National mechanisms for the prevention of torture in the South Caucasus

Armenia, Azerbaijan and Georgia

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Armenia (as of 2012)

Introduction

This report will first examine the international treaties and national legislation applicable in the field of prohibition of torture. Then, after listing the main types of places of detention and issues of concern arising in their respect, it will assess the efficiency of the existing national mechanisms for the prevention of torture.

Applicable legal framework

International treaties

Armenia is bound by the following treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination, ratified on 23 June 1993;
- International Covenant on Economic, Social and Cultural Rights, ratified on 13 September 1993;
- International Covenant on Civil and Political Rights, ratified on 23 June 1993;
- Optional Protocol to the ICCPR, ratified on 23 June 1993;
- Convention on the Elimination of All Forms of Discrimination against Women, ratified on 13 September 1993;
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, ratified on 14 September 2006;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 13 September 1993;
- Optional Protocol to the CAT, ratified on 14 September 2006;
- Convention on the Rights of the Child, ratified on 23 June 1993;
- Optional Protocol to the CRC on the involvement of children in armed conflict, ratified on 30 September 2005;
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, ratified on 30 June 2005;
- Convention on the Rights of Persons with Disabilities, ratified on 22 September 2010.

Armenia joined the Council of Europe on 25 January 2001. It ratified the European Convention on Human Rights on 26 April 2002 and the European Convention for the Prevention of Torture and protocols thereto on 1 October 2002. Although it has ratified Protocol 6 to the ECHR prohibiting death penalty in times of peace, it is yet to ratify Protocol 13 which prohibits death penalty in all circumstances.

Armenia signed but has yet to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities (signed on 30 March 2007) and the International Convention for the Protection of All Persons from Enforced Disappearance (signed on 24 January 2011). Armenia has not signed the Rome Statute of the International Criminal Court.

Prohibition of torture in national law

Article 17 of the Constitution provides 'No one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment. Arrested, detained or incarcerated persons shall be entitled to human treatment and respect of dignity'.

Under article 119 of the Criminal Code torture is defined as 'willfully causing strong pain or bodily or mental sufferance to a person, if this did not cause grave or serious bodily harm'.[1] Torture is punished by up to three years imprisonment; one finds no reference to torture committed by public officials among the aggravating circumstances.

Also relevant articles are 341 (using force to obtain testimony by judge, prosecutor, investigator), 308 and 309 (respectively, abuse and excess of official power) of the Criminal Code. However, they either punish a very narrowly defined number of officials (article 341)

1 Criminal Code of Armenia, available at http://legislationline.org/download/action/download/id/1655/file/bb9bb21f5c6170dadc5efd70578c.htm/preview (last accessed on 29 November 2011).

or do not allow prosecutions for torture specifically (i.e. Rather, a generic 'abuse of power', is (articles 308 and 309). The UN Committee Against Torture called for legislative amendments to be undertaken in order to bring the definition of torture in line with Article 1 of the CAT.

In 2008 two people were convicted under Article 119 (Torture) of the Criminal Code, one of them was sentenced to compulsory psychiatric treatment as a person of unsound mind. In 2009 two people were convicted under Article 119, one of them was released under amnesty laws. In 2010 nobody was convicted and in the first six months of 2011 one person was convicted under Article 119, who was released on amnesty.[2]

Places of detention

There is a total of 40 operating and non-operating temporary detention wards (IVS) in the Police system where a person can be held for a maximum of 72 hours, before the expiry of which he must be brought before a judge who may order pre-trial detention. Thirty-three temporary detention wards are currently operating in the Police system, seven are not used due to inappropriate conditions.[3]

A number of pre-trial detention facilities and penitentiary institutions for convicts function under the authority of the Ministry of Justice. Among them the Yerevan-Centre facility which is officially both a pre-trial detention facility and a prison under the authority of the Ministry of Justice is located in the premises of the National Security Service.[4] In practice it means that in order to have access to the Yerevan-Center Institution, the monitor has to go through the National Security Service checkpoint which informs the detention facility of the visit. The offices of the NSS investigators are located on the upper floors of the same building as the Yerevan-Center Institution (which is in the cellar of the building), and there is a risk that the detainees may be brought there without following the procedure stipulated by law, and other safeguards, however, no specific complaints have been made in that respect.

Military servicemen suspected of committing of crimes are detained for the first three days within the premises of the military police (not under control of the Police Monitoring Group), which are not equipped to keep prisoners and no law provides for their status as temporary detention wards. Consequently, the time-limit of 72 hours for bringing the servicemen concerned before a judge is often violated. However, once the detention has been authorized by a judge, the defendants who are military servicemen are detained in civilian pre-trial detention facilities.

Women and juvenile convicts are held in the Abovyan pre-trial detention facility and correctional colony. If the trial takes place elsewhere, the female or juvenile defendants are transferred to the temporary detention wards for the days on which courts hold hearings. The temporary detention wards used to keep defendants during trial days are supposed to comply with the requirements for the pre-trial detention facilities, but this is not observed in practice. The transfers from the Abovyan Facility to the temporary detention wards are carried out by the vehicles of the police. It follows that the Prison Monitoring Group is unable to monitor the conditions of transport for the reason that the vehicles belong to the police and the Police Monitoring Group is unable to inspect the vehicles, because they are used to transfer defendants. Both Monitoring Groups raised this issue with the Minister of Justice and the Head of Police, but without any outcome.

Migrants and asylum seekers are detained in a special admission centre of the State Migration Service of the Ministry of Territorial Administration. It is located near the Masis railway station, has a capacity of around 400 persons and is not within the monitoring mandate of any existing monitoring Groups.

Mental health institutions for convicts and those subject to compulsory psychiatric treatment are administered by the Ministry of Health. Orphanages and accommodation centers for the elderly, which are administered by the Ministry of Labour and Social Issues and not considered as places of detention, though acts of violence do happen there, they

2 The mentioned statistics for the years of 2008-2011 was provided by the RA Judicial Department

3 2010 Report of the Group of Public Observers monitoring the places for holding arrested persons in the Police system of the Republic of Armenia, published in 2011, available at http://www.policemonitoring.org/DownloadFile/210eng-2.Report_Eng._2011.pdf

4 Report of Group of Public Observers conducting public monitoring of penitentiary institutions and bodies of the Ministry of Justice of Armenia, published in 2009, available at http://www.hra.am/content/library/pmg_report_2008_eng.pdf

currently fall outside of either mandate or focus of attention of the existing monitoring mechanisms.

As of 30 August 2011 there are 4,514 persons deprived of liberty, 3,340 of whom are convicted prisoners, and 1,174 detained on remand.[5] As of 17 September 2011 there are 168 women and 17 juveniles deprived of liberty of whom 142 women and 15 juveniles are convicted prisoners.[6]

Areas of concern

During the years of 2010 and 2011 suspicious deaths continued to occur in the military under non-combat conditions (approx. 45 servicemen), while hazing and other mistreatment of conscripts by officers and fellow soldiers, and a lack of accountability for such actions, continued.[7]

The Committee against Torture remained concerned about reports that investigations carried out into many incidents of suspicious deaths or abuse of soldiers have been inadequate or absent, as well as about inadequate punishments of those convicted for the abuses.[8]

Armenian monitoring mechanisms have no access to the detention facilities located in Nagorno-Karabakh Republic. Even though Armenian army is stationed in Nagorno-Karabakh, the defendants who are servicemen, have no access to Armenian lawyers, held in Shushi or Stepanakert and are outside the reach of Armenian monitoring mechanisms, even though their detention is authorized and they are tried by an Armenian court (*de facto* sitting in Stepanakert).[9] Residents of Nagorno-Karabakh are tried by Karabakhi courts and serve their sentences in the territory (the only facility for convicts is in Shushi, it is outside the reach of Armenian monitoring mechanisms), except women who are transferred to Abovyan detention facility in Armenia.

Authorities continued to arrest and detain criminal suspects without reasonable suspicion and to detain arbitrarily individuals due to their opposition political affiliations or political activities. Courts remained subject to political pressure from the executive branch, and judges operated in a judicial culture that expected courts to find the accused guilty in almost every case.[10] During 2010-2011 the authorities released individuals who had been convicted in connection with the 2008 presidential election. Two other individuals convicted in connection with these events were released from prison after serving their full sentences.[11]

The Committee against Torture (CAT) expressed its serious concern about the "numerous and consistent allegations, corroborated by various sources, of routine use of torture and ill-treatment of suspects in police custody, especially to extract confessions to be used in criminal proceedings".[12]

The Committee urged the State party to promptly, thoroughly and impartially investigate all incidents of torture, ill-treatment and death in custody; prosecute those responsible and report publicly on the outcomes of such prosecutions.

Witnesses continued to report that police beat citizens during the arrest and interrogation.[13] Most cases of police mistreatment continue to go unreported due to fear of retaliation; in the reported cases effective investigations are rare. Most instances of abuse of arrested persons by law enforcement personnel occurs in police stations, particularly in the offices of police officers, rather than at police

5 The statistics was provided by the Prison Monitoring Group.

6 *ibid*

7 US State Department Human Rights report, Armenia.

8 *Concluding observations of the Committee against Torture: Armenia, Forty-eighth session 7 May–1 June 2012*

9 See an application communicated by the European Court of Human Rights to the Government of Armenia, concerning, inter alia, the presence of Armenian judiciary in Nagorno-Karabakh, *Muradyan v. Armenia*, no. 11275/07, communicated on 5 December 2011.

10 *Concluding observations of the Committee against Torture: Armenia, op.cit.*

11 *ibid*

12 *ibid*

13 *ibid*

detention facilities, which are accessible to public monitors.[14] The records of detention facilities in respect to the detainees who bear signs of injuries are not followed by medical examinations of the causes of injuries. Only recently the Monitoring Groups obtained the assurance that as a matter of practice such records would be transferred to the supervising bodies.

Overcrowding in the detention facilities is a serious issue. As of the end of 2008 the following numbers of detainees were kept in Nubarashen, Vardashen and Erebouni detention facilities.[15]

	Capacity	Actual
Nubarashen	840	947
Vardashen	154	192
Erebouni	391	591

One of the reasons for overcrowding is the regular and unconditional approval by judges of the requests to order pre-trial detention and also the low acquittal rate: over 99% of criminal judgments result in convictions. The procedure for release on parole is too vaguely defined, and the grounds of refusal allow for unfettered discretion of the decision-makers and the law does not provide for the reasons for refusal of the release on parole be given and the decision to be provided to the convict concerned.

Access to health care in pre-trial detention in particular is also an on-going concern.[16] There is a growing number of deaths in custody: nine in 2009, 35 in 2010, 17 in the first six months of 2011.[17]

Issues arise in respect of the conditions of treatment (whether voluntary and compulsory) of mentally ill patients. Compulsory treatment is often formally recorded as voluntary (the patient signs a pre-completed form of consent).

The UN Committee Against Torture also noted the following issues of concern: the lack of effective compensation for victims of acts of torture committed by government officials, poor prison conditions, the ongoing practice of hazing ('dedovshchina') in the military, which also has a devastating effect on victims and may sometimes even lead to their suicide.[18] One of the concerns expressed was also pertinent to reports that victims of and witnesses to torture and ill-treatment do not file complaints with the authorities because they fear retaliation.

Monitoring mechanisms

Operative Group of the Penitentiary Department of the Ministry of Justice

The procedure of implementation of monitoring by the Penitentiary department is regulated by Point IV of the Government decree of 24 August 2006, 1256-N on the Regulation of Penitentiary Department under the Ministry of Justice of the Republic of Armenia. According to Point II Sub-point 11, paragraphs (e) and (f) of the decree[19] one of the main objectives of the Department is the provision of guarantees to the detained and imprisoned people to enjoy their rights and freedoms, and ensuring the security of the people kept in the penitentiary institutions, including the staff and other detainees in the penitentiary institution. According to Sub-point 19 of Point IV of the Decree the supervision is carried out through site visits and surveys. Planned and non-planned site visits are carried out to the penitentiary institution. (Sub-point 21). As a result of the survey a protocol is prepared. (Sub-point 23). In case some new circumstances are revealed during the site visit, the purposes of the site visit can be changed by the Head of the Penitentiary department (Sub-point 26).

The Operative Group conducts visits unannounced to the penitentiary, but its aim is to control the observance of the prison regulations by the

14 *Ibid*

15 2010 Report of the Group of Public Observers, *op. cit.*

16 See OSJI, Developing a Tool for Independent Monitoring of Healthcare conditions in pre-trial detention. Armenia, An Expert Consultation, Vienna, Austria, 24-25 October 2011.

