REPUBLIC OF ARMENIA
HUMAN RIGHTS DEFENDER

AD HOC PUBLIC REPORT

ON SAFEGUARDING THE RIGHT TO HEALTH OF PERSONS DEPRIVED OF LIBERTY IN PENITENTIARY INSTITUTIONS

YEREVAN 2017

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Introduction

The right to health, including the right to receive medical care, is a fundamental right of everyone in a democratic society. It is aimed at ensuring the minimum conditions for the dignified life of all population groups in a country. Having legal rules safeguarding the proper exercise of this right is a key feature of any modern legal state. The matter gains further relevance, and the state's obligation more important in the case of persons deprived of liberty, who are therefore under the jurisdiction of the state.

The health issues of persons deprived of liberty in penitentiary institutions are among the most widespread and systemic challenges within the penitentiary system, which require urgent attention. Given their importance and the imperative of safeguarding the fundamental right to health of persons deprived of liberty, the Republic of Armenia Human Rights Defender specifically addressed them in the Annual Public Report published by the Defender in the capacity of the National Preventive Mechanism.[1]

The present Report reviews health-related issues by means of analyzing the international and domestic legal rules with respect to facts found in the course of the Human Rights Defender's activities. In other words, every aspect of the right to health of persons deprived of liberty contains an analysis of the relevant international standards and practices, followed by an overview of the practical problems and the facts collected through complaints and monitoring visits. This Report contains the Human Rights Defender's assessments and conclusions regarding each of the identified issues, with proposals on how to address the gaps of legislation and practice.

The Report was drafted on the basis of findings of 110 visits to penitentiary institutions in the course of 2016. The visits were carried out by the Torture Prevention Expert Council adjunct to the Human Rights Defender, which consists of representatives of the Defender's staff and of non-governmental organizations active in the field of combating torture and other forms of ill treatment, as well as independent experts.

Furthermore, the present Report reflects the results of the examination of complaints addressed to the Human Rights Defender by detainees and convicts, the Defender's decisions finding violations of human rights or freedoms, and the legal assessments contained therein. Thus, the Report cites the clarifications and information provided by state authorities in the course of examination of complaints, as well as the steps taken to address the existing problems.

Importantly, in view of the need to protect the privacy of persons deprived of liberty, which have applied to the Human Rights Defender, the description of applications in this Report does not disclose any identifying data. Health issues and the circumstances of diseases are presented in such a way as to make it impossible to identify the person.

Another key aspect of the Defender's work is the cooperation with the Republic of Armenia Ministry of Justice and its Penitentiary Service. This cooperation is of particular importance with respect to issues affecting the right to health of persons deprived of liberty. Any issue discovered here requires a swift response by the competent authorities.

The issues presented in this Report with respect to the right to health of persons deprived of liberty in penitentiary institutions are due to their pressing and systemic nature. Furthermore, the substance of the right to health contains a wide circle of issues, and this Report needs to target the

[1] For details, see the 2016 Annual Report of the Republic of Armenia Human Rights Defender as the National Preventive Mechanism, pp. 3-11, http://pashtpan.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf

relevant issues in sufficient detail and depth, refraining from an abstract and generalized presentation of the issues.

The Report does not address the issues that relate to the right to mental health or the medical care and services necessary in case of infectious disease (tuberculosis or HIV/AIDS). Those matters would require a dedicated study, analysis, and identification of the problems for the purpose of presenting well-founded recommendations. The Report also does not address matters that are related to the right to health, but are not directly associated with the safeguarding of proper medical care and services (such as food, including additional food and special diets, the conditions of detention, and the like). They, too, would require a separate study.[2]

The present Report addresses various elements of the right to health in places of deprivation of liberty, such as the adequacy of medical care and services, including care and government-guaranteed free medical care. The Report dwells upon the sufficiency and qualifications of medical personnel, the availability of equipment and drugs in penitentiary institutions, breaches of medical confidentiality, and the practical implementation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Thus, the issues raised in the present Report and the conclusions of the related legal analysis will serve as important guidelines for addressing the gaps of legislation and practice with respect to safeguarding the right to health of persons deprived of liberty.

