training towards professions, be employed and prepare for independent living.

After the stage of 4 years of living at the Youth House (YH) beneficiary can be transferred to semi-independent living stage; Prerequisites for this are studying at a higher education institution or continuous employment for the period of 6 months. Final stage of independent living support programme is that the beneficiary moves to his/her own

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house or rents an apartment. At the stage of independent living the organization helps young person in purchasing the apartment, mainly by covering 60-70 percent of its cost, the rest being covered by the young person with his/her savings.

There is no similar support to beneficiaries of other children's SGHs neither by provider organizations, nor from the government, often resulting in beneficiary's uncertainty and unpreparedness for independent living at the moment of exiting the children's SGH. In case of non-existence of the program, supporting independent living financially, it is particularly problematic and difficult for those children who have been unable to integrate with their biological families and do not have strong supporting network.

Recommendation to the Ministry of Labor, Health, and Social Protection:

- **To prepare effective program supporting independent living for those beneficiaries with relevant needs, who are leaving children's SGHs as a result of attaining the legal age, including by providing them with living space and supporting their employment.**

DOCUMENTATION EXISTING IN SGHs

According to the Article 3, paragraph 1 of the UN "Convention on the Rights of the Child", in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The said article of the Convention indicates that in any action undertaken towards the child, child's best interests should be fully considered, *inter alia* including state's obligation for ensuring that institutions, divisions, and organs responsible for child care or protection correspond to adequate norms; In particular, with regard to a number and validity of personnel in the sphere of security and health protection, as well as with regard to the competent supervision.

Article 1, paragraph 2 (Standard N1) of the "Child Care Standards" provides the list of the documentation, that the service provider ought to keep and ensure, that it is accessible to any interested person.

National Prevention Mechanism (NPM) studied documentation existing in children's SGHs in terms of compatibility with abovementioned standard; The study highlighted problems related to the children's SGHs' functioning, as well as, problems of non-adequate implementation of other obligatory standards vis a vis to beneficiaries.

One has to note that some of the children's SGHs do not keep obligatory documentation at all, while some keep it on an incomplete level, which affects provision of quality service to beneficiaries, as well as, provision of adequate level of information to interested persons.

Internal regulations cannot be found in the most of the children's SGHs; The staff of those SGHs who were handed over for management to the association "SOS Children's Village Georgia" by the commission, which was set up for transferring management rights over children's SGHs, in accordance with the Decision N01-129/O of the Minister of Labor, Health and Social Protection "On approving competition requirements for revealing legal persons to be granted the right to SGH management", presented standard "Internal Regulations of SOS Children's Village Georgia". Abovementioned act with its essence and content does not substitute internal regulations, as it unilaterally regulates issues of professional conduct, ethics, rights and duties, confidentiality of persons responsible for beneficiary care; As well, foresees consequences of violation of the code of conduct. It has to be noted, that abovementioned document is of general nature and does not entail any particular, children's SGH specific rules regulating beneficiaries' conduct and everyday life at home; Importantly, drafting process of such document should provide ambit for inclusion of beneficiaries and reflection of their views.

According to the Article 2 of the "Child Care Standards", internal regulations, along with other issues, should include rules and methods of managing socially unacceptable behavior; Procedures of feedback and complaint; Rules drafted

for avoiding infectious diseases; Questions of confidentiality; As well as, rules of conduct for staff, volunteers and interns.

Despite having no specific content of internal regulations, as an exception, short rules of conduct were posted on the wall in the most noticeable place at Khashuri children's SGH, which according to the information provided by the leader of the said house, were drafted with participation of the beneficiaries and up-bringers. Staff of children's SGHs (except for Chkhorotskhu children's SGH) also failed to present the upbringing programme, which according to the Article 1, Paragraph 2, Subparagraph (a. a.) of the "Child Care Standards" should reflect upbringing methodology and daily agenda. When asked about the daily agenda, foster mother Ts. I. from the Zestaponi municipality Village Kvaliti children's SGH explained to the persons conducting monitoring, that there is no need for any type of daily agenda; In particular, allocating specific time to eating, studying, and playing/leisure during the day is not acceptable for her. In Kutaisi children's SGH absence of prepared daily agenda was motivated by the need to be compatible with the recommendation of Polish expert conducting training of SGH management.

According to statements of other children's SGH up-bringers (e.g. Khashuri SGH), they refrain from drafting daily agenda and prescribing activities, as they consider such action inappropriate in an environment resembling family one.

As a result of monitoring of the children's SGHs conducted by Special Prevention Group, it was concluded that SGH staff does not have information about rules and methods of managing socially unacceptable behavior by beneficiaries, as well as, management of incidents of violence among children and appropriate response mechanisms.

Management of such type of problems by up-bringers is unsystematic, conducted in conditions lacking relevant professional qualification, often times based on one's own life experiences and views. In addition, almost all caregivers state that they have undertaken sometimes more than one training on aforementioned issues. One of the major challenges to the process of children's SHG management is lack of procedures of feedback and complaint, as well as lack of possibilities for expression of opinion by the child and procedures for its consideration. It has to be emphasized that 'complaints box' is not functioning at SGHs. Part of children SGH caregivers were not informed about necessity of implementing complaint procedures, while some consider that there is no need for the child to express his/her view or protest as beneficiaries have possibility to discuss openly their problems with the foster mother/father.

According to the manager of the Batumi children's SGH, complaints box proved inefficient; therefore a decision for discontinuing this mechanism was taken. In most of the children's SGHs absence of complaints box is explained by existence of a family environment excluding necessity for such mechanism as "box". In parallel to absence of the complaints procedure, there is no record of responses to freedom of expression by children at the children's SGHs; In addition, there is no special journal reflecting incidents of violence and procedures for investigating violence, as well as responses towards such violence.

It has to be noted that children's SGH documentation does not include journal for recording accidents. Foster mother and father often times do not have correct information on what types of accidents should be reflected in such documents. Most of the staff considers that the term 'accident' entails only natural disasters, fire, storm, etc. As it has been noted during conversation with the Special Prevention Group, caregivers have received specifically this type of interpretation of the term 'accident' during trainings conducted by service providers; Therefore, it is commonly shared understanding that there is no need to record in the journal negative facts/accidents related to health or life of the beneficiary. Some of the children's SGHs up-bringers keep diary where they record daily happenings, including incidents and accidents, but they also indicate that this practice is solely their own initiative and cannot be viewed as an official record.

Recommendation to the Ministry of Labor, Health, and Social Protection:

- **To ensure accessibility of information about the service by adequately drafting internal regulations and all of its components for children's SGHs, in accordance with the requirements set forth by "Child Care Standards";**

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- To ensure retraining of children's SGH staff in rules and methods of managing socially unacceptable behavior by beneficiaries, as well as, procedure of management of incidents of violence among children and appropriate, efficient response mechanisms;
- To ensure retraining of children's SGH staff in appropriate ways of keeping documentation and correct conceptualization of the relevant contexts;
- To implement efficient mechanism of complaint and feedback from beneficiaries, as well as, record all reasonable incidents of such complaints/feedback.