17 Reply of the Ministry of Justice to the Prison Monitoring Group.

18 Concluding observations of the Committee against Torture: Armenia, *op.cit.*

19 The decree is available in Armenian at http://www.arlis.am/DocumentView.aspx?DocID=28425&DocID_AM=28425&DocID_RU=0&DocID_EN=0

detainees, which results in searches, confiscation of unauthorised items and use of force against the detainees. This means that, the Operative Group is a law-enforcement body within the Service rather than a monitoring mechanism. It may be interested in the compliance of conditions of detention with the applicable legislation, where it acts under the instructions to find violations of law committed by a specific penitentiary official.

Prosecutor's office

Pursuant to Article 29(4) of the 2007 Armenian Prosecutor's Office Act,[20] prosecutors are entitled to control the legality of the application of criminal punishments and measures of coercion. In carrying out this mandate the prosecutors have a right to visit without hindrance and at any time all places where persons deprived of liberty are being kept, have access to documents, on the basis of which the person has been subjected to punishment or other coercive measures, and to meet with detainees.

If a violation of applicable legislation is found, the prosecutors are entitled to release those illegally detained, require explanations from officials for the actions or inaction undertaken and open criminal proceedings if a violation of the detainee's rights constitutes a crime. The exercise of these powers yields, however, no positive results to the detainees, as all functions are carried out in order to prove charges against defendants in criminal proceedings.

The prosecutor's office carries out multiple functions in criminal proceedings: it oversees the lawfulness of the investigation; it approves the indictment, represents the prosecution before the court, and oversees the execution of criminal punishments. Overseeing the legality of investigation and at the same time defending the charges in the court can create conflict of interest.

The fact that all these functions are entrusted to one body creates a conflict of interest in the prosecutors' actions and renders it non impartial.

Prison monitoring group

A group of public observers of penitentiary institutions and bodies of the Ministry of Justice (hereinafter Prison Monitoring Group) was established based on the 2005 order of the Ministry of Justice No. KH-66-N. The first composition was appointed by the Minister following applications of NGOs which were all granted.

Currently there are nine members in the Group. The members of the Prison Monitoring Group are appointed by the Minister of Justice for five years after having been accepted by the majority of 2/3 vote of the Group Members. The NGOs represented in the Group are changing often, but at the moment here are some of them: Civil Society Institute,[21] Foundation Against Violation of Law,[22] G. Magistros Medical Centre, Helsinki Committee of Armenia,[23] Vanadzor Branch of Helsinki Citizen Assembly,[24] Collaboration for Democracy, Trtu, Youth Center for Democratic Initiatives,[25] and Surb Kuys Sandukht. The maximum is 21 members, so there are positions for new members representing other NGOs. Only one person may represent an NGO on the Group.

The Prison monitoring group has access to the pre-trial detention facilities and places of detention for convicts under the authority of the Ministry of Justice. Its members also participate in the work of parole commissions of the Penitentiary Service of the Ministry of Justice although; it is not present where a parole case goes for examination to an inter-agency parole commission on appeal from refusal of parole.

A minimum of two members of the Group are allowed to visit places of detention, they may be assisted by outside experts who may have PMG passes, but do not take part in the vote of Group members. All

20 The Act can be found at http://www.translation-centre.am/pdf/Translat/HH_orenk/Prosecutor/Prosecutor_en.pdf

21 http://www.csi.am

22 http://www1.favl.am/index.php?out_lang=eng

23 Additional Information can be found at http://www.peacebuildingportal.org/index.asp?pgid=9&org=13

24 http://www.hcav.am/index.php/language_eng/

25 http://www.democracy.am/

decisions are taken by vote, but urgent appeals may be forwarded by the Group members to the Minister of Justice without deliberation.

The Group determines its topics for scheduled visits (this varies from one year to another: use of special means, internal complaints, disciplinary offences, applications for medical assistance etc.) It conducts meetings of focus groups, interviews detainees and staff. If it receives no specific complaints, it examines sanitary, hygiene, food, medical treatment, disciplinary cells, cases of death, detention facility records in every detention facility (many criminal cases are opened following the discovery of the records of injuries kept by the detention facilities). The results are covered in the annual report.

The Group conducts non-scheduled visits in urgent cases. The group can prepare an *ad hoc* report on a given urgent issue, and raise the issue before the Ministry of Justice.

When a complaint is received by the Prison Monitoring Group members (detainees and their relatives can contact the group on the phone or in writing), they may visit the prison, talk to the prisoner and the representative of the administration. However, detainees are often unwilling to speak to the Group members, often for one of the following reasons: either for the fear of reprisals or because it is not considered to be appropriate among the criminal convicts. When a violation is found and it is not possible to remedy it immediately, the group sends a report about the case to the Ministry of Justice. If necessary, the report is published with the answer/comments of the Ministry of Justice, it has to reply to the reports on urgent matters within three days. If the Ministry does not provide the answers within the timeframe stipulated by the 2005 Order, the report can be published without comments/answers therein.[26] The Prison Monitoring Group visits may result in internal inquiries, but those are conducted by the Ministry staff and penitentiary administration and the outcomes of the internal inquiries may be disciplinary sanctions against the complainant or a public reply from the Ministry of Justice that the complaint was not based on true facts (this contributed to discrediting of the Group's work).

The Group is funded by different donors in different years at the moment the Open Society Institute, which covers the transport, and secretarial expenses etc. Transport services are crucial insofar as Goris prison is concerned: it is located far from Yerevan and it is difficult for the Group to urgently react on cases coming from that detention facility, especially given the absence of active local NGOs on the spot.

Although the reports and conclusions of the Group are not binding, there is evidence of some of their findings having an impact. For example, in 2007 it was able to convince the authorities to construct a new facility in Vanadzor. This has not been the case on every occasion, however: a criminal case opened following the Group's report of excessive use of force by riot police in the Nubarashen detention facility in December 2008 was dismissed for the lack of *corpus delicti* (See Police Monitoring Group report 2008).

One of the problems with the impact of the Group's reports is that they are presented to the Minister of Justice. Both the Minister and the Head of the Penitentiary Service are appointed by the President of Armenia and while the latter heads one of the services of the Ministry governed by the former, the mode of appointment means that politically the Minister has limited authority over the Penitentiary Service and its head considers himself to be no less important than the Minister.

Police monitoring group

Similarly, a group of public observers for places where arrested people are kept under the authority of the Police (hereinafter Police Monitoring Group) was established under the 2005 order of the Head of Police No. 1-N.

Currently, there are 11 members in the Group, the maximum is set to be 21 members, so there are positions for those NGOs who wish to have their representative on the Group. The members of the Police Monitoring Group are approved by the Head of the Police. New members are elected by the majority of 2/3 votes of the Group Members, then the new member is appointed by the Head of Police for a three-year term. The following NGO are currently represented in the Group: the Yerevan Center for

26 This procedure is set by the order no. KH-66-N of the Ministry of Justice adopted in 2005, based on which the group was established.

Human Rights Protection, Law and Legal Protection, Civil Society Institute, Helsinki Committee of Armenia, International Department for Rights Protection, Hayots Haghtakan Ughi Patriotic Organisation, 'Afina' Women's Rights Protection Centre of Armenia, International Centre for Legal Improvements, 'AGNA' voluntary organisation, and 'Help' – the Armenian centre of protection of the rights of disabled people.

The police monitoring group has access to the temporary detention wards of the police and monitors conditions in these facilities. The applicable legislation requires that at least three members conduct visits to the facilities. It has the same working methods as the Prison Monitoring Group and is also funded by OSI.

One of the main shortcomings is that the group is not allowed to have access to police stations and police investigators' offices (where some detainees may be kept during the Group's visits), where interrogations are carried out, and pressure may be exerted. Despite the accessibility of the Group (it has a hotline phone number), detainees may sometimes be afraid of contacting it, fearing that this may complicate the criminal case against them. As a consequence, it is the Prison Monitoring Group that receives a lot of information on ill-treatment in police stations and temporary detention wards, after the defendant is convicted and has nothing more to lose, he or she is more eager to speak in detail about the treatment by the police.

Public Monitoring Group of Special Boarding Schools under the Ministry of Education

The group was created by the Order of the Minister of Education of 16 December 2009. Currently there is only one special boarding school for juvenile offenders below the age of criminal liability and difficult social behavior, e.g. vagrancy and mendicancy (in Vardashen). Juveniles are placed there by the decisions of the police (in cases of commission of criminal acts) and by Guardianship and Trusteeship Commissions of local authorities (in cases of behavioral problems). The group was created after a case of sexual abuse of a girl placed in such boarding school. Currently this school is closed and as mentioned, there is only one such school remaining. Other special boarding schools are for children with different learning difficulties and disabilities.

The Group consists of 18 members, two of whom represent Armenian branches of international NGOs (World Vision, Project Harmony). They have free access to boarding schools under the authority of the Ministry of Education (but not to orphanages and night-care institutions, which are administered by the Ministry of Labour and Social Issues), right to inspect the schools' documents, individual files, examine conditions in those institutions, meet the staff and juveniles themselves.

The Group is a recent creation and has not published any reports so far, so it is premature to judge on the efficiency of its activities.

Ombudsman

The Human Rights Defender (Ombudsman Office) of Armenia was established under Article 83.1 of the Constitution. The Human Rights Defender is elected by a majority of three fifths of the National Assembly for a non-renewable six-year term. Under Articles 8(1) and 12(1)(1) of the 2003 Human Rights Defender Act the Ombudsman has a right of access to every detention facility and every place where persons are deprived of their liberty.

The 2003 Act provides for a mechanism of examination of complaints to the Ombudsman (articles 7-15). A complaint can be made within a year after the alleged violation has taken place, unless judicial proceedings are or can be brought in order to remedy the violation. When investigating a complaint, the Ombudsman has a right to consult judicial case-files, obtain expert opinions, interview public officials etc. If he or she is satisfied that a violation of human rights has taken place, he or she may indicate the measures the impugned state body or official has to take in order to remedy the violation and that body or official has to reply within 20 days to report the measures taken following the Ombudsman's decision (article 15(3) of the 2003 Act). The 2003 Act also provides for the Ombudsman's annual reports presented to the President of Armenia, legislative, executive and judiciary and debated in the National Assembly.

Even though the Human Rights Defender is an accessible mechanism and has enough powers to access every person in detention, it is designed to focus more on complaints than on prevention of violations. As it will be seen below, the designation of the Ombudsman's Office as the NPM has yet to affect the Ombudsman's mandate, as the amendments to the 2003 Act designating the NPM were limited to a short statement to that end unaffecting the remaining provisions. A further problem facing the Human Rights Defender's office is that, according to the national expert, it currently has not enough staff to monitor places in detention.

The Ombudsman Plus: the NPM

The Ombudsman's office was designated as the national preventive mechanism after Armenia ratified OPCAT. Article 6.1 of the 2003 Act, introduced in 2008, states that the Human Rights Defender is designated as "independent national mechanism" under the OPCAT. The amendments provide no further detail on the functioning of the Ombudsman's Office as NPM.

A group of NGOs was elaborating and discussing an NPM bill when suddenly the National Assembly adopted the amendments to the 2003 Human Rights Defender Act designating the Ombudsman as the NPM. Following the amendments the then Ombudsman Armen Harutyunyan started to involve NGOs in his work having created a council of four NGO representatives and three experts of his office. The council members carried out visits to the places of detention on the condition that delegations comprised at least one expert from the Ombudsman's Office (meaning that under those arrangements the NGOs could not visit the places of detention on their own) and that the Ombudsman was informed of every visit beforehand.

The incumbent Ombudsman Karen Andreasyan brought in a new head of the NPM division of his office, a retired police colonel, which was both in charge of the visit and of the logistical support of the NPM activities, which prompted the NGOs represented on the NPM council to leave it. Currently, there are no formal requirements for the membership in the NPM council, neither in the amended 2003 Act nor in the 2011 NPM regulations adopted by the Ombudsman, which merely state that the council shall be comprised of lawyers, psychologists, doctors etc. over the age of 21. There's no requirement of expertise in the field of prevention of torture, no statute of incompatibilities (e.g., prohibition to seat on more than one monitoring mechanism, prohibition to appoint more than one representative of the same NGO on the NPM council, etc.), so that, according to the national expert, the selection is largely based on the personal preferences of the Human Rights Defender. The 2011 regulations[27] also fail to set out the powers of the NPM council members and consequences of its decisions.

Currently, the NPM council includes 3 members of the Ombudsman's office and the following NGOs: the Civil Society Institute, Foundation Against Violations of Law, Children's association of Armenia,[28] Social Justice, and G. Magistros Medical Centre. There may be up to 20 members. The council members work on a memorandum of understanding with other monitoring mechanisms and on the creation of regional offices of the NPM.