[2] The 2016 Annual Report of the Republic of Armenia Human Rights Defender as the National Preventive Mechanism addresses, among others, issues related to the food of persons deprived of liberty, as well as the conditions of their detention,
http://pashtpan.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf

1. Legal Grounds Safeguarding the Right to Health of Persons Deprived of Liberty

The right of anyone deprived of liberty in any manner to receive proper medical care, as a condition for safeguarding the dignity and physical security of the person, is enshrined in various international legal documents.

Article 25 of the UN **Universal Declaration of Human Rights** (12 December 1948) provides: "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including … medical care and necessary social services...*"

Paragraph 1 of Article 12 of the UN **International Covenant on Economic, Social and Cultural Rights** (16 December 1966) provides: "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*"

According to Rule 22.1 of Recommendation 2006(2) of the **Committee of Ministers of the Council of Europe on the European Prison Rules,** "*prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.*" According to Rule 40.3 of the Recommendation, "*prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.*" Rule 46.1 provides: "*Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals, when such treatment is not available in prison.*"

A similar requirement is contained in Paragraph 22(2) of the UN's Standard Minimum Rules for the Treatment of Prisoners (adopted on 30 August 1955): "*Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.*"

According to Principle 24 of the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (adopted by UN General Assembly resolution 43/173 on 9 December 1988), "*A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*"

It is particularly important to study the legal standards of the European Court of Human Rights with regard to the health and medical care of persons deprived of liberty in light of the absolute prohibition of torture and ill treatment enshrined in Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

In judgments concerning Armenia, addressing the state's positive obligation to provide proper medical care to persons deprived of liberty, the European Court of Human Rights found that Article 3 "*imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance.*"[3]

The European Court further emphasized that all prisoners have the right to "*their health and well-being being adequately secured by, among other things, providing the requisite medical assistance.*"[4] In those cases, the judgments against Armenia found a violation of Article 3 of the

[3] Judgment dated 15 June 2010 in the case of Ashot Harutyunyan v. Armenia, application no. 34334/04, para. 103; judgment of 31 March 2015 in the case of Davtyan v. Armenia, application no. 29736/06, para. 80.

[4] Judgment in the case of Ashot Harutyunyan v. Armenia, para. 104; judgment in the case of Davtyan v. Armenia, para. 81.

European Convention on Human Rights and Fundamental Freedoms on the ground that proper medical assistance was not provided to persons deprived of liberty.

According to the case law of the European Court, the honoring of such an obligation of the state is even more important as *persons deprived of liberty are, by virtue of their status, dependent upon the authorities.* The European Court considered that *any action or inaction of the authorities will most likely have a great impact on the physical well-being of persons deprived of their liberty*.[5]

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has addressed the importance of safeguarding the requisite medical assistance to persons deprived of their liberty.

According to the jurisprudence of the CPT, "*the direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital.*" Moreover, "*a prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets,… in conditions comparable to those enjoyed by patients in the outside community.*"[6]

The CPT noted that *the state should take measures to ensure the proper training of prisoners engaged in providing care to prisoners having limited ability. Even under such conditions, when such persons provide care, their work should be properly supervised by properly-qualified administrative staff of the penitentiary institution.*

Thus, an overview of the international legal provisions prescribing the right to health supports the conclusion that the right of persons deprived of liberty in any manner to receive proper medical care, as a safeguard of the person's dignity and security, implies the state's obligation to take measures needed for protecting the health of the person deprived of liberty.

In the Republic of Armenia, everyone's right to health is subject to full protection and safeguarding. The legal grounds for safeguarding this right are primarily enshrined in Paragraph 1 of Article 85 of the Republic of Armenia Constitution, which provides: "*Everyone shall, in accordance with law, have the right to health care.*" This provision of the Constitution was detailed out in the sector legislation. Article 3 of the Republic of Armenia Law on Health Care and Services provides: "*Medical care and services shall be organized in hospital form when complex application of medical measures is necessary, including diagnosis, treatment, lengthy supervision, and special care.*" Article 12 of the same Law provides that arrested and detained persons and persons serving a sentence in places of deprivation of liberty shall have the right to receive medical care and services in accordance with the procedure stipulated by the Republic of Armenia legislation.