INDIVIDUAL SERVICE APPROACH

In the process of monitoring of children's SGH special prevention group conducted detailed study of beneficiaries' personal profiles, which should include documentation provided by the Article 6 of the Decision N52/n from 26 February 2010 by the Minister of Labor Health and Social Protection on "Approving Rules and Conditions of Placement and Release of Persons in/from Specialized Institutions"; In particular, along with the decision of the regional council on placement of the beneficiary in an institution, service provider should also keep copy of beneficiary's ID or birth certificate; Health certificate (Form NIV-100/A), copies of social worker's conclusion based on child's assessment form filled in by the social worker and overall assessment; Copy of child's individual development plan.

According to "Child Care Standards", service provided to the beneficiary should be individually tailored and responding to his/her individual needs; Pursuant to the same standard, within 30 calendar days from child's enrollment in service, service provider has the duty to draft individual service plan together with interested persons, (i.e. beneficiary/his/her legal representative/family), on the basis of assessment carried out by social worker, and with due regard to child's needs. The plan should clearly prescribe the kind of service that will be provided to the beneficiary, along with reference to the in-service planned activities/implementation schedule. The plan should indicate prospective results of service provision, as well as, identity and duties of persons responsible for carrying out implementation.

In accordance with the standard, Child's Individual Service Plan is subject to periodic, obligatory review and assessment, which should be carried out at least once in 6 months with the participation of beneficiary, his/her legal representative and representative of the child custodial and guardianship institution.

Article 25 of the Child rights Convention states the need for periodic assessment of the child in custody and obliges the state to protect the right of the child given for care into custody by competent state organs - to have his/her custodial conditions assessed periodically.

In the Report of the Child Rights Committee, dedicated to the subject of children lacking parental care, Committee underlined the principle of individual approach towards the child. Individual approach implies particular attitude towards each child, which is based on situation of each particular child, his/her personal family and social conditions. Individual approach provides possibility for elaborating child's long-term development strategy. Pursuant to Committee's recommendation all decisions pertinent to separating the child from his/her parent, as well as periodic assessment of the situation should be based on the principle of individual approach.

As a result of the monitoring, following problems were outlined with regard to keeping children's SGH beneficiary profiles:

Practically none of the children's SGH beneficiary profiles include full documentation. For instance, profiles of 3 beneficiaries of the Village Kvaliti children's SGH lacked decision of the regional council on enrollment of the beneficiaries. In addition, journal recording placement and release of beneficiaries in/from specialized institution was incompletely filled. Because of mentioned discrepancies, the issue of drafting and assessment of children's Individual Service Plan, and further Individual Development Plans within established deadlines failed; Decisions of regional council were also not kept in profiles of Kutaisi children's SGH beneficiary profiles.

As regards children's SGH beneficiaries' Individual Development Plans, following overall discrepancy can be noted: Plans grant inappropriate attention to individual needs of the beneficiary; Information stated in the Individual Development Plan is scarce, and does not reflect in detail objectives, activities planned for achieving objectives, and indicators of success. Review of Individual Development Plans is not conducted within the set periods.

Individual development plans of Chkhorotskhu children's SGH are mainly elaborated during relocation of beneficiaries from Zugdidi Orphanage and are oriented on implementation of activities related to change of domicile, such as transportation of children's belongings, enrolment in general educational institution, purchase of cloths, etc. Individual Development Plans elaborated by foster mother/father do not include enough information for individual needs of the child. Each of the graphs of the plan are completed in an uninformative and unprofessional manner, and do not adequately reflect objectives stated and results attained. Graphs on reviewing efficiency of the stated objectives and activities are not completed. For Individual Development Plans of certain beneficiaries, foster father - A.K. is named as responsible, but when members of the monitoring group asked A.K. about child needs, the latter replied that his signature on the Individual Development Plan bears only formal character and it was drafted by foster mother T.B. The said person also being in charge of its implementation. Children's Individual Development Plans are not signed at Village Kvaliti children's SGH, which gives rise to doubts about the validity of these documents. On the positive side, it has to be noted that foster mother - Ts. I. - of the mentioned SGH, keeps unofficial records in her private diaries where she reflects problems related with children, objectives set and results achieved.

In the Individual Development Plan of beneficiary T.Sh. from the Tsalenjkhka children's SGH, elaborated by foster father Z. K. and social worker N.S. one finds following ambiguous record: "Objective - that the child would not follow others in everything with advice and counseling", "that the child would not take into account bad behavior of others", and as an indicator of success – "that the child would not follow example of others in bad behavior". Aforementioned fact highlights the problem that persons responsible for elaboration and implementation of Individual Development Plan are not sufficiently qualified for the tasks to be performed.

Individual Development Plans were absent in some beneficiary profiles of Batumi children's SGH. Often time's beneficiary profiles did not include social worker's assessment form and conclusion about the child. Speaking with the staff of children's SGH revealed major challenge, namely the fact that SGH receives documentation regarding the child at a later stage, following one month after child's placement in SGH. Consequently, during this period foster mother and father have no detailed information about the child.

LPL Social Service Agency Decision N04-385/o from 20 June, 2012 on "Allocating functions and duties of social worker and service provider in the children's Small Group Home" defines minimal number of social worker's visits to the children's SGH, as well as activities to be undertaken in the framework of such visits. According to the said act, when enrolling adolescents in children's SGH, at the moment of social worker's first meeting with the service provider, social worker should have at hand all existing information available about the child: Decision of the regional council, certificate of birth/ID, insurance police, Form N100, assessment by the social worker, conclusion, etc. Service provider should be acquainted with all this information about the child before latter is actually placed in children's SGH. In Batumi children's SGH, manager M.K. explained that confidentiality was the reason why beneficiaries' profiles did not include Individual Development Plans reviewed according to set periods. In particular, according to the same person, Individual Development Plans along with psychologist's conclusions are stored at AALP "Batumi Center for Education, Development, and Employment Center". Aforementioned argument creates doubts whether quality service provision based on individual needs of the child is ensured by responsible persons – foster mother and father – without being guided by relevant plan.

Major problem which was revealed after studying personal profiles of children' SGH beneficiaries is that Individual Development Plans do not grant appropriate attention to child's specific needs. For instance, Individual Development Plan of Ozurgeti children's SGH beneficiary P.G. indicates that for reasons of managing child behavior consultations with the psychologist and periodic supervision of psychiatrist are needed. The same Plan, under the graph "comments" indicates record about the visit of - M.G. - Doctor of psycho neurological clinic. Foster mother could not remember this inscription and explained that such activity did not take place as the child did not reveal need for such consultation while

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living at the SGH. Social worker's visiting form, assessing child's psychosocial condition kept in the personal profile of Z. Kh. - beneficiary of the same house – indicates, that according to the Batumi Orphanage psychologist, Z. Kh. is characterized by anti-social behavior and is in need of intensive intervention. Individual Development Plan elaborated by social worker I.S. states, that for reasons of controlling child's health he/she is in need of psychological services and difficult behavior management work, as well as consultation with psychiatrist. In the Individual Development Plan additionally sent via electronic post by manager of the Home I.U., meeting with the psychologist is indicated as one of the activities for managing child's aggressive behavior; Yet, the document indicates neither schedule nor timeframe for implementing said activity. The results part of the Individual Development Plan states: "has been consulted by psychologist" as the result achieved. Despite existence of such record, information about activity exercised is not sufficient as it does not reflect information about intensiveness of consultations with the psychologist, as well as indicators of success. Similar problems were observed with regard to several beneficiaries of the Batumi children's SGH. For instance, according to the conclusion of neuropsychologist I.Z., found in the personal profile of beneficiary L.Y., child has problems of mental development. His skills fall behind required level of development for the same age group category; Child is in need of intensive work with special program for stimulating perceptive social and motoric skills and self-service habits. It has to be noted, that Individual Development Plan was not included in beneficiary's personal profile. According to foster mother, a pedagogist is working with the child, yet information about activities undertaken and success achieved is absent from child's personal profile.