During 2011, visits were carried out in the penitentiaries, police departments, military units, psychiatric hospitals, orphanages, special schools, care homes of the Republic of Armenia by the Expert Council to reveal and prevent cases of torture and other inhuman or degrading treatment or punishment.

Conclusions and recommendations

General:

- bring the domestic definition of torture in line with Article 1 of UN CAT;
- provide for a clear framework of release on parole and effective appeal;

27 http://www.ombuds.am/main/am/10/116/2457/

28 http://www.ch-fund.narod.ru

- regulate the status of military detention facilities (temporary detention wards, disciplinary quarters) – so that they fall under the mandate of one of the monitoring groups;
- develop a national action plan for the prevention of torture;
- probably within the reform of the Code of Criminal Procedure, provide for a clear prohibition to have recourse to evidence obtained under torture and comply with it in judicial practice;
- implement, to the extent possible, the recommendations of international monitoring bodies;
- take immediate and effective steps to prevent acts of torture and ill-treatment; promptly, thoroughly and impartially investigate all incidents of torture, ill-treatment and death in custody; prosecute those responsible and report publicly on the outcomes of such prosecutions;
- publicly declare "zero tolerance" to torture and publicly warn that anyone committing such acts or otherwise complicit or acquiescing to torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties;
- reinforce measures to prohibit and eliminate hazing in the armed forces and ensure prompt, impartial and thorough investigation of all allegations of hazing and noncombat deaths in the military.

In respect of Nagorno-Karabakh:

- pending a permanent resolution to the Karabakh territorial dispute, temporary arrangements should be made to allow monitoring of the detention facilities located in the territory;

In respect of the Prosecutor's office:

- prosecutors to be encouraged to launch investigations into torture allegations rather than rely on internal police investigations;
- functions should be separated in a way to increase independence and ability to investigate;
- prosecutors should be encouraged to not to rely on evidence obtained under torture;
- discretion in allocating cases to investigate should be limited by law – and complied with in practice;
- in cases where injuries are recorded forensic examinations should be conducted regardless of whether a criminal case is opened or not; its conclusions should be provided to the person concerned and/or to his or her representative.

In respect of the Monitoring Groups:

- due follow up on the reports of torture should be organised;
- sustainable funding should be provided;
- transfers between different penitentiary facilities should be put under monitoring;
- Police monitoring group should have its mandate extended to the police stations.

In respect of the Office of the Ombudsman:

- consider creation of specialised centres for the protection of particularly vulnerable groups (children, women, military etc.);
- detail the statutory regulation of the NPM mandate of the ombudsman;
- provide for clear criteria for selection of NPM members and separation of administrative and monitoring functions;
- provide for clear regulation of the NPM working methods in order to allow institutionalised cooperation with the Monitoring Groups;
- pending creation of new mechanisms or reform of the existing ones, consider concentrating on those detention facilities which fall outside the currently defined mandates of the two monitoring groups (military units and military detention facilities, psychiatric hospitals etc.).

Azerbaijan (as of 2012)

Introduction

This report will first examine the international treaties and national legislation applicable in the field of prohibition of torture. Then, after listing the main types of places of detention and issues of concern arising in their respect, it will assess the efficiency of the existing national mechanisms for the prevention of torture.

Applicable legal framework

International treaties

Azerbaijan became a member of the UN on 3 March 1992 and acceded to the Council of Europe on 25 January 2001. Azerbaijan ratified the ICCPR on 13 August 1992 and on 27 November 2001 it ratified the first Optional Protocol thereto (it came into force in respect of Azerbaijan on 27 February 2002). On 16 August 1996 Azerbaijan ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is in force since 15 September 1996. On 4 February 2002 it made a declaration under Article 22 CAT (acceptance of individual communications). OPCAT was signed on 15 September 2005 and ratified on 28 January 2009. Azerbaijan is also bound by CEDAW and CERD.

With effect from 15 April 2002 Azerbaijan ratified two Council of Europe instruments, the European Convention for Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Framework Convention on National Minorities was ratified on 26 June 2000.

However, the compliance with the decisions and recommendations of international bodies is far from perfect. Thus, out of six reports the CPT prepared following its visits to Azerbaijan four remain unpublished because of the lack of consent of the Azerbaijani authorities for publication. All major recommendations of the UN treaty bodies and the CPT remain unimplemented, including the ones to close the pre-trial detention facility of the Ministry of National Security or transfer it under the jurisdiction of the Ministry of Justice, or to amend the definition of torture in the Criminal Code in order to bring it in line with Article 1 of the CAT.

Decisions in individual cases also remain unimplemented. This concerns both the views of the UN CAT (*Elif Petit v. Azerbaijan*, Comm. no. 281/2005, 29.05.2009, which concerned an extradition of a PKK member to Turkey, in violation of Article 3 of UN CAT) and the judgments of the European Court of Human Rights. The latter is the only judicial body to recognize that cases of torture exist in Azerbaijan, the national judiciary always declines to do so. But the judgments of the Strasbourg Court under Article 3 of the ECHR, some of them dating back to 2007 (e.g. *Mammadov (Jalaloglu) v. Azerbaijan*, no. 34445/04, 11.01.2007; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, 29.11.2007), remain unexecuted, except for the payment of just satisfaction to the successful applicants.

Prohibition of torture in domestic law

The Criminal Code, as amended in 2000 and on June 29, 2012, criminalises torture in Article 133, according to which it is “infliction of physical or mental suffering by way of systematic beatings or other violent actions, if it did not lead to grave or serious bodily harm”.

The already limited provision (it excludes severe harm and unsystematic violence) contains, however, an aggravating circumstance of torture (torment) committed or instigated by public officials with the aim of obtaining information or confessions, punishment for actions or inaction of the victim or third persons. However, discriminatory intent does not constitute an aggravating circumstance. Further excluded from Article 133 there is also torture committed in order to obtain information or confessions not from the victim, but from a third person.

Articles 293 of the Criminal Code punishes forcing (or ordering others to force) suspects, defendants, witnesses, victims or experts to give testimonies. It only applies to prosecutors and investigators, but contains recourse to torture as an aggravating circumstance. Further, Article 331 of the Criminal Code (abuse of official power) also criminalises actions which may constitute torture under Article 1 CAT, but not under Article 133 of the Criminal Code.

Finally, article 113 of the Code criminalises torture in custody in the context of international crimes.

In 2009, the UN Committee Against Torture reiterated its "concern that the definition of torture in article 133 of the current Criminal Code omits the references to the purposes of torture set forth in the Convention, such as for any reasons of discrimination of any kind" and lacks provisions defining as an offence torture inflicted with the consent or acquiescence of a public official or other person performing official functions". It called upon Azerbaijani authorities to bring its definition of torture fully into conformity with the Convention, "so as to ensure that it's possible to prosecute all public officials and others responsible for torture under article 133 of the Criminal Code".[29] In 2011 the Ombudsperson/NPM also reiterated the need to bring the definition of torture in line with the UN Convention Article 1.[30]

No one has been prosecuted for torture since 2000. Five policemen and a prosecutor were sentenced in 2001 for acts constituting torture under Article 1 UN CAT following an intervention of the President at a meeting with the Office of the Prosecutor-General, but under article 331 and not 133 (formally because the crime was committed before the entry into force of the new version of article 133). Another relevant example is a case of an investigator who allegedly raped the mother of a defendant, but was convicted of disorderly acts and sentenced to three years in prison.[31]

Places of detention

A number of executive agencies administer different places of detention.

The Ministry of Interior administers temporary detention wards where the following categories of persons may be held:

- suspects in criminal cases for the first 48 hours after the arrest;
- defendants transferred from the pre-trial detention facilities located in Baku, but appearing before rural courts of appeal where no pre-trial detention facilities are available;
- those convicted of administrative offences to a term of arrest of up to 15 days.

It also administers Special Admission Centres for vagrants, those without identity papers. Asylum seekers are held in two admission centres of the State Migration Service, which is currently a separate executive agency.

Penitentiary service of the Ministry of Justice administers the following detention facilities:

- pre-trial detention facilities for defendants in criminal cases deprived of liberty pending investigation, trial and/or appeal;
- penitentiary institutions of semi-closed camp type (colonies) for convicts–19;
- places of deprivation of liberty in the form of colony-settlement which currently constitute 14 establishments;
- one prison, i.e., penitentiary facility of closed cell type;
- Central Penitentiary Hospital for those detainees who require medical assistance.

Ministry of National Security administers its own pre-trial detention facility for the defendants in criminal cases investigated by the Ministry and for Armenian POW and Armenian civilians captured in the conflict.

Mentally ill convicts and forcibly hospitalized persons suffering from mental disorders are treated in the mental health institutions under the authority of the Ministry of Healthcare. Republican Psychiatric Hospital no. 1 has a wing for those mentally ill who undergo examinations within the framework of criminal proceedings and are detained following

29 CAT/C/AZE/CO/3, 19 November 2009. Concluding observations of the Committee against Torture. Azerbaijan

30 Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Report on the Activity of the National Preventive Mechanism Against Torture, 2009-2010, Baku 2011.

31 Both cases were reported by the national expert.

convictions. They are guarded by the police staff and not by the hospital staff, like in other institutions.

Ministry of Education administers special boarding schools for juvenile offenders under the age of criminal responsibility. Cases of violence happen in orphanages (under the Ministry of Education) and accommodation for elders (under the Ministry of Labour and Social Welfare). Currently there is no public oversight over these institutions.

The Ombudsman and the NPM carry out monitoring in these institutions within the scope of their mandate and present recommendations. For instance in the report of the NPM for 2009-2012 respective proposals for improvement and recommendations are reflected.

Finally, military servicemen may be placed in disciplinary quarters ('hauptwache') for disciplinary offences or pending criminal investigation and trial or in disciplinary battalions following conviction.

There are 77 temporary detention wards, one Centre for isolation of the Chief police quarters in Baku (for detaining juveniles requiring judicial decision), five pre-trial detention facilities, 19 colonies (not including penitentiary settlements – *koloniya-poseleniye*), one prison hospital, two special admission centres for asylum seekers, 10 disciplinary military quarters, one disciplinary battalion, 22 mental clinics and other closed medical institutions.

Temporary detention wards are located in 56 district centers, 13 city districts in Baku and Ganja, as well as in 5 other cities of republican subordination (Sumqayit, Shabran, Mingachevir, Naftalan, Nakhchivan). The Main Directorate on Fight the Organised Crime in Baku, Division on Fight against Illegal Migration (scheduled to be transferred to the State Migration Service) and Department on Fight against Trafficking in Human Beings have their own temporary detention wards.

Pre-trial detention facilities are located in Baku, Ganja and in Nakhchivan city. There are colonies in Baku, Salyan region and in Nakhchivan. The central prison hospital is in Baku. The prison is located in the Qobustan settlement near Baku.

Military disciplinary quarters are located in the military garrisons (Baku, Ganja, Beylaqan, Lenkaran, Nakhchivan, Qazakh, Sumqayit, Terter). Out of the ten disciplinary quarters only four are in operation. The work of other isolators is stalled due to their imcompatibility with modern requirements. The only Disciplinary batallion is located in Salyan district.

Mental hospitals are located in Baku, Ganja, Qazakh, Kurdamir, and Salyan.[32] One of them, Mental clinical hospital no.1 in Mashtaga settlement in Baku is a base for forensic examination of suspects and detention of mentally ill convicts.

As of 1 November 2011, there were following numbers of persons in detention:

- *suspects and defendants* – about 3,000;
- *convicts* – about 15,000;
- *disciplinary battalion*–about 100.

As for the specific groups of prisoners, there are:

- between 3,000 and 4,000 drug addicts;
- about 2,000 tubercular patients;
- more than 470 foreigners;
- about 350 female prisoners;
- more than 250 lifers;
- about 250 former military officers and policemen;
- more than 200 persons convicted for religious extremism;
- more than 160 especially dangerous recidivists;
- about 40 male minors.

Nakhchivan Autonomous Republic has its own government and enjoys wide autonomy under Chapter VIII of the Constitution. In particular, by having its own ombudsman it falls outside of the Baku monitoring, which prevents access to the detention facilities located in the autonomy not only by the national ombudsman, but by NGOs and international organisations as well.