Article 12 of the Republic of Armenia Penitentiary Code, which enshrines the fundamental rights of convicts, safeguards the right to health, including the right to receive adequate food and medical assistance.

Paragraph 1(4) of Article 13 of the Republic of Armenia Law on Keeping Arrested and Detained Persons, a detained person shall have the right to ... health. Paragraph 4 of Article 21 of the same Law provides that arrested or detained persons needing specialized medical care shall be transferred to a specialized or civil medical institution.

[5] Kudła v. Poland [GC], no. 30210/96, § 94, judgment dated 26 October 2000.
[6] The 3rd General Report on the CPT's Activities Covering the Period 1 January to 31 December 1992, paras. 36 and 38.

Paragraph 59 of the Republic of Armenia Government Decree 825-N dated 26 May 2006 (On Approving the Procedure of Organizing Prevention and Health Care of Detainees and Convicts, Using the Medical Institutions of Healthcare Authorities, and Engaging Their Staff for Such Purposes) provides that if the in-patient medical care and assistance volume is insufficient, a detainee or convict who is sick shall be transferred to the medical correctional institution or medical institutions of other health authorities, with the consent of the Department's Medical Services Unit Chief, except for cases of providing urgent medical care. Under Paragraph 65 of the same Decree, the medical correctional institution shall… ensure … sufficient volumes of care.

Under Paragraph 11(g) of the By-Laws of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia (approved by the Republic of Armenia Government Decree 1256-N dated 24 August 2006), one of the goals of the Department is "to ensure proper conditions for … protecting the life and health of detained persons and convicts."

2. Care Provision to Sick Persons Deprived of Liberty in Penitentiary Institutions

Care provision is essential to safeguarding the right to health of persons deprived of liberty.

Although the situation in penitentiary institutions has somewhat improved over the course of the years, urgent solutions are currently still needed.

More specifically, proper care of sick persons deprived of their liberty is still not organized in the penitentiary institutions, including the in-patient medical services unit (ward or station) and the medical correctional institution. There are problems related to the organization of care for persons having palliative, post-surgical, rehabilitative, musculoskeletal, and mental health issues. Moreover, there are concerns over the rights of elderly persons held in penitentiary institutions.

Care provision to sick and elderly persons deprived of their liberty in the in-patient medical services units (ward or station) of penitentiary institutions and the medical correctional institution was analyzed on the basis of the following questions:

a) Is the necessary volume of care provided to sick and elderly persons deprived of liberty? If not, what measures need to be taken?

b) Is it legitimate for a sick person deprived of liberty to be cared for by another person deprived of liberty?

During the monitoring of penitentiary institutions in the course of 2016, the Defender's staff and members of the Torture Prevention Expert Council found problems related to proper care provision to persons deprived of liberty and needing care, including the inadequacy of its volume. More specifically, persons deprived of liberty attended to their personal needs with the help of other persons deprived of liberty (in the penitentiary institutions of Artik, Noubarashen, and the Hospital for Convicts). Moreover, persons deprived of liberty and needing care were found not to have been transferred to the medical correctional institution or a civil medical institution for the purpose of organizing proper care. For instance, a person with a first-degree disability, deprived of liberty and in need of care, who, due to serious vision problems, had difficulty moving without assistance, was discharged from the "Hospital for Convicts" penitentiary institution and moved to the Sevan penitentiary institution without providing proper care. Such practice is unacceptable.

In the course of 2016, the review of complaints addressed to the Defender by persons deprived of liberty in penitentiary institutions also revealed cases of an orderly of the Narcology Ward of the "Hospital for Convicts" penitentiary institution being temporarily transferred to the

Noubarashen penitentiary institution in order to ensure proper care for persons deprived of liberty. In this situation, however, the care was provided only during the day. Moreover, a person deprived of liberty refused the care service, noting that the orderly was a representative of the opposite sex. As a result, the requisite care was not provided to the person.

The wards of the "Hospital for Convicts" penitentiary institution, as well as in the medical services units of the other penitentiary institutions were found to lack staffing positions for the orderlies; some positions were vacant, and some of the existing staff was overburdened.