Comparatively different situation can be observed at children's SGHs, following so called Polish management model, where more attention is given to up bringers' individual work with children. Staff of aforesaid children' SGHs (Kutaisi and Khashuri SGHs) are comprised of four up bringers and a leader. Each up bringer is in charge of 2-3 beneficiaries and is responsible for having individual working hours with each child twice per week. Up bringers change according to day shifts, but the Home has information sharing journal, where up bringers record information about the child on a daily basis, thereby giving staff opportunity to gather enough data on individual needs of the child.

Polish management model SGHs also practice different approach towards running beneficiaries' personal profiles. Each of the profiles contain different types of information cards, mainly providing information about strong sides of the child and analysis of his/her needs recorded within one month from the child's enrollment in SGH; In parallel to this, personal profile includes following additional documents: Filled in child observation card, clothes card, contact with parents card, contact of up bringer with the school card, contact with the doctor card, plan for developing educational services, additional activities card, chart of long-term goals. Apart from mentioned cards, Individual Development Plan and monthly plan are drafted in relation to each beneficiary and reasons for family crisis are analyzed. Consistent and accurate keeping of such documentation makes it possible to identify child's individual needs and plan/implement relevant activities, as well as provide interested person with somewhat complete information about the child.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To provide accurate and complete maintenance of personal profiles and documentation of children's SGH beneficiaries, with a view of protecting the principle of individual approach and meeting individual needs;**
- **Provide complete accessibility of beneficiary related documents for persons responsible for child upbringing and care.**

CHILDREN'S HEALTHCARE AND MEDICAL SERVICE ACCESSIBILITY IN SGHs

The aim of the reform of the child care system with regards to the socially unprotected child, deprived of parental care, is to create better opportunities and environment for their upbringing and development. Deinstitutionalization is the priority for the government of Georgia, entailing relocation of children from large-sized orphanages to small

alternative forms and gradual substitution of the orphanages with alternative services. As of today, 50 Small Group Homes (SGH) are operating with 320 children enrolled. The functioning format of these homes differ from each other: those organized according to the British model: children and foster parents (real couple) along with weekend shift of aunt and uncle (also a couple) inhabit the house. Those organized according to the Polish model: supervision is performed by four up bringers and a leader; and SOS Children's Village model, which is the oldest to be implemented and entails presence of single foster mother being substituted by aunt on weekends.

It has to be noted that infrastructure existing at new type of children's SGHs indeed have positive effect on child health and welfare. SGH is an environment with maximum resemblance of a biological family, where children can receive care and adequate service during 24 hours.

Access to medical service at child care institutions is exercised in accordance with the Article 135 of the "Law of Georgia on Health Protection", indicating that "the State provides medical assistance for orphans, children deprived of parental care, children with physical and psychical disabilities in institutions".

In reality, irrespective of the location where the child is placed, the Article 24 of the Child Rights Convention is applicable, according to which: "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services"; In addition, according to the Child Care Standard N9 – "Support to and Protection of Child's Health", "In-service support for conditions required for beneficiary's physical and psychological health are established. Beneficiary will be provided information regarding his/he health and self-care. Service provider ensures beneficiary's accessibility to immunization and medical-prophylactic check. Beneficiary has healthy and age-relevant diet; Child's physical activity and leisure are balanced; Where relevant, beneficiary will be provided with qualified medical service".

Monitoring team assessed children's health situation and actual possibilities of accessing medical services in children's SGHs operating in regions of the Western Georgia.

Monitoring was conducted across different child care service providers for SGHs. In 9 children's SGHs coordinated by SOS Children's Village: Zestaponi Municipality Vil.Kvaliti, Chkhorotskhu, Sachkhere municipality Vil.Bajiti, Ambrolauri, Khoni, Tsalenjikha and two children's SGHs in Kutaisi, as well as Ozurgeti, Kutaisi "Bres Georgia", Lanchkhuti municipality Vil. Lesa "Ray of Future", Ozurgeti "Young Pedagogists Union", Batumi and Khashuri two children's SGHs. According to the Decree of the Government N503 from 29 December, 2011 on "Approving State Program on Social Rehabilitation and Child Care for the year 2012" with regard to the Article 2 on family service subprogram for children deprived of parental care, subprogram activities include: k) Provision of dynamic surveillance of a child in primary health institutions and, if needed, provision of initial medical assistance, as well as organization of outpatient and inpatient medical service specified or not specified by the state programs; Despite aforementioned duties, monitoring team observed different kinds of inconsistencies with regard to monitoring beneficiaries' health, accessibility to medical services and supervision over flow of chronic diseases in children's SGHs.

INDIVIDUAL DEVELOPMENT PLAN AND THE REALITY

All SGHs supervised by SOS Children's Village keep Individual Development Plans elaborated by Children's Village (first part consists of 14 paragraphs, including comprehension development assessment, study skills and abilities, behavior and other). Assessment format entails paragraph (N3) of physical development assessment, accompanied by Individual Development Plan questionnaire. Second part of the Individual Development Plan indicates activities to be completed across time and schedule of protraction of indicators of success.

Paragraph N3 on physical development comprises following questions: "overall health condition; does physical development correspond to age group requirements or it runs behind? Are there any physical signs, e.g. illness, uncontrollable enuresis, etc.? How do psychomotorics look (e.g. postures, gesticulation)?"

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It is important to note that physical development itself is one of the components for determining health condition and not vice-versa, as it is stated in the individual development data questionnaire. “Overall health condition” is of such importance, that maybe dedicating a separate paragraph to this issue could have an effect of increasing attention towards monitoring of the health condition of beneficiaries, particularly in cases of chronic diseases. It is also difficult for a non-medic to fill in “physical development” questionnaire without having special diagram for physical development at hand, moreover considering the fact that foster mother, father, and up bringers have not received any training on assessing physical development or rules for medication administration. During monitoring of the children’s SGHs often times Individual Development Plans were seen as partially complete, lacking date and signature, with incomplete and non-real records. After speaking with foster mother, father, and up bringers, it became evident that often cards are filled in together with the social workers; at times they had difficulties expressing concrete opinion or commenting on beneficiary’s health/behavior from cards certified with their signature. It could be that aforementioned is caused by lack of clear and straight instruction regarding “Individual Development Plan” of the child.