32 http://www.who.int/mental_health/evidence/azerbaijan_who_aims_report_english.pdf

Areas of concern

According to the claims of human rights defenders the law-enforcement agencies used torture during mass politically motivated arrests and trials, mainly in 1993-2000. In 1992-1995, Azerbaijan faced five attempts of *coup d'etat* and several alleged plots. While about 1125 political prisoners were released and 50 still are in prison, 54 political prisoners died in detention and 10 more died soon after release.[33] Now, the torture is common as a way to extract forced confessions in police quarters.[34] Besides, the conditions in temporary detention places, subordinated to police and inherited from the USSR period do often constitute ill-treatment, as confirmed by the recently established National Prevention Mechanism.[35] At the moment, a significant number of detention facilities can be considered as overcrowded on the basis of European standards.[36] Although measures are undertaken to improve infrastructure in the prison system, still conditions in most of the establishments remain grave.[37]

As for the ill-treatment in penitentiary institutions, it was a common phenomenon in the early 1990s, especially as result of repatriation of convicted Azerbaijani citizens in Azerbaijan (mostly from Russia and Ukraine) in 1992 under CIS agreements on transfer of convicts following the break-up of the USSR.

There are also concerns raised about the ineffectiveness and lack of independent investigations and court proceedings, as well as failure to give adequate reasons for arrest.[38]

The case-law of European Court of Human Rights (ECtHR) related to torture and ill-treatment includes the following judgments regarding Article 3:

- *Mammadov (Jalaloglu) v. Azerbaijan* (no. 34445/04, 11 January 2007) – ineffective investigation of allegations on torture;
- *Hummatov v. Azerbaijan* (nos. 9852/03 and 13413/04, 29 November 2007) – inadequate medical aid in prison as ill-treatment.

Mechanisms of prevention

Internal mechanisms of the executive

According to the Code of Criminal Procedure supervision of the investigations of the allegations of torture is conducted by the Prosecutor's office (*prokurorluq*). Under Article 214(2)(2) of the same Code, the preliminary investigation is conducted by the chief person of the place of alleged torture, i.e. by policemen, director of penitentiary, commander of military unit, captain of ship. While the preliminary investigation aimed to disclose and to document the evidences of crime, often it is conducted by the persons involved into the torture and ill-treatment who therefore try to cover the crime.

The Prosecutor's Office has no monitoring powers, so the department on the supervision of places of detention was dissolved. But district prosecutors must be informed of the use of force against prisoners and if such use of force results in injuries or deaths they may open criminal investigations of their own motion. However, criminal cases are regularly not opened, the prosecutors decide not to proceed with investigations after preliminary inquests are made, for the reason that inquests showed no sign of crime having been committed. According to national experts preliminary inquests are conducted not by the prosecutors, but by the penitentiary administration (which may be implicated in the impugned acts). According to the current legislation the Ministry of Justice as well as respective territorial bodies of the prosecutor's office must be immediately informed of each death case of a prisoner. The prosecutor's office must conduct investigation into the case on the ground and consequently a decision made about

33 Estimation of Human Rights Center of Azerbaijan based at name-by-name lists of 1993-2011.

34 Report on the Human Rights Practices in Azerbaijan, 2011, US Department of State, Bureau of Democracy, Human Rights and Labor

35 NPM Report for 2009-2010

36 http://www.cpt.coe.int/documents/aze/2004-36-inf-eng.htm. This CPT report dates from 2004 and covers the visit conducted in December 2002, but it is the most recent comprehensive CPT report currently available on Azerbaijan.

37 Report on the Human Rights Practices in Azerbaijan, 2011, US Department of State, Bureau of Democracy, Human Rights and Labor

38 2011 Report of the Ombudsman, p.34.

starting or not commencing a criminal case. At the same time the Penitentiary Service of the Ministry of Justice of Azerbaijan Republic conducts a in-service investigation aimed at revealing the guilt or absence of culpability of the staff member of a prison facility in question, and is responsible got taking actions including disciplinary measures.

Candidates for the positions of prosecutors undergo tests, but the Prosecutor-General may relatively freely choose the appointees among the successful candidates. The nominations are made following non-transparent oral examination by a selection committee composed of the members of the Council of Judiciary (but prosecutors and executive officials do sit on these commissions).

In the structure of the Ministry of Justice exists an Inspection which is in charge of internal investigations and is accountable to the Minister. It inspects the institutions administered by the Ministry and investigates the Ministry's law-enforcement officials, that is penitentiary staff and guard regiments (concerning hazing, or 'dedovschina', issues for example). The Inspection is composed of the Ministry of Justice officials, but no public information exists on its composition, just as there is none on the legal basis for its work; it is only mentioned in Prison Internal Regulations adopted by the Ministry (but even those are published in low-circulation bulletins and are not distributed among the detainees).

The Inspection investigates violations of law by the Ministry officials and of regime of execution of sentences, including violations of human rights and ill-treatment by penitentiary staff. It meets detainees and requests explanatory papers from detainees and staff; its conclusions are notified to the Minister, but are never public. The Inspection has no power of sanction, it is the Minister who decides on disciplinary sanctions or referral of a specific case to the prosecutors.

The Ministry of Internal Affairs has the Department of Internal Investigations. It is composed of the Ministry's officials and investigates violations of law by the Ministry staff, not only related to torture, but corruption, disciplinary offences etc. The investigations may be triggered by applications or instructions from superiors following unofficial collection of information. The Department has no powers of sanction, even disciplinary, it belongs exclusively to the Minister. In cases of internal struggle between or within executive agencies the Department's investigations may come into play: while a minister may not be inclined to press for investigations, a new minister investigates the violations of law committed under his predecessor. No legislation governing the Department's activities is published, neither are the Department's reports.

Ombudsman's office (and NPM)

The authorities of Ombudsman and NPM are regulated by the Constitutional Law "On Human Rights Commissioner (Ombudsman) of Azerbaijan Republic" significantly amended on 24 June 2011. The prison monitoring mandate is described in the Articles 12 and 18 of the Law.

Mandate and procedure of appointment

The Ombudsman is elected by the Parliament out of three candidates proposed by the President based on rather vague criteria. The names appear just at the Parliament hearing, being obviously proposed by the executive. The term of office of the Ombudsman is seven years. Since July 2, 2002 the post of the Human Rights Commissioner has been occupied by Mrs. Elmira Suleymanova. She was re-elected in 2010.

In 2010 three candidates were proposed. One of them was incumbent Ombudsman Elmira Suleymanova together with Faiq Qurbanov, head of the Department on Human Rights of the Ministry of Justice and supervisor of the Public Committee on monitoring of penitentiary institutions, and Teymur Melikaslanov, representative of the UN OHCHR in Baku.

Before the elections, the Constitutional Act was amended to allow the Ombudsman to be elected for a second term. "The same person cannot be elected on the position of the Human Rights Commissioner more than twice" (Article 4.2). Another amendment allowed the Ombudsperson to continue acting as a Commissioner until the election of a new one.

Staff of the Ombudsman is recruited in accordance with the requirements of the Law on Public Service. On the basis of Article 29.1 of the Law recruitment on the administrative positions (1-5 classifications/ grades) is conducted through interviews. The staff is recruited with a probation period of one year

pursuant to an interview with a special commission set up within the office of the ombudsman. According to the Article 18.1 of the Constitutional Law on Human Rights Commissioner staff members of the Ombudsman's office are recruited and dismissed by the Commissioner.

The average age of staff was 30 years in late 2007. It is unclear according to the legislation whether "a gender balance and the adequate representation of ethnic and minority groups in the country" is observed.[39] Staff members of the Ombudsman's Office involved in the NPM activities have been working in this sphere for 10 years and have participated in a number of international events on the topic of monitoring closed institutions.

The state body to monitor the compliance with State obligations under OP-CAT is the National Preventive Mechanism (NPM). According to the order of the President of Azerbaijan of 13 January 2009, the Ombudsman's office was designated as NPM reporting to the Parliament and the UN. The NPM mandate is wide, it covers virtually all places of detention, 254 facilities in total. The Ombudsman's office has a right of unlimited visits of state institutions, military units, police stations, military disciplinary quarters, mental health institutions, pre-trial detention facilities, colonies and prisons, special schools for minors and other places of deprivation of liberty at any time. The representatives of Ombudsman have a right to meet detainees confidentially, to have recourse to assistants of experts or interpreters, to access and copy the documents proving the legality of detention, treatment and conditions of detention, to document the outcomes of visit, to give the recommendations and receive the answers for these recommendations.

Admissibility of complaints

The NPM does not admit individual complaints from the alleged victims of torture and ill-treatment. In the case of such individual complaints, they are forwarded for consideration to the Ombudsman as 'violations of human rights'. In fact, the NPM group works in double capacity as both NPM team and representatives of Ombudsman's office, because NPM group has no authority to receive and to investigate individual complaints.

The rules concerning individual complaints are set out in Article 8 of the Constitutional Law on Ombudsman and published at the Ombudsman's website.[40] Complaints to the Ombudsman's office can be submitted orally or in writing. A written complaint should state the identity of the applicant and be signed by him or her. In case of oral submission of a complaint, a member of the Ombudsman's staff should note down the contents of the complaint on a special letterhead, which must be signed by the applicant. Upon request of the applicant, the Ombudsman should keep the person's identity confidential. A complaint may also be filed by a third person or a non-governmental organization with the consent of the victim. If it is impossible to obtain such consent (if the victim died, lost his or her legal capacity etc.), the requirement of consent does not apply. The complaint must be lodged with the Ombudsman within a period of one year from the date on which alleged violation of the applicant's rights occurred or he/she became aware of that violation. Complaints addressed by persons held in penitentiary institutions or detention centers shall be sent to the Commissioner within 24 hours from the receipt by the penitentiary administration without being subjected to any kind of censorship.

Accessibility of the mechanism

For better access to the Ombudsman's office, it has four regional branches. Additionally, the institution has e-mail and fax contacts, as well as a 24-hours hotline. The website of Ombudsman has the online form for applications, however without opportunity to attach documents.

In practice, some e-mail complaints (or even scanned facsimile letters) are rejected because of legislative provision that a complaint has to be signed, even though an even less reliable online application is considered official.

No special mailboxes for the correspondence with the Ombudsman exist in prisons.

Communication with the Ombudsman is a difficult task for prisoners. According to the Article 83.5 of the Code of Execution of Criminal Punishments, complaints of prisoners have to be sent to the

39 Article 18 of UN OPCAT.

40 http://www.ombudsman.gov.az/view.php?lang=en&menu=59

Ombudsman without censorship. In fact, at least some of the complaints (in particular, in Qobustan Prison) were allegedly censored by prison administration.

Where a strong case of a violation of human rights was made by a prisoner sentenced to life, he was put in solitary detention for the 'slanderous' letters of 'blackmailing character' to the various state bodies including the Ombudsman's Office. This position of prison administration was supported by all domestic court instances.[41]

Examination of complaints

While investigating the circumstances indicated in a complaint on human rights violation and while executing the functions of the NPM the Ombudsman has the rights to access, without hindrance and prior notification, any governmental or local authority and places of detention; to meet detainees and other persons in private, if necessary with participation of an expert or interpreter.

The Ombudsman also has a right to be received without delay by heads and other officials of governmental and local authorities, commanders of military units, the directors of police stations and detention facilities.

The Ombudsman and his staff have a right to get acquainted with and obtain copies of the documents confirming the lawfulness of detention and providing information on treatment and conditions of detention; to obtain final court orders and judgments; to receive written explanations from officials; to give fact-finding instructions to executive bodies, such instructions may not be given to the body whose act or omission is complained of; and to seek expert opinions.

The Ombudsman has called for further protection to be accorded expressly in the legislation to those who make complaints as required by Article 21 of OPCAT.[42]

Powers

If the Ombudsman finds a violation of rights and freedoms of the applicant, he or she may demand from the governmental or local authority, whose act or omission violated human rights, to remedy the violation. Written information of the measures taken to remedy violations should be provided to the Ombudsman within 10 days from his or her decision. Where such information is not provided or the appropriate body fails to comply with the demands of the Ombudsman, the latter may apply to the superior authorities. He may also apply to the prosecutor's office to seek the opening of criminal or disciplinary proceedings, to the officials entitled to file extraordinary applications with the Supreme Court, to the Constitutional Court in cases where the rights and freedoms of a person are violated by legislative acts in force.

In practice, the absence of independent forensic examination capacity for the Ombudsman's office prevents the collection of medical evidence of torture. Besides, the absence of investigative power necessitates forwarding of the complaints of torture to the prosecutor's office for investigation. The latter usually finds them unsubstantiated (see the excerpts from the 2007 and 2009 Ombudsman reports below). Another consequence is that the investigating authority is the one whose actions are complained of. As a result, no complaint of torture has officially been confirmed by the Ombudsman since 2002.

The 2007 Ombudsman's report mentions that she "made motions to the Ministries of Interior and Justice, as well as to the Office of the Prosecutor General for investigation of [allegations of torture] and for punishment of the officials responsible for torture and beatings when such cases were discovered… The cases of beatings at police stations are usually explained by resistance of the detainee and by his refusal to obey officers' orders, whereas in the penitentiary service they are justified by violation of the rules of discipline by inmates and their disobedience to lawful demands of the personnel of penitentiaries."