The night duty shift at the "Hospital for Convicts" penitentiary institution does not include orderlies, and the vital needs of persons deprived of liberty and needing care are mostly met with the help of other persons deprived of liberty. The fact that a whole ward employs just one orderly leads to the conclusion that the care of persons deprived of liberty and needing care is not provided during the daytime, either.[7] This was reported by detainees and convicts during private interviews, as well.

Moreover, there were cases of persons deprived of liberty being unable to attend to their own needs (to move, to use the toilet, and the like), and being assisted by the administration during food intake and when attending to their personal needs. While administration assistance may seem acceptable at first sight, this practice is impermissible, because special knowledge is required for the provision of care. This situation also undermines medical confidentiality.

With respect to this practice, the Defender raised the issue of not organizing the care of persons deprived of their liberty sufficiently. According to clarifications provided by the Republic of Armenia Ministry of Justice, the Head of the Penitentiary Department has adopted an order whereby an orderly was transferred to the respective penitentiary institution for a two-month period for organizing the care of the person deprived of liberty.

However, not all complaints related to the organization of sufficient care for persons deprived of their liberty have been properly resolved.

For example, one person deprived of liberty complained to the Defender about being unable to wrap elastic bandage around his limbs on his own. He claimed that the penitentiary institution's medical staff did not provide any care and did not visit him in the cell. He said that he had to wrap the bandage with the help of his cellmates, and hat to visit the medical services unit in order to receive medical services, although he had been advised not to walk without the elastic bandage.

As a result of examining this complaint, the Defender adopted a decision finding a violation of human rights or freedoms, and recommended to transfer the complainant immediately to a civil medical institution and to organize the required care in such an institution, as well as to preclude, in similar circumstances, the provision of care by another person deprived of liberty. In this particular case, however, adequate measures were not taken to ensure the proper care of the person.

The analysis of a number of paragraphs of the Republic of Armenia Government Decree 825-N dated 26 May 2006 (On Approving the Procedure of Organizing Prevention and Health Care of Detainees and Convicts, Using the Medical Institutions of Healthcare Authorities, and Engaging Their Staff for Such Purposes) clearly shows that the in-patient medical services units (ward or station) of penitentiary institutions and the medical correctional institution must ensure the sufficient volume of care. If they are inadequate, a sick person deprived of liberty and in need of

[7] See the following sections of the Report for details on the medical staffing of the penitentiary institutions.

care must be transferred to the medical correctional institution or to the medical institutions of other healthcare authorities.[8]

In other words, the state is obliged to take measures necessary to protect the health of a person deprived of liberty, including the provision of proper care in the place of deprivation of liberty. This implies that, when the adequate volume of care is not provided in the place of deprivation of liberty, the state is obliged to organize it in a civil medical institution.

The proof of this point is that, having examined similar complaints addressed to him, the Defender adopted decision finding violations of human rights or freedoms. In such decisions, based on the international legal requirements in this field, the Human Rights Defender found that **when the volume of care provided in the medical correctional institution is inadequate, the persons deprived of liberty must be transferred to a specialized medical institution, and there must be no exceptions to this rule.**

As to the second question, regarding the legitimacy of a sick person deprived of liberty being cared for by another person deprived of liberty, **the international requirements prohibit organizing the care for a person deprived of liberty by another person deprived of liberty. The state must ensure the permanent care of persons deprived of liberty and having special needs by specialists that have been specially trained.**

This inference is reinforced by the case law of the European Court of Human Rights. The European Court of Human Rights considers it problematic under Article 3 of the Convention when a person deprived of liberty is cared for by his close relatives or other persons deprived of liberty.

In the judgment in the case of Farbtuhs v. Latvia, for example, the European Court did not consider it appropriate that *a significant part of the responsibility for the care of a disabled person deprived of liberty, was assigned to another person deprived of liberty, who lacked any qualifications, even for a limited time*.[9]

Moreover, in its 2013 report on Italy, the CPT "called for caution when involving fellow inmates in the care of disabled prisoners…"[10]

The CPT noted that the state should take measures to provide appropriate training to inmates involved in the care of disabled prisoners. Even under such circumstances, during the provision of such care, their work should always be adequately supervised by a qualified member of staff of the correctional institution.