Conversation with foster parents and up bringers revealed that up bringers have been trained for urgent medical assistance at a learning center in the framework of so called “Polish Model”.

Majority of SGH up ringers have undertaken preparatory training conducted with joint organization and financing from USAID, MoLHSA, UNICEF, Save the Children, Association “Children of Georgia”. British charity organization “Every Child” prepared textbook (consisting from three parts) on “Child Care Issues for SGH Caregivers” in the framework of the project on “Strengthening Child Care System and Services”; with the support of the Polish project training materials “Methods for Individual Plan for Children and Families in Crisis” were prepared. Provided textbooks review issues of attachment and development; Upbringing style and effective communication; Management of difficult behavior, aggression and other acute topics potentially applicable and relevant to be used by the up bringer in daily life. Nevertheless, there is no information as to health support and prevention of diseases, rules for medication administration and storage security during the period of child’s sickness, importance of balanced full diet for normal health physical development, as well as information pertinent to other acute topics which could have been beneficial for up bringers of children’s SGHs.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- To ensure within the framework of the reform of the child care system assessment of the effectiveness of different child care models (British, Polish, SOS Village models);
- To elaborate uniform, practical, and reality adapted standard and work forms for improved supervision of children’s SGHs beneficiaries’ growth and development and monitoring of their health;
- To ensure preparation of practical study training course for retraining up bringers and SGH foster parents for the purposes of improved supervision of children’s SGH beneficiaries’ growth and development and monitoring of their health;
- To ensure preparation of relevant textbooks and their dissemination in SGHs, with due consideration of Child Care Standards, support to and protection of health, and principles of appropriate diet.

CONDITION OF HEALTH

Article 25 of the Child Rights Convention provides: “States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

Article 6 “Placement of beneficiary in Round Clock Specialized Institutions” of the Decision N52/n from 26 February 2010 by the Minister of Labor Health and Social Protection on “Approving Rules and Conditions of Placement and Release of Persons in/from Specialized Institutions” indicates that service provider should receive regional council decision on beneficiary placement accompanied by “beneficiary’s health condition certificate (Form NIV-100/A) further defined in paragraph 1.b.”

There were instances when beneficiaries were placed in SGHs without form NIV-100/A (3 beneficiaries in Chkhorotskhu, 1 –in Kutaisi, 6- in Ambrolauri, 1- in Khashuri, 2 - in Kutaisi “BRES Georgia” children’s SGH, and 2 beneficiaries in Lanchkhuti, Vil. Lesa).

In terms of health condition, there are no children having disability status living in SGHs, but among inhabitants of the Home, there are children with various chronic diseases which shall be discussed further on when considering accessibility to medical services.

During relocation of children from one SGH to another, I.Ch. and K. Ch. (Zestaponi) health certificates, form NIV-100/A, indicated that form NIV-100/A was completed “to be presented upon request”, statement on health condition reads: “healthy” and only short brief indicates, that “according to the mother, child is overly emotional”. In reality, as SGH foster mother stated, “children have difficult behavior, and there is frequent need for calling psychologists from the organization “Children of Georgia”, “they have been visiting psychiatrist for consultation in Kutaisi, concrete treatment was prescribed”.

It has to be noted that there are cases when form NIV-100/A indeed reflects child’s actual health condition as well as outlines treatment recommendations; nevertheless, in practice these children have not received any type of medical support, health certificate presented by the beneficiaries on the stage of enrolment in SGH (medical documentation form NIV-100/A) was only kept in the administration.

In the case of beneficiary L.R., form NIV-100/A indicates diagnosis – “night enuresis” (SOS Children’s Village , Kutaisi House N12), while treatment recommendations outline “needs overall urinary test, medical check of urinary systems” beneficiaries; treatment recommendations for M.R. and L.R. with the diagnosis of night enuresis indicate “consultation with neurologist, medical check of urinary system”. Beneficiary G.R.’s recommendations for treatment of “endemic thyroid linked with iodine deficit” indicate “ requires echoscophy of the thyroid gland, additional hormonal tests, control of TSH and FT4”, despite these diagnosis we were unable to find information and recommendations about laboratory tests/ medical checks and treatment provided to beneficiaries, and consequently any change or improvement in their health conditions.

In Kutaisi form NIV-100/A concluding remarks on the health condition of SOS Children’s Village children’s SGH beneficiary G.M. stated that the he/she is “practically healthy”, nevertheless, according to consultation of ophthalmologist, beneficiary has significant regress of sight (0,3) in his/her right eye. This health condition is inadequately assessed; neither appropriate medical intervention took place. Moreover, according to SGH foster mother, beneficiary “is only suffering from enuresis and is already receiving treatment with relevant medicine – “Merlipramin”.

Similar situation was observed in Ozurgeti “St. Barbare” children’s SGH, where beneficiary A.Y. was relocated to from Tbilisi; according to form NIV-100/A received from children’s orphanage “Charity”, beneficiary is “healthy”, yet based on information provided by SGH’s foster mother: “she has enuresis, is often emotionally anxious, is under supervision of neuropathologist, has obstructions of the menstrual cycle.”

Similarly, beneficiary of the SOS Children’s Village Sachkhere municipality Vil. Bajiti children’s SGH suffers from night enuresis, as stated by foster mother. Yet, Form NIV-100/A conclusion indicates that the child is “healthy”; the part of “diagnostic checks/tests and consultancies conducted” reads: “Mental capabilities are slightly limited as a result of living in an downgraded environment.” The document does not at all mention enuresis. The child has not had any consultation with the doctor, medications were also not prescribed. According to the SGH foster mother, “the child is using diapers, and one diaper is satisfactory only in case the child will be woken up at 1 a.m., otherwise he/she needs to change for second diaper.

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Record done by up bringer with regard to health condition of beneficiary S.K. (12.02.2012) states that S.S. had “pneumonia, and was hospitalized to Tsalenjkha hospital for 4 days; was subjected to treatment”. Record done by the up bringer does not indicate time when beneficiary was hospitalized, what specific treatment was he subjected to; there is also no information as to the flow of disease after sickness; form N100/A is absent. 3 more beneficiaries were hospitalized with similar problems, in their cases also form N100/A was lacking (Tsalenjkha).

Certificate of Health Condition (medical documentation form NIV-100/A) is an important medical document regulated by Georgian legislation.

Article 56 “on keeping medical records” of the “Law on Medical Undertakings”, paragraph 2.b. states: “medical records should be complete. Subject of independent medical activity should complete each part of the record (patient’s personal, social, medical data)” subparagraph (d) of the same paragraph (2.b) points out to the requirement that “medical records adequately reflect every detail related to patient’s medical service”.

Indeed inadequately, non-objectively completed medical document cannot guarantee comprehensive supervision of children and adolescents who are under children’s SGH custody.