In 2009 the Ombudsman's staff addressed 333 inquiries to the Ministry of Interior concerning "the acts disgracing the honour of policemen, severe treatment of citizens as well as abuse of duties and non-observance of ethic rules." The Ombudsman's report mentioned that it was stated in the replies

41 http://www.cpt.coe.int/documents/aze/2009-28-inf-eng.htm, para. 54.

42 Ombudsman 2011 Report, p.25-26.

she received, that the complainants were "evil" or "nervous" or had no complaints at all.

A number of recommendations have been made by the Ombudsperson to bring her powers in line with the provisions of OPCAT. Some of these have now been acted upon with the amendments to the legislation in 2011.[43]

Publicity

According to the Article 13.2 of the Constitutional Law, the Ombudsman shall inform mass media of the results of the investigations conducted into alleged human rights violations. In cases where violations of human rights take on special public importance and if the means available to the Ombudsman are not sufficient to remedy those violations, he/she may intervene at a session of the Milli Mejlis (Parliament).

Article 14 of the Law obliges the Ombudsman to submit annual reports not later than 2 months after the end of each year to the President of Azerbaijan and the Milli Mejlis. The annual report shall contain not only the general views and recommendations concerning the protection of human rights but indicate the governmental and local authorities that violate human rights and fail to comply with the demands of the Commissioner, as well as the measures taken in their regard.

The annual report of the Commissioner shall be submitted also to the Cabinet of Ministers, the Constitutional Court, the Supreme Court and the Prosecutor General as well as published in the official newspaper 'Azerbaijan' and 'Compilation of legislative acts of the Republic of Azerbaijan'.

Other form of publicity of activities of Ombudsman and NPM consists of publishing press releases with short description of prison visits and their outcomes. They are published at the Commissioner's website[44] and distributed through mailing list.

NPM in practice

The NPM mandate is exercised by the Office of the Ombudsman. In practice, the staff of 17 conducts visits to places of detention including two members from each of four Regional Centres of the Ombudsman's Office. Staff involved in the work of the NPM is recruited according to the general procedures for the staffing of the office.

Those in charge of the NPM conduct unannounced visits. The group may also conduct follow-up visits (including on the day following the initial visit) in order to satisfy themselves whether a particular complainant was or was not subject to disciplinary measures following his or her complaint to the NPM staff. The NPM team was also able to raise the problems of conditions in police temporary detention facilities, absence of duty doctors etc., which affected the functioning of the police and penitentiary in the way to ensure basic rights of the detainees. However, the NPM has no institutionalised cooperation with NGOs, it only conducts irregular roundtables. It investigates individual complaints received during the course of monitoring, and in other cases merely refers them to the relevant prosecutor, which results not only in an ineffective investigation, but also in the complainant's name being disclosed and pressure being put on him or her in order to have the complaint withdrawn.

As the Ombudsman noted in the 2007 report, "although usually it was reported [by the impugned authorities] that no cases of torture took place, sometimes those responsible were punished in an administrative order, demoted in rank or dismissed from their positions". The Ombudsman reported in 2010 that as a result of the Office's visits to places of detention and recommendations and motions made in order to institute proceedings against the perpetrators of torture, a number of officials of the Ministry of Interior and the Penitentiary Service "were brought to administrative responsibility for committing offences, and various steps were taken for elimination of disclosed shortcomings".[45]

As for statistics of such relatively 'good practice', the Ombudsman's 2007 report mentioned 144 cases of "cruel treatment, unjustified arrest, detention, beatings and violation of drivers' rights". As a result of investigations, "199 officers were subjected to serious disciplinary measures … eight officers were charged

43 Note pp.23 of the Ombudsman 2011 Report.

44 www.ombudsman.gov.az

45 Ombudsman's annual report 2010.

with criminal offences, 56 were discharged from the police, 18 were dismissed from other posts, and 153 were subjected to other disciplinary actions. Four officers were punished for beatings".[46] It is unclear what proportion of the punishments was related to the requests of Ombudsman.

The NPM in Azerbaijan should have a possibility to conduct independent forensic examination in order to be able to document injuries sustained as a result of cruel treatment. When the NPM group discovers obvious traces of torture and ill-treatment, it is forced to transfer the allegations of torture to the same police and prosecution bodies which already dealt with the incident and to rely at the outcomes of further investigation by them.

Other non-governmental bodies

As for non-governmental bodies, the Public Committee to secure public participation in correction of prisoners and implement public supervision over the Penitentiary (PC) under the Minister of Justice was established in 2006. The legal basis for the Committee's operations is a Ministry of Justice regulation, and it reports to the Minister even if the latter does not exercise control over the activities of the Committee.

The members of the Public Committee (there may be up to eleven) are appointed by the selection committee, consisting of the representatives of the Ministry, the Parliament, the Central Elections Commission, trade unions etc., which receives applications and letters in support of the candidates. The Committee members are appointed for the term of one year and should be publicly known experts in the field of ensuring human rights in detention having a clear plan of action within the Committee. After one year the selection committee appraises the efficiency of each member's work on the committee, and subsequently they may be reappointed.

The Committee may only monitor the situation in the Ministry of Justice-administered facilities for convicts and prison hospitals (thus excluding pre-trial detention facilities). At least two members of the Committee may conduct visits. Even though in principle the visits are unannounced, due to the lack of own transport, it always needs to request transport to a particular destination from the Ministry. Due to large dependence on the Ministry of Justice (not only in terms of transport, all means necessary for the PC to operate has to be provided by the Ministry; it has neither office nor even a postal address outside the Ministry to receive complaints) the Committee is not seen as independent. The members cannot be assisted by external experts during their visits, should they decide to bring such experts to a particular detention facility. They need to request prior authorization of the administration of the facility.

The Committee members may meet detainees in private (at least, on request) and do so even in the cells; they may also receive complaints in writing.

The Public Committee issues opinions following each visit and makes recommendations to the Ministry of Justice. Public officials of the impugned institutions must make comments to the opinions and report on the follow-up to the recommendations at the meetings of the Committee (but these are not publicly available). It is the Minister who decides whether to publish the reports. The Committee nevertheless gives some brief information about its visits and once per year publicizes the outcomes of its work; the chairperson also goes public by giving regular press-conferences.

Conclusions and recommendations

The government authorities should do the following.

General:

- bring the definition of torture in line with the one provided for under the UN Convention Against Torture, Article 1;
- compensation for torture victims should be provided irrespective of the conviction or acquittal of defendant;
- ensure there is an independent forensic examination (not substituting official forensic examinations);

46 Summary of the 2007 Annual Report of the Ombudsman, p. 9, available at http://www.ombudsman.gov.az/upload/file/AnnualreportOmbudsman07.doc.

- either stop using the NSS pre-trial detention facility or transfer the authority to the MoJ;
- endeavour to ensure judicial independence;
- implement the judgments of the European Court of Human Rights, especially those under Article 3 of the ECHR;
- implement, to the extent possible, the recommendations of international organisations;
- not to use temporary detention wards for long detention of the defendants appearing before remote town and rural district and regional courts;
- publish the outstanding CPT reports;
- consider creating monitoring mechanisms comparable to the Public Committee under the Ministry of Justice with the mandate to monitor places of detention falling under other executive agencies;
- develop a national action plan outlining measures for effectively combating torture; designate a government agency responsible for the overseeing of the implementation.

In respect of the territory of Nakhchivan:

- Monitoring should be extended to the Nakhchivan autonomy.

In respect of the Prosecutor's Office:

- exclude prison administration investigating itself without any supervision, but with that of the prosecutors;
- encourage to investigate torture rather than to dismiss allegations of torture and suspicious suicides;
- periodically publish the outcomes of examination of allegations of torture;
- reform prosecutors' mandate in a way to remove areas of conflict of interest and encourage reliance on evidence not obtained under torture.

In respect of the NPM:

- uninhibited communication of prisoners with the Ombudsman should be ensured in practice
- provide that individual complaints may be submitted to the NPM;
- right/possibility to conduct medical examination;
- press on specification of statistics (which punishments relate to torture and to cases reported by her).

In respect of the Public Committee:

- provide for a statutory legal basis for the PC;
- extend the term of office of the members (one year is not long enough);
- extend its mandate to the pre-trial detention facilities;
- ensure its independence from the Ministry of Justice (address, office, transport, secretary);
- provide for a right to publish conclusions and full periodic reports on its own motion.

Georgia (as of 2012)

Introduction

This report will first examine the international treaties and national legislation applicable in the field of prohibition of torture. Then, after listing the main types of places of detention and issues of concern arising in their respect, it will assess the efficiency of the existing national mechanisms for the prevention of torture.

Applicable legal framework

International treaties

Georgia has been a member of the United Nations (UN) since 31 July 1992. It is bound by the following treaties:

1. International Covenant on Civil and Political Rights, ICCPR: Georgia ratified the ICCPR on 3 May 1994. It accepts individual communications to the Human Rights Committee (HRC) as it ratified the 1st Optional Protocol to the ICCPR on 3 May 1994.[47]

2. International Convention on the Elimination of All Forms of Racial Discrimination: Georgia ratified the Convention on 2 June 1999 without reservations. On 30 June 2005 it made a declaration under Article 14(1) in which it recognized the competence of the Committee (CERD) to receive and consider communication from individuals or a group of individuals.[48]

3. Convention on the Elimination of all forms of Discrimination against Women: Georgia ratified the Convention on 26 October 1994. It ratified the Optional Protocol on 1 August 2002, i.e. Georgia accepts that individual complaints are received and considered by the Committee on the Elimination of Discrimination against Woman (CEDAW).[49]

4. International Convention on the Right of the Child: Georgia ratified the Convention on 2 June 1994. It ratified the 1st Optional Protocol (on Involvement of Children in Armed Conflicts) on 3 August 2010. Furthermore, it ratified the 2nd Optional Protocol (on Sale of Children, Child Prostitution and Child Pornography) on 28 May 2005.[50]

5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Georgia ratified the Convention on 26 October 1994. On 30 June 2005, Georgia made a Declaration in which it accepts inter-state complaints (Art. 21(1) of the Convention) and individual complaints (Art. 22(1) of the Convention).[51]

6. Optional Protocol to the Convention against Torture and other cruel, inhuman and degrading Treatment or Punishment, OPCAT: ratified on 9 August 2005.[52] Up to May 2011 there has been no visits by the Subcommittee against Torture (SPT). Georgia designated the Public Defender[53] (also known as the Ombudsman) as the country's NPM in 2009.[54]

7. Georgia ratified the European Convention on Human Rights (ECHR) on 20 September 1999. It has also ratified Protocols No. 4, 7, 12, 13 and 14 to the ECHR.[55]

47 See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en ; http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en (last accessed on 22 April 2011).

48 See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en#EndDec (last accessed on 22 April 2011).

49 See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en ; http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en (last accessed on 22 April 2011).

50 See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en ; http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en; http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last accessed on 22 April 2011).

51 See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (last accessed on 22 April 2011).

52 See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en (last accessed on 22 April 2011).

53 The Office of the Public Defender received "A status" in accordance with Paris Principles in 2007. See: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/Georgia-A_HRC_WG.6_10_L.9-eng.pdf , para.8 (23.4.2011).

54 See: http://www.ombudsman.ge/index.php?page=777&lang=1&n=9 (23.4.2011); and http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm (23.4.2011).

55 http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=GEO&MA=999&SI=2&DF=&CM=3&CL=GER

8. Georgia ratified the European Convention on the Prevention of Torture (ECPT) on 20 June 2000. It has made a declaration that it will not be responsible for violations of the provisions of the Convention and the safety of the members of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) on the territories of Abkhazia and the Tskhinvali region until the territorial integrity of Georgia is restored and full and effective control over these territories is exercised by the legitimate authorities.[56]

9. Georgia ratified the Framework Convention on National Minorities on 22 May 2005.

Domestic legislation

Article 17 of the Constitution prohibits ill-treatment in following terms:

1. Honor and dignity of an individual is inviolable.

2. Torture, inhuman, cruel degrading treatment and punishment shall be impermissible.

3. Physical or psychological coercion of a person detained or otherwise deprived of liberty is impermissible."

Article 144-1 of the Criminal Code defines torture as follows

> "Creating conditions or treating a person, or his/her close relative, or a person materially or otherwise dependant on him/her in a way, which by its nature, intensity or length causes strong physical pain, or mental or moral suffering aimed at obtaining information, evidence or confession, also at intimidating or coercing, or punishing a person for an act committed, or presumably committed, by him or a third person."

Imprisonment for torture ranges from seven to 10 years, plus a fine. Commission of torture by an official[57] is considered as an aggravating circumstance punishable between nine to 15 years along with the deprivation to hold a government office, up to five years.