Despite that fact that often form NIV-100/A was only formally filled in, only “upon request”, it has to be noted that even in cases where form NIV-100/A indicated chronic diseases, there is no evidence of any laboratory tests/checks, consultations, treatment, or rehabilitation recommendations for beneficiary G.B. (Zestaponi) diagnosed with sheer bone bump Osteochondropathy”, making us think that no consultation of specialist was ever accessible to the latter person. Since form NIV-100/A is dated with 29 December, 2011, neither SGH foster parents, nor their provider organization showed interest towards health condition of the abovementioned beneficiary during the period of almost one year (monitoring was conducted on 12.12.2012.).

It is a regrettable fact that similar instances often happen in different SGHs, including more complicated cases with severe negative results stemming from child’s initial behavioral dysfunction diagnosis.

Child Health Support and Protection Standard (Standard N9) obliges service provider to ensure targeted prophylactic, treatment procedures irrespective of the type of institution where the child or adolescent is placed. “Service provider shall ensure beneficiary’s access to immunization and medical prophylactic check”. Up bringers of SGHs have no information about immunization, as form NIV-100/A presented at the enrollment stage, it does not contain relevant records. Save for several exceptions (such as Ozurgeti “St. Barbara” children’s SGH; Khashuri “Biliki”); children moved from Zugdidi Orphanage to Chkhorotskhu children’s SGH had accompanying development cards; up bringers stated that “district doctor promised to inform them about the time for vaccination”.

Social worker’s records indicate that children have been immunized, but no supporting documentation is attached. Social worker’s records usually contain following type of information: “according to medical records child has gone through age –relevant prophylactic immunization procedures”. G.Ch.’s Child Development History Form IV -008/a is not complete (only 17 pages are present) and the rest (15-16 pages) are torn out and lacking. Social worker’s records pertaining to said beneficiary: “Overall health condition is satisfactory; according to boarding school nurse M.V. the child undertook age relevant preventive inoculations, certified by child medical history found in Kutaisi N44 Public boarding school. It is notable, that same information is not reflected in “Individual Development History” of the child sent from the boarding school to SGH; Similar situation was observed with regards to other beneficiaries of Khoni children’s SGH.

Despite the fact that primary healthcare institutions are responsible for timely immunization and quality, it is possible to reflect relevant information in “Development Cards” kept by SGHs, which would prevent complications in cases where preventive inoculation is needed following injury, different types of trauma or animal bite.

Prophylactic medical check is defined by 2012 State Program on Social Rehabilitation and Child Care; article 2, paragraph (k) of Family Service Subprogram for Children Deprived of Parental Care defining subprogram activities, in particular: “Provision of dynamic surveillance of a child in primary health institutions and, if needed, provision of initial medical

assistance, as well as organization of outpatient and inpatient medical service specified or not specified by the state programs.” Beneficiaries have not taken any medical check after moving to SGH. Some noted that medical check was conducted in the summer prior to sea holidays. SGH foster father stated: “3 months ago district doctor visited us and conducted medical check of all children” (Chkhorotskhu).

Implementation indicator “d” of Standard N9 on Child Health Support and Protection indicates: “service provider in charge of control over infections; attempts to prevent them through quarantine and other measures recommended by the doctor”. According to up bringers of SGHs “children have not been ailing with transmittable infectious diseases”. There is not much possibility of isolating the child from his/her peers in case of infectious diseases. Two beneficiaries inhabit each dorm room, there is no additional room. In some SGHs there is a possibility for temporary isolation of one child in the ironing room (Chkhorotskhu) or in the library (Khashuri, Kutaisi). In some SGHs up bringers noted possibility of isolating the infected child, namely child infected with virus stays in the room, while healthy child is moved to other beneficiaries. (Sachkhere, Ambrolauri, Lanchkhuti, Ozurgeti, Tsalnjikha, Khashuri, “Bres Georgia” Kutaisi children’s SGH”).

Implementation indicator “a” of the Child Care Standard N9 notes that “service provider supports the child in receiving advice on issues of personal hygiene and healthy lifestyle.”

In this regard, up bringers engage beneficiaries into conversations; Many children are involved in sports activities (Zestaponi, Chkhorotskhu); Although according to up bringers, children often times need to be reminded about the need to wash their hands, major challenge was studying to flush the toilet; It was also hard to teach them brushing their teeth (Tsalnjikha). There were occasions of infection with fleas mostly after returning from summer holidays.

Up bringers of both of Khashuri children’s SGHs noted: “There were instances of scabies at the time of SGH opening”. According to child care system reform, alternative forms of child care should be more flexible, practical, and child welfare oriented. Successful positive infrastructural changes further highlight only formal and non-objective assessment of child’s health condition, denial of beneficiaries’ need for medical assistance, insufficient objectivity of supervision of normal growth, development, and health conditions at the beneficiary enrollment stage in SGHs.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- **To ensure correct and complete keeping of medical documentation** - form NIV-100/A health condition certificate - in accordance with the rule on enrollment of beneficiaries in children’s SGHs;
- **To elaborate simple indicators of supervision of SGH children’s health condition** with a view of improving and monitoring their health;
- **Conduct monitoring of SGH beneficiaries’ health conditions, prevention of diseases and rehabilitation procedures with due regard to their health condition; particular attention should be given to cases with chronic disease presence;**
- **To ensure, in the framework of state program on social rehabilitation and child care, comprehensive medical check at Tbilisi city or regional multi-profile medical institutions undertaken at the stage of enrollment of children in SGHs and indicating, whenever necessary, appropriate treatment, rehabilitation, and relevant recommendations.**

ASSESSMENT OF CHILD’S HEALTH CONDITION BY SOCIAL WORKERS

When conducting primary or full assessment of the child, social worker assesses beneficiary’s health condition. In the process of monitoring, up bringers often note that social workers do not provide them with full information about child’s health condition; Consequently, they unexpectedly encounter beneficiaries’ health problems during their work.

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In the process of the monitoring, health conditions records done by social workers were reviewed; the most of these documents provide incomplete information, which does not reflect clear picture of child's health condition.

Document on "Allocating functions and duties of social worker and service provider in the children's Small Group Home" provides that social worker should have at hand all existing information available about the child: decision of the regional council on enrollment, certificate of birth/ID, insurance police, Form N100, assessment by the social worker, conclusion, intervention plan, certificate on disability etc. Service provider should be acquainted with all this information about the child before latter is actually placed in children's SGH. Yet there were instances during the monitoring process when SGH up bringers, foster parents often stated that they were not informed about beneficiary's health problem (Sachkhere, Kutaisi, Ambrolauri, Khashuri). It was also revealed that several beneficiaries did not have health insurance (Sachkhere); in several cases health insurance was overdue (with regards to: one GPI health insurance policy beneficiary from 01.11.2012 -Chkhrotskhu; one ALDAGI – BCI health insurance policy beneficiary from 01.09.2012 – Kutaisi, two beneficiaries of "International" health insurance from 01.10.2012 –Batumi). Several beneficiaries' personal profiles did not include form N100/A to be presented at the stage of enrolment in SGH (3 beneficiaries –Chkhorotskhu, 1 beneficiary – Kutaisi, 6 beneficiaries –Ambrolauri, 1 beneficiary –Khashuri, 2 beneficiary - Kutaisi "BRES Georgia" children's SGH, 2 beneficiaries - Lanchkhuti vil. Lesa).

Sachkhere municipality Vil. Bajiti SGH beneficiary G.Ts. health certificate issued by JSC "My Family Clinic" Tkibuli Regional Hospital" states: "child's physical and psycho-motoric development pace is appropriate to relevant age group development, overall condition is satisfactory, without any complaints observed. Psycho-emotional sphere is slightly behind age; beneficiary has problems with conceptualizing the material read. According to up bringers beneficiary has problems with concentration and demonstrates inadequate behavior. Social worker's assessment concludes that the child is healthy; the document does not refer to any problem indicated by the up bringer. According to the up bringers of M.Kh., beneficiary of the same SGH, the latter has aggressive behavior towards his/her siblings, in contrast, health certificate of M.Kh. states that "child's physical and emotional development responds to relevant age requirements". Social worker's assessment form is also absent.

Beneficiary N. N.'s personal profile holds data about child's health conditions where it is indicated that the child has health related problems, in particular - has periodic night enuresis. Doctor's prescription paper indicates: "epilepsy with big generalized fainting. Last fainting was observed 10 days ago; non-treated mental development retardiness (accompanied by social background)". Child was prescribed drugs treatment. Social worker's assessment form reads: "child is healthy according to family members and neighbors' statement, as well as external inspection; Child's medical documentation and family members' information both indicate that beneficiary has no signs of any disease."

Beneficiary N.Y. profile (Ambrolauri children's SGH) includes "LTD Medical Park Georgia" 113 medical card where only patient's complaints are listed. Illness progress, its treatment and results achieved are not reflected in the documentation. According to up bringer, the child is healthy, but has mental difficulties and requires speech corrector. Foster mother stated that the Home does not have adequate specialist support; Consequently the child has not received any medical consultation. Up bringer notes that the child cannot study and is unable to differentiate between morning, noon, and evening; Beneficiary has problems with remembering up bringer's name, is unable to tell time; Child is not diagnosed; Doctor has not been consulted.

It is interesting to look at the conclusion of the social worker based on overall assessment of beneficiary N.Y. which reads: "according to district doctor and family members, child is practically healthy; Medical documentation is duly arranged and kept at Khotevi ambulatory. Whenever necessary, beneficiary is supervised by Doctor N.B.; Child's psychological and mental development meets relevant age requirements". In this case, data recorded by the social worker with regard to N.Y. is not compatible with actual situation. It does not reflect problems faced by the beneficiary.

Personal profile of one of Kutaisi BRES Georgia SGH beneficiaries does not indicate appropriate medical documentation pertinent to child's enrollment in SGH. Information about the health condition of beneficiary became accessible to the monitoring group only through social worker's assessment and data recorded by the latter. Social worker's assessment (Child Assessment Form, Chapter 4 – Information about needs for development of the beneficiary, 4.1. - Health) reads: According to the doctor child does not need regular medical supervision; Child is listed in TSU Pediatric Clinic;

Preventive inoculation has been conducted, the fact being certified by relevant document. Beneficiary has undergone annual deep medical check at Tskneti boarding school, although no documentation certifying aforementioned is attached to child's personal profile. Social worker elaborated Child's Individual Development Plan for the same beneficiary dated as of 26.12.2011. Objective N2 (supporting biological factors) provides for "monitoring of child's health", but does not indicate person(s) responsible for monitoring and the record is incomplete.

In the course of monitoring the social worker's assessment forms following was observed: Gibo Sh.'s assessment form reads: "Diana is a healthy child and has no complaints about illnesses (4.1.1.); Diana has no signs of any chronic or acute disease (4.1.2.) (Kutaisi). Abovementioned once again emphasizes, that documentation completion takes place only formally, by mechanically transferring data from one personal profile to another (copy – paste).

Recommendations to the Ministry of Labor, Health, and Social Protection:

- To oversee precision and quality of implementation of the duties prescribed by the document on "Allocating functions and duties of social worker and service provider in the children's Small Group Home";
- To ensure, that social workers fully inform SGH up bringers/ foster parents about children's health conditions.
- To ensure, that social workers provide required medical documentation (Form N100/A, health insurance policy) to be presented to children's SGH upon enrollment of the beneficiary.
- To ensure, that social worker's child assessment form reflects precise information about the beneficiary.

ACCESSIBILITY OF MEDICAL SERVICE

2012 State Program on Social Rehabilitation and Child Care; Article 2, Paragraph (k) of Family Service Subprogram for Children Deprived of Parental Care, defining subprogram activities, establishes for "Provision of dynamic surveillance of a child in primary health institutions and, if needed, provision of initial medical assistance, as well as organization of outpatient and inpatient medical service specified or not specified by the state programs."

Accessibility of medical services for SGH beneficiaries is provided by insurance policies, whereas medications, purchase of spectacles and other medical assistance not covered by insurance policy - are paid for by the provider organization.

Almost every beneficiary of the SGH holds policies of various insurance companies. In some cases, as it has been noted with regards to completeness of documentation related to insurance policy was overdue. One beneficiary of the children's SGH did not have insurance policy. SGH foster mother could not name the problem, but indicated that she had addressed Social Service on this issue.

Dental care of SGH beneficiaries is still problematic in regions, as they are not covered by any insurance package. Moreover, necessary medical checks, such as hormonal analysis, electroencephalogram, dermatologist consultation, and other checks are possible only with additional funding. When children are ill, up bringers address either ambulatory or hospital; In special cases Emergency is called which transports the child to the regional hospital, and whenever necessary – to the regional medical center.

There is no practice (neither obligation) to record instances and reasons for calling Emergency, such as: Beneficiary's high temperature and fainting (Chkhorotskhu), muscle pain (Kutaisi), stomach ache (SOS Children's Village House N12); Neither any record on hospitalization (Zestaponi, Chkhorotskhu, Kutaisi) was made; Absence of such obligation complicates medical monitoring, including assessment of support given to the child. In most of the cases child

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returning from the hospital is not issued copy of the form NIV-100/A with relevant record and recommendations for further treatment, regime, or diet. Neither special “Cards Reflecting Health Condition” provides such information. There were instances when beneficiary was issued form NIV-100/A after visiting the hospital and consulting the doctor, yet the document was incomplete (often times lacking: date of referral, date when the form was issued, doctor’s signature; The record was incomplete and not providing relevant information about the patient). Ozurgeti SGH was outstanding as all cases of child illness were supported with existence of the Form 100/A. SGH foster mother noted that they encounter problems receiving Form 100/A from institutions; Even in this latter case, documentation issued by hospitals was not properly kept and complete and did not include full and exhaustive information about patient’s health condition.

Sachkhere SGH beneficiary has hearing deficiency. According to the up bringer, he/she accidentally encountered the problem when seeing pus trace on the pillow. According to SGH foster mother, child was taken to Sachkhere hospital. No medical documentation or record exists on this fact. Information relating to beneficiary is recorded in up bringer’s personal notes.