Further, Article 144-2 of the Criminal Code criminalises the threat of torture and Article 144-3 prohibits inhuman and degrading treatment, that is humiliation, coercion, inhuman treatment and putting a person in a position degrading human dignity and honour, which resulted in serious physical or mental pain, or moral suffering.

Between 2006 and 2010 the officers of the Ministry of Interior only were subject to 20-68 investigations per year, but only 2-7 cases per year ended up before the courts.[58]

Places of detention

Different authorities administer a number of different places of detention.

The Ministry of Interior administers temporary detention wards:

- for persons to be kept during the initial 72 hours after arrest, pending judicial authorisation of pre-trial detention; after the first 48 hours the arrested person must be formally indicted; 20,619 persons were placed there in 2009 (although not simultaneously);[59]
- for persons convicted of administrative offences, that is minor violations of law and order such as disorderly acts, swearing in public places etc.; administrative detention may last up to 90 days which is one of the longest terms for comparable offences in the former USSR;
- for juvenile suspects over 14 (special cells within the same facility).

56 http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=126&CM=1&DF=&CL=ENG , (30.4.2011); http://sim.law.uu.nl/SIM/Library/RATIF.nsf/f8bbb7ac2d00a38141256bfb00342a3f/ce8aab853d62379f41256bfe004edc00?OpenDocument (30.4.2011).

57 The Law on Public Office states that "any person who carriesout paid job at any state institution or self-government body is a public official, this includes: those who occupy political positions, officials, assisting staff and others (who are not considered as staff). Article 4, 5 of the the Law on Public Office (1997)

58 Letter of the MIA (No. 13/15578, dated by May 30, 2011) written in response to PRI's request for public information (PRI letter dated by April 13, 2011,) requesting statistical data on criminal cases initiated under article 144 of the Criminal Code of Georgia.

59 Monthly statistics from the Penitentiary Department of the Ministry of Corrections and Legal Assistance, Letter # 10/5/12-10445 (07.09.2012)

The staff administering these wards have different command line from the rest of the police and different premises (somehow separated from the rest of the police stations), which is intended to ensure independence from the operative policemen.

Temporary detention wards are not intended for long-term detention, such as 90 days of administrative arrest, for example, they have no facilities for either outdoor or indoor exercise. There are no separate buildings for those under administrative arrest, despite the recommendations having been made to this end. As a result, the cells intended to keep persons under administrative arrest are overcrowded: there are few such cells and the administratively arrested cannot be mixed with criminal suspects.

Under the Ministry of Corrections and Legal Assistance (MCLA), holding a total of 22,726 prisoners (of whom 1,047 were on remand) in August 2012:

- pre-trial detention facilities – for persons whose pre-trial detention has been authorised by a judge who are detained pending trial and judgment; separate cells in pre-trial detention facilities exist for juveniles;
- a range of correctional institutions for convicts of different levels of security.

Under the Ministry of Health, Labour and Social Affairs:

- special wings within Tbilisi psychiatric clinics and a special psychiatric hospital for those subject to compulsory medical treatment;[60]
- a wing in Kutiri hospital – for criminal convicts under compulsory medical treatment;
- an institution for persons with mental and physical disabilities in the village of Dzevri holding 65 person who were not free to leave.[61]

Asatiani Psychiatric Institute in Tbilisi, where 230 adults were treated, of whom 17 were involuntary patients, placed there following a criminal judgment, was closed by the authorities in May 2011.

Under the Ministry of Education there is a school for juveniles with behavioural problems in Santredia. They may be placed there by the juvenile affairs commission of the local authorities.

Military servicemen suspected of commission of disciplinary offences may be detained in the disciplinary military quarters *(hauptwache)* of the military police (there is one in Tbilisi and one in Senaki, both fall under the NPM monitoring). If they are suspects or defendants in criminal cases, they are placed in general temporary detention wards and pre-trial detention facilities. No complaints have been made about illegal detention elsewhere.

Areas of concern

Ill-treatment in places of detention and its documentation

According to the Public Defender's Office, "apart from few exceptions, in all cases when an inmate is placed in the solitary confinement cell a doctor signs a document practically certifying that the health conditions of this particular prisoner will withstand this punishment … Indeed doctors are obliged to keep an eye on inmates placed in the isolation cells, however, this does not mean approving such punishment by signing the document".[62]

The report further notes that although medical staff can play a vital role in fighting ill-treatment activism of doctors in that regard is minimal. "Signs of violence identified during the bodily examination of inmates (especially upon arrival of a new inmate to the penal establishment), which potentially might be caused by ill-treatment, are not documented in an appropriate manner either in their individual health files or in the common register of injuries. In some establishments a register of injuries are not maintained at all, which is a flagrant violation of torture prevention standards. In other establishments the registers are incomplete."[63] This problem is of particular concern for those who are being placed in pre-trial detention facilities or

60 Ibid., para. 122.

61 Ibid., para. 146.

62 Public Defender of Georgia, annual human rights report for 2010, available at http://www.ombudsman.ge/files/downloads/ge/ktifezlljkytwmwbpggc.pdf (available only in Georgian)

63 Ibid.

transferred there from temporary detention wards. In some establishments physical examination of inmates is a mere formality. Sometimes prison administration and/or an officer transferring a person to a penal establishment are also present during the examination. There are cases when the latter even signs the protocol for external physical examination, which is a direct conflict of interest.

Cases involving violence that take place inside the prison are also not documented properly. Specific reasons for particular injuries are not identified (whether it is self-inflicted injury, injury inflicted by another person, etc.). Psychological or psychiatric signs of ill-treatment are not described and documented at all. The regulations oblige the penitentiary staff to record 'injuries' understood exclusively as bodily harm.

Investigations into the allegations of torture and other forms of ill-treatment

The lack of effective, independent and timely investigations into allegations of torture and ill-treatment undermine the genuine nature of government's anti-torture policy. This issue has been raised by national as well as international stakeholders.

The Public Defender notes in this respect that "investigations into allegation of ill-treatment are still not conducted in an appropriate manner – in the most of the cases investigations bear a formalistic nature, forensic-medical examinations often are either not conducted at all, or are delayed and offered when the injuries suffered may no longer be visible".[64] According to him, investigative authorities mischaracterize the cases of torture, inhuman or degrading treatment as "abuse of power /official authority," a crime which bears much lighter sanction than torture, inhuman or degrading treatment. On the other hand, investigations into the allegations of ill-treatment are either protracted or ongoing forever or terminated based on the testimonies of law enforcement officials themselves.[65]

According to the Ministry of Interior "detainees benefit from a simplified complaint mechanism at the temporary detention wards, according to which an oral complaint of a detainee is sufficient for the respective unit to start inquiries into the reasons and causes of such complaint. 24 hour medical care is provided at all temporary detention cells, in Tbilisi doctors are present in all detention facilities, in regions emergency medical care is provided when necessary. If an injury is identified, the record of it is immediately sent to the investigative bodies for reaction (to the General Inspection of the Ministry of Internal Affairs, and to the Office of the Chief Prosecutor of Georgia in case if there are elements of criminal offence)."[66] However, the practice of the mechanism is often undermined by the fact that there are no duty doctors in provincial detention facilities.

The US State Department Report noted that in number cases when an NGO or Ombudsman alleged ill-treatment of a particular inmate and appealed for investigation, the relevant ministries (Ministry of Justice, Ministry of Interior, Ministry of Corrections and Legal Assistance) claimed that "investigation found no signs of ill-treatment or disciplinary or criminal violations".[67]

Moreover, NGOs and the PDO reported that victims often failed to report abuse or withdraw their initial testimonies due to fear of reprisal by police or prison authorities against them or their families. The above-mentioned report by the Ombudsman noted that "a culture of fear among inmates was preventing prompt and thorough investigations into allegations of torture and ill treatment and punishment of the perpetrators".[68]

Similar views were also reflected in the CPT report:

> "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 created a climate of impunity. According to them, most complaints of ill-treatment were dismissed; at best, the officers

64 Ibid.

65 Ibid.

66 For detailed information see www.geninspeqcia.gov.ge

67 See e.g., http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html, RESPECT FOR HUMAN RIGHTS Section 1.

68 Public Defender's Office, 2010 Report, *op. cit.*

> 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 144 of the Criminal Code, but rather under the Article 333 of the Criminal Code of Georgia. Furthermore, it was said that the proceedings were protracted and very rarely led to convictions, which diminished trust in the system for investigating complaints."[69]

In a case of *Enukidze and Girgvliani v. Georgia* the European Court of Human Rights found a violation of Georgia's procedural obligations under Article 2 of the Convention to investigate the murder of the applicants' relative committed by officers of the Ministry of Interior, albeit acting in personal capacity; the Strasbourg Court identified numerous flaws in the investigation and prosecution.[70]

Excessive use of force

Excessive use of force by law enforcement officials has been one of the most often reported problems in recent years in Georgia, in several dozens of cases it led to deaths,[71] in other instances excessive force was used against protesters at anti-government demonstrations (in 2007, 2009 and 2011).[72] There were also reports of use of unnecessary and disproportionate force during arrest. In the report on its visit to the country, the Council of Europe's Committee for the Prevention of Torture (CPT) reported receiving a few allegations of police physically mistreating persons in their custody. Most involved excessive use of force (for example, punches and kicks) at the time of apprehension, but there were also allegations of mistreatment during questioning.[73]

The Public Defender's report stated in 2008 that "investigating facts of police excessive use of force, which resulted in deaths, still remains a problem. Special attention has to be paid to inadequate use of firearms by the police while carrying out their official duties which have a direct impact on human life and health. The Public Defender has a number of times appealed to the prosecutor's office to initiate investigations [on particular cases], however many of them still remain uninvestigated. This creates reasonable ground to suspect that investigations in the prosecutor's office are a mere formality; they are not thorough and objective, not all the necessary investigative measures are undertaken in order to establish the truth on the case."[74]

In 2007 and 2009 the police used weapons, which at that time were not authorized by law. In 2009, after initially denying it, the Ministry of Internal Affairs acknowledged having used plastic and rubber bullets against demonstrators during the 2009 Spring protests. Reportedly, the Ministry of Internal Affairs investigation into the case concluded that police acted in accordance with the law.[75] No one has been held accountable for use of those prohibited weapons.

The 2009 amendments to the legislation governing police actions allowed the use of non-lethal weapons (like rubber bullets), so the current position of the prosecution is that there is no need to prosecute those who had allegedly employed rubber bullets, for the reason that the criminality of their action was removed by subsequent legislation.

Conditions of detention

The monitoring carried out by the Public Defender's Office who is designated as NPM under OPCAT

69 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, Strasbourg, 21 September 2010 available at http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm. "NGOs also continued to claim that close ties between the Prosecutor General's Office and police hindered the ability of NGOs to substantiate police misconduct. NGOs alleged that the judiciary's lack of professionalism and independence made it unresponsive to allegations of mistreatment. As a result, despite implementation of positive reforms, NGOs claimed law enforcement officials could still mistreat persons with limited risk of exposure or punishment. NGOs also believed a lack of adequate training for law enforcement officers, as well as low public awareness of the protections afforded citizens, impeded improvements.", US State Department Human Rights Report 2010 / Section on Georgia, http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html.

70 No. 25091/07, 26.04.2011.

71 See the Joint Submission for UPR by Georgian Young Lawyers Association, Human Rights Centre, Article 42 of the Constitution and Independent Teachers' Union, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/JS6_JointSubmission6-eng.pdf

72 Human Rights Watch, Crossing the Line, http://www.hrw.org/sites/default/files/reports/georgia1207web.pdf

73 http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm, para. 13 (last accessed on 15 November 2011).