Despite the fact that SMG foster parents are only ones entitled to fill in the special form provided by SOS Children’s Village – “Cards reflecting Health Condition”, in reality these pages are either empty (Zestaponi, Kutaisi SOS Children’s Village House N12), or records are incomplete, in some cases only indicating medications prescribed (Chkhorotskhu, Tsalenjikha). From the records it cannot be discerned actually how many days the child administered the prescription, when it was completed, and what was success which resulted. Conversation with foster parents revealed that “no one ever mentioned such records, neither during the training or verbally, when we entered this house”.

As a result of Kvaliti Ambulatory Doctor’s diagnosis - “1st stage of diffusion thyroid” - I.Ch. was prescribed iodbalance. The only way we can ascertain the period during which the beneficiary should have taken medicines, is the amount of tablets indicated on the prescription (i.e. approximately 2 months), as relevant form elaborated by SOS Children’s Village - “Cards reflecting Health Condition”, contains no such record. SGH foster mother was convincing the monitoring group that “children take whatever medications doctors prescribe”.

In cases of beneficiaries being prescribed medications on certain days, there is no information transmission mechanism between foster parents of SGH and weekend up bringers on medication administration rules and dosages. Information transmission is done verbally or according to the written list of medications based on the prescription, which is mostly held on the kitchen along with medications (Kutaisi, Ozurgeti, Khoni), “so that children would not forget to take them”.

Most of the medications are purchased in accordance with need – only emergency aid box is present on the SGH location, but this does not create problems, as purchase of prescribed medications is possible at every drugstore.

As an example of positive practice, one could note that at Khashuri district SGH (provider “Biliki”) detailed records present in “Card of Contact with Doctor” indicate identity of the doctor that beneficiary has consulted, doctor’s diagnosis, doctor’s prescription. All records are certified by the up bringer. In this regard, Ozurgeti SGH (Young Pedagogists Union) is an exception, as records provided by SGH foster mother about beneficiary’s diseases are detailed, also indicating treatment prescription and information regarding child’s health condition progress. Data are informative and consistent, thereby enabling acquisition of information on beneficiary’s health condition. Necessity for sharing information on about beneficiaries’ medical assistance ensures comprehensive monitoring of child and adolescent health condition at children’s SGHs.

Mental retardiness, as well as different chronic diseases are common among SGH beneficiaries (enuresis, encopresis, iod deficit, diffusive thyroid, 2nd stage overweight and obesity); There are children with behavioral dysfunction, inexact behavioral dysfunction and psychological problems.

Although overseeing organizations provide additional medical assistance and purchase of medications based on up bringers request (“SOS Children’s Village”, “Biliki”), in reality medical problems cannot be solved in the region: human resources of the regional center medical institutions, their qualification, and medical technologies cannot ensure

accessibility of medical assistance in such difficult cases when MR check or consultations of child and adolescent psychiatrist, gynecologist or endocrinologist are needed.

It is important to find means for solving abovementioned problems. Indeed medical checks conducted prior to placement of beneficiary in children's SGHs should prioritize improvement of child's health. It would be advisable to place children and adolescents with chronic diseases, severe behavioral dysfunction in or near the capital, thereby ensuring their accessibility to all types of medical services, including locations, where consultation with narrow specialists of particular subjects (child psychiatrist, child endocrinologist, including rehabilitation endocrinologist) is more accessible.

Currently children with diagnosis such as enuresis and encopresis are left without treatment while placement of a child in SGH is an alternative form of childcare and entails implementation of the standard for "Health Support and Protection".

Recommendations to the Ministry of Labor, Health, and Social Protection:

- To determine medical-psychological needs of children and adolescents with mental health problems, taking into account psycho emotional stress and facts of violence experienced by such beneficiaries in the past.
- To ensure placement of children and adolescents with special medical-psychological needs in a manner providing for their medical and psychological rehabilitation (selection of SGHs located in or close proximity to the capital or regional centers).
- To ensure conducting of relevant educational trainings for SGH foster parents and up bringers in urgent medical assistance, medication administration, and storage rules.
- To provide for conditions for storing medications and following of security rules in children's SGHs.
- To elaborate simple, practical, and dynamic monitoring paper for children's SGHs overseeing medication administration by beneficiaries of the Home.

EATING

According to the Article 6 of the Child Rights Convention: "States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child." Development of the child and adolescent greatly depends on full, balanced diet.

According to the Article 24, Paragraph 2, Subparagraph (c) of Child Rights Convention dedicated to accessibility to healthcare and medical services, "States Parties shall pursue full implementation of this right" .. "Through the provision of adequate nutritious foods and clean drinking - water".

Child Care Standard N10 indicates: Service provider provides the beneficiary with safe food satisfying beneficiary's physiological requirements for food and energy, at the same time considering beneficiary's individual requirements. Service provider propagates healthy eating habit in front of the beneficiary. In case of absence of medical prescription, provider does not force beneficiary to eat, as well as does not forbid food for reasons of punishment". According to expected results of the Standard: "beneficiary receives the quality and amount of food necessary for satisfying his/her individual needs. Point "a" indicating implementation of Standard N10 indicates that service provider shall ensure that beneficiary receives safe food satisfying individual needs of each beneficiary"; here information about detailed list of menu-schedules is provided so as to "define to what extent food offered corresponds to physiological needs".

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VIOLATION OF RULES OF SAFE COOKING OF FOOD

Kitchens at SGHs are renovated, sunny, equipped with hot water, heating and adequate ventilation. Nevertheless there is no single insect-free net installed on kitchen windows.

When serving food to beneficiaries one has to grant attention to consumption dates and cooking instructions. Raw animal products, for instance meet processing utensils - cutting board, knife should be different from utensils for processing bread and vegetables.

Often times kitchen lacked knives and cutting boards for: set aside, marked, raw, and boiled meat and vegetables (Zestaponi, Sachkhere, Ambrolauri, Khoni, tsalenjikha, Lanchkhuti, Khashuri). Existing utensils, as explained on the spot, were either found in the SGH when relocating, or were included in the shopping list (Chkhorotskhu), although allocated amount of money – 10 GEL – was not enough for purchasing several cutting boards.

Knives do not vary in color or size; therefore they cannot be separately used for raw and boiled meat, fish and bread (Zestaponi). Some knives are lacking handles and there are practically no ways for using them safely (Chkhorotskhu). Tsalenjikha has only one shop where it is possible to receive receipt for the products purchased. In addition, it was revealed on the spot, that there is a taxi allocated to the SGH staff by the coordinator serving them on one particular day during the week to transport them to Zugdidi, but such instances are not being used for buying cheese and meat.

Water is supplied by motor pumping gathered water pumped from the well, which is then centrally distributed across the whole house and passes through appropriate filter (Zestaponi, Kutaisi, Tsalenjikha, Sachkhere); Alternatively, some SGHs gather water in water tanks (Chkhorotskhu, Tsalenjikha, Ambrolauri, Khoni, Kutaisi, Ozurgeti) equipped with special filter, the water is then distributed across the whole building.

Some houses were short of kitchen utensils, including those required for cooking (Zestaponi, Chkhorotskhu); Surface of enamel pots was damaged.