74 Public Defender of Georgia, The Situation in the Field of Human Rights Protection in Georgia, second half of 2008, (submitted to the Parliament)

75 US State Department Human Rights Report 2010/Section on Georgia , available at http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

revealed that "the penitentiary system still remains one of the problematic areas in Georgia".[76] Among the main problems the report names: rising death toll in the prison, overcrowding in a number of penal establishments, deplorable conditions and outdated facilities creating inhuman and degrading conditions in a number of establishments, different forms of ill-treatment of inmates, and inadequate investigations into those facts, inadequate prison healthcare system and conditions which cause development and spread of different diseases among the inmates.[77]

The 2009 National Preventive Mechanism Report noted that inequality between the national healthcare system and healthcare in the penitentiary system violated international standards. Medical care was also provided unequally in penitentiaries in different geographical areas. Prisons administrators were not able to provide comprehensive emergency services. The PDO reported that during the year many prison doctors were dismissed from their positions for not providing adequate service to inmates, and most prisoner deaths during the year were due to tuberculosis. The PDO criticized the Ministry of Corrections and Legal Assistance for a lack of adequate healthcare. Since 2009 the Penitentiary Department has been overseen by the Ministry of Corrections and Legal Assistance, and the unit responsible for monitoring penitentiary establishments has been located in the General Inspection Department of that ministry.[78]

The problems continued in the following years as well, in 2010 and 2011 the US State Department report noted that "many prisons were severely short of medical facilities, including equipment and medicine".[79]

The Ombudsman's Human Rights Report for 2011 stresses that "number of prisoners and the existing capabilities are still disproportional. Overcrowding is certainly one of the evident reasons for healthcare related problems in prisons".[80] Identified problems include increase in transmittable diseases and the problem of mental health, lack of resources and means for dealing with medical problems, overtly heavy workload of medical personnel, the delay in transferring to medical institutions, use of less efficient or practically ineffective treatment means, exercise of illegal doctoral activity."[81]

According to the report, availability of medical staff in the prisons differs across the country. While their number is sufficient in some establishments, it is far below the satisfactory threshold in others. In certain areas patients are left entirely without qualified and adequate medical assistance either because of the absence of a doctor of this or that particular profile/ specialisation, or because available doctors are overburdened with patients.

Main tendencies continued also in 2011. According to the Report of the Ombudsman covering 2011 some successful effort was made to improve the infrastructure, however this proved insufficient to ensure adequate healthcare. According to the report the growth in prisoner deaths continued.[82]

The monitoring group practically could not identify a single case when prison administration satisfied request of a pre-trial detainee to appoint medical and psychological/psychiatric examination by a doctor of their own choosing. Expert psychiatric examination was not conducted at all or was conducted with a delay. In this case it becomes impossible to obtain evidence which is of crucial importance to the prisoner.

Further concerns were raised in respect of the independence of medical staff working in prisons, uncontrolled use of psychotropic medication, protection of prisoner's confidentiality and medical secret in respect of the treatment of detainees, conditions of detention of those suffering from mental

76 Public Defender of Georgia, annual human rights report for 2010, available at http://www.ombudsman.ge/files/downloads/ge/ktifezlljkytwmwbpggc.pdf (available only in Georgian)

77 Ibid.

78 US State Department Human Rights Report 2010 / Section on Georgia, http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

79 Ibid.

80 Public Defender's Annual Report 2011, available in English at http://www.ombudsman.ge/files/downloads/en/hcqkqyhblwldxcayqiwg.pdf

81 Public Defender, 2010 annual report, *op. cit*.

82 Public Defender of Georgia, Defender's Annual Report 2011, available in English http://www.ombudsman.ge/files/downloads/en/hcqkqyhblwldxcayqiwg.pdf

disorders, grave and incurable diseases.[83] Lack of proper medical treatment in prisons prompted the European Court of Human Rights to give a judgment requesting under Article 46 of the ECHR (binding force of judgments), that specific measures be undertaken by the Georgian authorities in order to prevent the transmission of hepatitis C, and that Georgia should create a system of early detection and effective treatment of this disease.[84]

Mechanisms for the prevention of torture

There are a range of mechanisms established for the prevention of torture in Georgia.

Division of Human Rights Protection within the Department of General Inspection of the Ministry of Corrections and Legal Assistance

The Division conducts internal monitoring of penitentiary facilities under the Ministry of Corrections and Legal Assistance (MCLA). Its function is to identify the acts of torture, inhuman, cruel and degrading treatment or punishment and take appropriate measures.[85] Its mandate derives from the Decision #8 of the Government of Georgia regarding the Statute of the Ministry of Corrections and Legal Assistance. The Division's mandate is limited to the MCLA-administered facilities. It may act only if no crime has been committed (if it has been, it must refer the case to the relevant prosecutor), and may adopt disciplinary sanctions against the MCLA officers.

The website[86] of the Ministry also indicates a hotline number designated for collecting information concerning human rights violations. However, its position within the Ministry undermines its ability to be perceived as independent. This is further aggravated by the Division's working methods. It questions complaining detainees, their co-detainees and penitentiary officials, but this is done in a way that does not remove the detainees' fear that sanctions or even violent actions may be taken against them following their complaints, which leads to retraction of allegations of ill-treatment. Public Defender's Office often refers cases of serious allegations of torture to the Division, but the replies the Ombudsman receives are limited to the statement that the facts complained of were not confirmed by the inquiry. It refers a tiny proportion of cases to the prosecutors and publishes statistics on sanctions adopted against the MCLA officials – however those are not specific enough to understand how many were sanctioned for any form of ill-treatment (and how many of those were sanctioned following the Ombudsman's referrals).

Overall, not only is Department not independent, but moreover the detainees have no confidence in its working methods and its mandate is limited to disciplinary offences, whilst torture and other forms of ill-treatment are crimes that the Department has no power to investigate and no incentive to refer them to the prosecutors.

Main Division for Human Rights Protection and Monitoring of the Ministry of Interior[87]

This Division monitors temporary isolation wards under the Ministry of Interior and is its structural subdivision.[88] It is charged with the function of conducting internal monitoring in the detention wards and police units/stations. Its officers carry out scheduled and nonscheduled checks in regional and local police units (this is only rarely done) and in the detention wards. The aim of the monitoring is to detect facts of violation of detainees' rights and to prevent such facts in future. If the Division officers consider that a breach of inmate's rights has taken place, they are authorized to draw upon a report and

83 Ibid.

84 *Poghossian c. Géorgie*, n° 9870/07, 24.02.2009, para. 70.

85 Decree no. 154 of the Minister of Penitentiary, Probation and Legal Aid regarding the Statute of the Ministry of Penitentiary, Probation and Legal Aid, Article 18 (1).

86 www.mcla.gov.ge

87 Governed by, inter alia, the Order of the Minister of Interior of 1 February 2010 no. 108, Model Temporary Detention Wards Rules.

88 The Main Division of Human Right Protection and Monitoring has been functioning within the Administration of the Ministry of Internal Affairs of Georgia since January, 2005.

submit it to the relevant investigative authorities.[89] It has no power of sanction of its own.

It is promising that the Main Division does have a broader human rights mandate: in addition to internal monitoring its key responsibility is to protect human rights within the system of the Ministry of Internal Affairs. The Main Division closely cooperates with Public Defender's Office (Ombudsman's Office) of Georgia. It has a role in training the police officers manning the detention wards in the field of human rights.

However, its mandate is limited to the temporary detention wards where cases of ill-treatment are relatively rare. More problematic issues like the use of force by the police during apprehension and arrest, transfers from one facility to another, ill-treatment inflicted during interrogations, are if not outside the mandate, than outside of the field of interest of the Division.

These setbacks seriously undermine the efficiency of the Division in preventing torture. Despite its contribution to the monitoring of the temporary detention wards, it fails to address the issues that arise elsewhere within the police (and most of them do arise elsewhere).

The Human Rights Department of the Chief Prosecutor's Office

The Department of Legal Affairs of the Chief Prosecutor's Office has as its sub-division the Human Rights Department (Unit). One of the functions of this unit is to combat certain crimes committed against human rights and liberties. Priority directions are fighting torture and inhuman and degrading treatment. Other tasks of the unit also include responding to and monitoring alleged violations of human rights of detainees in prosecutorial bodies, places of detention, prisons.[90]

For this purpose the Human Rights Department receives informational bulletin containing data on prisoners admitted with physical injuries in all prisons. The unit undertakes visits to prisons based on the received information in order to prevent ill-treatment and respond to such facts. Representatives of the unit meet with prisoners and draw up a protocol containing information about the causes and circumstances of inflicting injuries. If criminal nature of the cause is identified the protocol is sent over to relevant district prosecutorial office.

Subdivisions of the Chief Prosecutor's Office provide regular information to the Human Rights Department on facts identified involving the commission of torture, and inhuman and degrading treatment.

Respectively, the Department conducts recording of the statistical data pertinent to inhumane treatment committed by public officials, also controls the course of investigation of such cases and prepares recommendations if need be.

It is difficult to assess the effectiveness of this unit as there are no public reports made available.

Prosecutor's Office

The Prosecutor's Office may receive complaints both in writing as well as orally through hotline operating in the General Inspection of the Prosecutor's Office.[91] The hotline system operates in the following way: an inmate can get hold of a prosecutor on duty (even during the weekend) who takes necessary steps (after transferring the information to responsible agencies in charge) and then will write back to the person who has made the call. (It is implied that the call is not anonymous).[92] The prosecutor on duty who receives the information through the hotline (including the information related to torture) transfers this information to the senior prosecutor. The complaint is then assigned to a particular prosecutor who is in charge of conducting investigation in relation to

89 Ill treatment country report Georgia, COE at http://portal.coe.ge/downloads/Country%20Report%20-%20the%20final%20for%20print.pdf

90 Chief Prosecutor's Office of Georgia, http://www.justice.gov.ge/index.php?sec_id=250&lang_id=GEO

91 Ill treatment country report Georgia, COE, *op. cit.*

92 Ibid.

93 Ibid.

the facts alleged and reports about the progress of investigation to the Chief Prosecutor.[93]

The effectiveness of the hotline's operation in practice remains unclear however, since independent monitors do not have access to the detention facilities.[94]

The monitoring of the police cells and temporary detention wards (which are under the control of the Ministry of Interior) is also carried out by the Prosecutor's Office which has the mandate to visit the places of detention if it investigates cases of ill-treatment against prisoners.[95] The basis for such visits is usually a piece of information revealing that there may have been ill-treatment, the source of information is files kept by the detention facilities where the injuries sustained by the inmate are recorded. The monitoring is carried out on a daily basis in response to the protocols received from the Penitentiary Department. The protocols, *inter alia*, contain information about those inmates who have signs of physical injuries at the time when they are placed in pre-trial detention, prison or prison hospital, as well as about the circumstances in which the injuries where sustained. In response to such information the employees of the Human Rights Unit carry out the monitoring visits in order to find out whether the reason for physical injuries is inhuman or degrading treatment or punishment.

Despite the apparently broad mandate of the Prosecutor's office, it is, in fact, limited to the investigation of specific criminal cases; it has no powers to start the investigation on its own motion, but only to react to an application for the opening of a criminal case where it is satisfied that a criminal offence has been committed. Furthermore, under the recent reform, the prosecutor's office was merged with the Ministry of Justice, which makes the Office not only dependent from the executive, but indeed a part of the executive.

Public Monitoring Commissions

From the start of 2006 three public monitoring commissions for prisons were set up by the Minister of Justice according to the Article 93 of the Georgian Law on Imprisonment, in order to establish independent, public oversight over the detention facilities in Batumi, Kutaisi and Zugdidi. Later in 2006 and at the start of 2007 more commissions were set up at individual prisons, 11 commissions in total including the previously established 3. The commissions operated till the end of 2007 carrying out monitoring visits to relevant facilities and submitting periodic reports to the Minister of Justice. All 11 commissions submitted their reports in common format to the Ministry in December 2007.

One commission oversaw one detention facility of the Ministry of Justice. The commissions comprised members of human rights NGOs (appointed upon consideration of their applications to the Ministry of Justice), Georgian Orthodox Christian priests (who, however, professed religion rather than oversaw the compliance with the prohibition of ill-treatment), local councilors (some of whom were appointed by the Ministry of Justice without any prior application from them and even without them knowing it).

As to the working procedure, two members of the commission could exercise monitoring, the members of the commissions could conduct unannounced visits at any time 24 hours a day, they were issued special passes to conduct the visits. They could meet detainees in private and even those detained in disciplinary punishment cells. The commissions were able to discuss the solutions to the problems concerning conditions of detention directly with the administration of the detention facility concerned and with the Penitentiary Department of the Ministry. They could raise the structural problems in the penitentiary at annual meetings with the Minister of Justice.

One of the problems was the absence of doctors or other persons with medical training on any of the commissions. The requests to appoint such persons were never granted by the Minister of Justice. Among the unfulfilled recommendations was the one to give detailed reasons for disciplinary sanctions, the problem being that the placement in disciplinary punishment cells was ordered by the penitentiary administration for minor violations of the prison rules, often provoked by the staff, and no records being kept of the facts of the offence and no reasons were provided to the convict. This was exacerbated by the absence of any gradual sanctions (placement

94 Ibid.

95 Ibid.

in disciplinary punishment cell having been the only used in practice) and the loss of any chance of release on parole following a disciplinary sanction received while serving the sentence. However, the commissions managed not only to improve the prison staff working conditions, but also contribute to the improvement of medical assistance in detention and successfully insist on the requirement to record any injuries received by the detainees.

However, in early 2008, following the change in the administration of the Ministry of Justice the commissions were no longer supported, as they were not given special passes by the Ministry to access their respective prisons. Also the membership of those early established commissions has not been renewed, and commissions for new prisons have not been set up even though civil society representatives had applied repeatedly. There was only one commission (the one for the Prison no. 5 for Women and Juveniles) which has been officially given the passes, but their membership term expired at the end of November 2008. No commission has been set up for the newly opened Prison no. 8 in Gldani, and none for the juvenile colony as well.

A reason for the dissolution of the commissions cited by the authorities is that the creation of the NPM renders them unnecessary.

The Ombudsman – Public Defender of Georgia

The Office of the Public Defender of Georgia (PDO) was created in line with Paris Principles by Organic Law No. 230 of 16 May 1996. The PDO is an independent human rights institution. It is mandated to monitor and assess the observance of human rights and freedoms and examine cases concerning alleged human rights violations, either based on the applications and complaints received or on its own motion. Under the law the Public Defender is independent in exercising the functions of the PDO and is bound only by the Constitution and law. The law prohibits any undue pressure or interference in the Public Defender's activities.

General mandate of the Public Defender

Powers and competence of the Public Defender are defined in the Organic Law of Georgia on the Public Defender.[96] They shall receive applications and complaints from Georgian citizens, foreign citizens, stateless persons, legal entities of private law, NGOs, political and religious associations concerning alleged violations of any rights and freedoms guaranteed by the Georgian Constitution and by law, as well as by the international treaties and agreements to which Georgia is party and that may have resulted as a consequence of the actions or acts of State or local self-government bodies, public entities and officials.[97] Applications, complaints and letters sent to the PDO by persons held in police custody, pre-trial detention or in other places of deprivation of liberty are confidential and mailed without opening or censorship.

The Public Defender shall examine applications and complaints on violations of human rights and freedoms if the applicant contests:

a. a decision of a public body;

b. a breach or violation of the rights and freedoms envisaged by the Georgian legislation in the course of the court proceedings;

c. a violation of the rights envisaged by the legislation for a person under arrest, detention or any other form of restriction of liberty;

d. compliance of the normative acts with the human rights provisions of the Constitution of Georgia;

e. constitutionality of the norms on referendum and elections as well as constitutionality of the elections (referendum) held or to be held on the basis of these norms.[98]

Conducting investigations on the applications received the Public Defender is entitled to demand and obtain official documents and explanations from any public official, instruct public or private agencies and experts to perform expert examinations or

96 Organic Law of Georgia on the Public Defender, Article 12

97 Ibid., Article 13

98 Ibid., Article 14

provide advice, and have access to criminal, civil and administrative case files where a final decision has been rendered by court.[99]

If the Public Defender reaches the opinion that the application he received is well-founded, his powers are mainly advisory (he may make recommendations on legislative amendments or propose actions to be taken to remedy the situation, including sanctions against those responsible or parliamentary inquiries). He may also intervene in cases before the district courts and courts of appeal and lodge constitutional complaints with the Constitutional Court, if the statutory rules governing elections or referendum are in issue.[100]

The Public Defender, and his representatives, also have the mandate to enter any place of deprivation of liberty and demand supply of concrete information from authorities. He can also give recommendations to the state authorities for them to eradicate causes of human rights violations; he can also refer a concrete case to relevant investigative or disciplinary body, when he considers that an issue of criminal responsibility has to be raised.

Mandate of the PDO as NPM

In 2009 the Public Defender was assigned the functions of a National Preventive Mechanism, envisaged by the OPCAT.[101] The law states that the Public Defender shall be provided with the necessary logistical and financial resources required for performing the functions stipulated above.[102]

The Public Defender, as NPM, has the right to monitor any place of deprivation of liberty.[103] As of November 2011 and despite the initial opposition of the Ministry of Health, the NPM has a right to visit orphanages and shelters for the disabled and seniors (which are technically not detention facilities, but which those placed there have no real liberty to leave), so that all places of deprivation or restriction of liberty are now covered.

Applications, complaints and letters sent to the Public Defender by persons held in police custody, pre-trial detention or in other places of restriction of liberty shall be confidential and shall be mailed without opening, examination or censorship. Any such correspondence shall be delivered to the Public Defender without delay.[104]

Public Defender has unimpeded access to the premises of any state or local self-government body, regardless of its legal status, including military units, places of arrest, pre-trial detention facilities and other places of restriction of liberty, psychiatric institutions, institutions for elderly persons, child care institutions.[105]

In order to fulfill its function as National Preventive Mechanism the Department of prevention and monitoring was established within the Public Defender's Office. In addition Special Preventive Groups are set up *ad hoc* at the Public Defender's Office. A new SPG is constituted by the Head of the Department for the monitoring of each detention facility, the composition of the Group depending on its type, so that not the same persons monitor orphanages and temporary detention wards of the police, which ensure a degree of flexibility. There is a pool of experts appointed after the examination of their applications for the participation in the NPM activities following the assessment of the candidates' experience, expertise, credentials etc.

SPGs comprise four to eight persons and at least two should carry out any specific tasks; usually, persons with different backgrounds (e.g., a public official and

99 Ibid., Article 18

100 Ibid., Article 21

101 Organic Law of Georgia on the Public Defender, Article 3 (amendment introduced on 16.07.2009)

102 "Pursuant to the aims of the National Preventive Mechanism, the Public Defender of Georgia shall cooperate with the respective bodies and mechanisms of the United Nations as well as international, regional and national institutions or organizations working on the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment in the places of arrest, detention or other places of restriction of liberty." Organic Law of Georgia on the Public Defender.

103 Information Regarding Follow-up measures in Georgia to the Recommendations of the Special Rapporteur Mr. Manfred Nowak Conditions of Detention: Prevention, Prepared by Penal Reform International (PRI) South Caucasus Regional Office November 2008

104 Organic Law of Georgia on the Public Defender, Article 15

105 Ibid., Article 18

a human rights activist) are entrusted to carry out the same task together. The members of the SPGs have a right to conduct unannounced visits to any place of detention 24 hours a day, inspect the facility's records and meet detainees in private, including meeting them in their cells. Reports are approved by the SPG by consensus.

Every year the NPM Department conducts two scheduled monitoring visits of each of 19 facilities under the administration of the MCLA spending two or three days in every facility. It also conducts two scheduled monitoring visits of each of 41 temporary detention wards per year. The visits are scheduled by the Department and are not announced to the penitentiary administration. However, the news of the visit spread at high speed, so that after visit to a temporary detention ward in Zestafoni all detention facilities in Western Georgia would expect a visit by an SPG, after a visit in Tbilisi visits would be expected in Rustavi. The NPM Department thus amended its working methods in order to avoid visiting many facilities in the same region within a short period of time, rather planning the geographical spread of the visits in a more random manner.

The NPM Department and the SPGs receive complaints via a telephone hotline, even on the private phones of its staff, it may act upon a publication in mass media or on its own motion (for example, to double-check the information received or to control the implementation of its recommendations). The recommendations following the monitoring activities are not binding on the executive and sometimes are implemented with significant delay in order not to create an impression that the changes were made following the Ombudsman's reports. However, generally, the rates of compliance arose with the appointment of Mr. Georgi Tugushi as Public Defender. The NPM Department gained important experience, the executive officials received training and explanations on the nature of the NPM, the monitoring activities are carried out in more organized way and the recommendations are realistic enough to be fulfilled, the funding of the NPM Department improved. According to the annual reports, the Public Defender's Office carried out 68 planned and 440 ad hoc monitoring prison visits in 2010 and 72 planned and 516 ad hoc visits in 2011 to the detention facilities under the authority of the Ministry of Corrections and Legal Assistance. The monitoring group members held meetings and interviews with inmates, prison directors, personnel and medical staff of these establishments. Approximately 1,200 inmates were interviewed in 2010 and 1500 in 2011.

There were 104 planned and 47 ad hoc visits in 2010 and 84 planned and 157 ad hoc visits to the temporary detention wards administered by the Ministry of Interior. The monitoring team assessed the infrastructure of their facilities and inspected inmates' registration logs and records of medical examination of inmates carried out upon their arrival. The members of the group interviewed members of administrations and inmates.

The report noted positively that the monitoring team did not experience any problems during the exercise of its authority as prescribed by the law.[106] However it also noted that the SPG faced some hindrances while monitoring the deaths in prison; it was either the delay in provision of information requested from the Ministry of Penitentiary or provision of incomplete information.[107] Among the achievements of the NPM it may be mentioned that the prisons in Batumi and Zugdidi with appaling conditions of detention were closed. However, serious problems remain where the prosecution and punishment of those implicated in torture and other forms of ill-treatment is in issue: the prosecutors regularly open criminal cases, but then the investigation remains open but inactive for years with no results at all. At the same time, the Ombudsman has no right to access the case-files in pending investigations, but only in cases terminated by a final judgment or decision; investigations of torture, even if inactive for years, remain formally pending, so that the Ombudsman is unable to ascertain the exact causes of such situation.

On 21 July 2010 the Parliament amended the law to grant the Public Defender the right to make

106 Public Defender of Georgia, annual human rights report for 2010, *op. cit.*

107 Ibid.

nonbinding recommendations to law enforcement agencies that they investigate allegations of human rights violations, including those involving abuse of prisoners. Government agencies have 20 days to respond to the public defender's recommendation or to submit a written justification of their decision not to follow them. The amendment was intended to force government agencies to justify publicly any failure to investigate allegations and to improve response times to the PDO. The PDO reported that its communications with most governmental institutions improved; however, there continued to be cases of late or inadequate responses, and the PDO was doubtful if the improvement was directly related to the amendment.[108]

No other national external monitoring mechanisms have access to penitentiary institutions. Relevant international mechanism/organizations (COE, UN) are periodically monitoring them.

The Public Defender publishes the results of the monitoring in his report (since 2010 he submits his report to the Parliament only once a year, it may also submit a special report covering a period other than a year), he also published thematic reports.[109] The NPM reports (unlike general reports) are not discussed in the Parliament, but they are submitted to international organisations present in Georgia. The Public Defender also mentions the results of the NPM activities in his general annual reports.

The Public Defender's Office has a broad mandate and is perceived as an independent body. It has developed effective working methods and cooperates with NGOs. However, it remains the only mechanism relatively independent from the executive which may visit the places of detention; its creation served a justification of the dissolution of public commissions in the MCLA detention facilities which were opened for NGO participation.

Conclusions and recommendations

In respect of legislation and other general measures:

- bring the definition of torture in accordance with Article 1 UN CAT by, in particular, discrimination, acquiescence in torture;
- in respect of administrative detention, reduce sentences, provide for procedural guarantees of those charged with administrative offences, including effective appeals, improve conditions of detention, so that those under administrative arrest are not detained in temporary detention wards, but have the same rights as criminal convicts (in respect correspondence, physical exercise etc.);
- reform plea bargaining by providing necessary procedural guarantees and ensuring independence of judges;
- do not allow for public officials to call into question final and binding judgments of the ECHR – on the contrary, endeavour to implement both binding judgments and, to the extent possible, recommendations of international institutions;
- comply with the obligation to give specific reasons for disciplinary sanctions in the places of detention;
- try to bring medical treatment in detention to the standards of civil medical service, in the meantime, allow detainees to be examined by doctors of their own choice.

In respect of investigations and prosecutions of ill-treatment:

- improve documentation of injuries, by complying with Istanbul protocol in particular; restore medical examinations in cases of transfer;

108 US State Department Human Rights Report 2010 / Section on Georgia, *op. cit.*

109 See the Parliamentary Reports at http://www.ombudsman.ge/index.php?page=21&lang=1
See special (thematic reports) at http://www.ombudsman.ge/index.php?page=22&lang=1

- forensic medical examination should be timely conducted in order to preserve evidence of recourse to torture;
- safeguards for those complaining of torture (by transferring elsewhere, for example)
- records of serious injuries should prompt the administration and, where necessary, prosecutors to investigate the causes;
- encourage to investigate cases of torture;
- avoid ministries investigating torture committed by themselves;
- encourage prosecution of those identified by NPM as implicated in torture.

In respect of the former public commissions of the Ministry of Justice:

- encourage the Ministry of Corrections and Legal Assistance to consider creating monitoring mechanisms, open to human rights NGOs and alternative to the NPM;
- entrust such mechanism with extensive monitoring mandate.

In respect of the NPM activities of the Public Defender's Office:

- increase its budget;
- encourage compliance with NPM recommendations;
- grant it access to documents in opened but not terminated cases of investigation – after one year, for example;
- encourage parliamentary discussion of NPM reports, probably in the committees rather than at plenary sessions;
- encourage to pursue 'name and shame' practice in cases of confirmed serious violations of human rights;
- make the NPM more open to the wider civil society participation.

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