MENU

Government Decree N503 from 29 December, 2011 on “Approving State Programme on Social Rehabilitation and Child Care for the year 2012” with regard to the Article 2 on family service subprogram for children deprived of parental care subprogram activities indicates:

2.B) “Serving meals minimum three times a day, out of which one should be a three course dinner”.

Nevertheless, during monitoring, neither the menus nor any records connected to food were found. Meal preparation was done according to children’s desires. Only in Ozurgeti did they bring the menu and names of the food products for the whole week. The monitoring group, right on spot, studied the food diaries that were kept daily. Based on these diaries, one can assess what kind of food the beneficiaries received.

With regards to this, the children’s up bringers were indicating that they “lived simple, like in a family”, “we know what the children like and we do that”, “the written menu did not find success amongst the children and they wanted a change”. Often the up bringers cannot explain what is “simple living” and have no answer to it, nor do they explain how good is for health and child normal development to have those “products that the children like”.

One has to single out the principle of an “open fridge” (in Kutaisi), a Polish model of upbringing “a person eats when he/she wants”. Yet, note has to be taken as to how such an approach ensures N 9 standard of child care, to what extent does it help to develop correct eating behavior, to the normal functioning of digestion system and health improvement.

As it became apparent from the conversation with the up bringers and foster parents, they have zero information about balanced and proper eating habits. Furthermore, no special training was held on these issues, nor is there any material about full, balanced diet in their training handouts.

Hence, there is no menu and no journal for monitoring eating. For this reason, it is difficult to identify what food the small group home beneficiaries received.

The children have no set schedule for eating, which means they study at various times and who comes when, eats then. Often children say “they eat as many times as they want” and they consider this to be a positive aspect. We ought not to forget, we are dealing with traumatized children, who in the past could not eat properly and had no access to food. Therefore, they have unordinary relationship with the food. For instance, at times they might be bulimic. Due to this, adequate eating time schedule should be determined.

It has to be said, that during the monitoring one week menu was seen only in Khashuri and Ozurgeti small group homes for children (Young Teachers Association), the provider of which is “Biliki”. In Khashuri they regularly have menus and the beneficiaries participate in the menu planning. According to the house manager even though he/she did not have a special training on eating and food matters, he/she constantly tries to get information on these topics, consult specialists on the matter and use all the acquired information during his/ her work. According to the manager in upcoming days there is a training planned to be held by a dietologist for the house foster mothers and foster fathers.

PURCHASING OF FOOD SUPPLIES

As usual, Small Group Homes do not stock up on food products as the home management has easy access to buying food every day or once in couple of days. Not in every region of Georgia where the small group homes are located, meat and cheese products are bought by the house administration. This is explained with a fact that they cannot receive the receipt. Nevertheless, potatoes and carrots are bought strait from the seller.

Due to such method of purchasing, when buying of food stuff, major attention is allocated to financial accountability, which does not always, guarantee purchase of quality and healthy food for children.

On the positive side it should be mentioned that in Kutaisi “BRES Georgia” and Ozurgeti “Young Pedagogists’ Union” run SGHs, beneficiaries do not receive frozen food products (meat, chicken legs, chicken), usage of ham and sausage is limited to maximum extent, dairy products are systematically purchased (cheese, cottage cheese, white yogurt – “matsoni” – and sour cream). House managers indicated that they often speak with beneficiaries about healthy eating habit and its importance, especially in adolescence years.

In some of SGHs following products without relevant labels were found: Ham “Eco-miti” stored in the refrigerator lacking production date (Zestaponi), sour cream stored in 2kg. jar without label (Kutaisi), 20 pieces of “Khinkali - new faces” (meat dumpling) stored in the freezer lacking inscription about expiration date and having only production date inserted on (Tsalenjikha). Overdue minced meat was stored in the freezer, production date indicated on the product was 16 June, 2012, and its storage time defined at -10 degrees Celsius -10 days and at -18 degrees – 30 days (Khashuri).

Following products were inappropriately stored: tomato paste (Zestaponi), condensed milk (Khashuri) stored in an open iron can.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- To prepare and conduct adequate trainings on child and adolescent full, balanced diet for their normal physical and psychomotoric development;
- To grant due attention to security of food products, considering dates of purchasing food products, their storage conditions and validity dates;
- To allocate additional funds to following security rules during food preparation at SGHs;
- To elaborate week-long simplified format menus and establish diet diaries aimed at ensuring varied, balanced diet.

2012

STAFF QUALIFICATION AND REMUNERATION

UN Committee on the Rights of the Child in its General Comment N7 “Implementing Child’s Rights in Early Childhood”¹⁶⁹ states, that states parties must ensure that the institutions and services responsible for childcare conform to quality standards, also implying that “staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and welltrained”. Committee notes, that persons working with young children should be socially valued and properly paid, in order to attract a highly qualified workforce; It is of particular importance that staff have sound, up-to-date theoretical and practical understanding about children’s rights and development. Monitoring conducted across SGHs revealed the problem of low qualification and insufficient retraining of the employed staff. Majority of up-bringers could not remember the topics they were trained in to by service provider institutions, fragmentally naming violence against children and primary medical services themes. Most of the staff could not present certificates from special retraining courses.

As it has been already mentioned, apart from insufficient guidance in document keeping, majority of up-bringers does not have sufficient and systematized information on methods of upbringing, Difficult behavior management, security, healthy life and such other spheres which are essential for conducting quality pedagogic or upbringing work.

The issue of staff adequate remuneration and work conditions should stand alone from others. Since objective for establishing of the SGHs was creation of an environment with maximum resemblance to the family, house personnel is composed of: In British model cases – only from foster parents (24 hour work schedule, 5 times a week) and weekend substitute up-bringers, whereas in the Polish system average of 4 up-bringers and a leader are working in shifts (10:00-18:00 to 18:00-10:00). The British model entails allocation of a separate room for foster parents; While at the Polish model Homes up-bringers have no private room and can only rest on the sofa.

As regards the question of remuneration and work conditions, despite different work schedules, average salary for foster parents and up-bringers is 440 GEL; One also has to consider that persons employed, in addition, have to perform all kinds of home chores and family duties accompanied by requirement to take care to the development of the child. Staff of SGHs is also not insured.

Different situation can be observed with regards to SOS Children’s Village staff remuneration. Mainly, average salary of SOS Children’s Village SGH foster mothers is 800 GEL; Additional funds are allocated to cover their meals. According to information provided, in case of 15 years of continuous employment in the capacity of SOS Children’s Village’s SGH foster mother, at the time of attainment of the pension age, employee receives additional pension from her employer. Aforesaid benefit and comparatively high salary considerably motivates staff and contributes to their positive approach to their duties.

Recommendations to the Ministry of Labor, Health, and Social Protection:

- To conduct periodic qualification trainings and thematic retraining courses for staff employed at SGHs;
- To provide staff of SGHs with adequate work remuneration and issue to them, to the extent possible, health insurance policies.

¹⁶⁹ UN committee on the Rights of the Child, General Comment N7, 2005, paragraph 23; CRC/C/GC/7/Rev 1.