The state has the positive obligation to ensure the permanent care of persons deprived of liberty and having special needs by specialists that have been specially trained. Even if such care is provided by another person deprived of liberty, it is permissible only when such person has undergone special training.

The urgency of the problem and the need for addressing it are proven by the results of monitoring visits, as well as the decisions adopted by the Human Rights Defender, finding violations of human rights and freedoms with respect to complaints addressed to him,

In one such decision, the Defender noted that, throughout his term in a penitentiary institution, the care of a person deprived of liberty was organized with the help of cellmates.

In this case, a person deprived of liberty lodged a complaint informing that he had first-degree disability and serious health problems, including ischemic heart disease (IHD), atherosclerosis,

[8] For details, see Paragraphs 58, 59, 65, 69, and 77 of the said Decree.
[9] For example, the judgment in the case of Farbtuhs v. Latvia, application no. 4672/02, para. 73.
[10] The Report to the Italian Government on the visit to Italy carried out by the CPT from 13 to 25 May 2012, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069727a

atherosclerotic cardiosclerosis, hypertension, chronic pyelonephritis, spinal osteochondrosis, and Organic emotionally labile disorder. He also complained of weakness and noted that he needed inpatient care and treatment.

During an interview with the Defender's representatives, he informed that he had felt lightheaded, fallen, and broken his leg. He further noted that, although he had been transferred to the medical correctional institution, no medical intervention had been performed, other than the X-ray examination.

This claim was confirmed by the review of the person's medical documents by the representatives of the Defender's staff, which showed that the person had fallen because of being lightheaded and sustained a closed fracture of the upper third of the left femur, with a hypertensive crisis. He had been transferred to the medical correctional institution, and after being discharged from there, had been examined by the Medical Working Commission of the Ministry of Justice of the Republic of Armenia, which had prescribed conservative treatment in an outpatient setting.

The inspection of the conditions of detention showed that the person used the cell toilet with great difficulty: he had to climb two stairs in order to use the toilet, which is a process inflicting pain and suffering to a person having a femur fracture and moving with crutches.

His cellmates further noted that, because of his health condition, for a rather long time already, he was unable to bathe or go out for exercise, and attended to his personal needs with the help of his cellmates, which did not have appropriate skills to look after a sick person.

In another case, a person held in the Artik penitentiary institution orally complained to the Defender that he suffered from complete adentia, deforming polyarthritis, and movement function disorder, so he had difficulty moving and eating. He added that he had third-degree disability. The person deprived of liberty stated that his health condition was deteriorating by the day, and that the treatment provided had not improved his health condition. During the visit, it became clear that the person moved and used the toilet with the help of his cellmates.

In view of the overall logic of the international law in this field, it must be noted that the provision of proper care to persons deprived of liberty by appropriately qualified persons is important because it predetermines the appropriateness of care and assistance provided to the person. To this end, **care provision by a cellmate is not necessarily problematic *per se* if such care is provided by such a person deprived of liberty, which has had appropriate training.**

Thus, it can be concluded that the necessary volume of care is not necessarily always provided to persons held in penitentiary institutions. Moreover, it is worrisome that, with the inadequate volume of care, the state is not taking sufficient alternative measures to ensure the transfer of a person in need of care to a specialized medical institution. This results in the illegitimate practice of a person being cared for by another person deprived of liberty, such as a cellmate, who lacks appropriate training.

3. Provision of Proper Medical Care and Services to Persons Deprived of Liberty

The problems revealed during the activities of the Human Rights Defender, which are related to safeguarding the right to health of persons deprived of liberty, are largely due to the inadequate volume of medical care and services in penitentiary institutions.

This conclusion is confirmed by continuing complaints of this nature addressed to the Human Rights Defender. In the course of 2016, as a result of examining such complaints, the Defender has adopted decisions finding violations of human rights of freedoms. In those decisions, he not only found violations of the right to health, but also made specific recommendations on the right to health and safeguarding the right to proper care, holding officials liable, and taking effective and sufficient measures to preclude similar violations in the future with respect to persons in similar situations.

As a result of examining one such complaint, the Defender found that **the volume of medical assistance provided to a person deprived of liberty in the Noubarashen penitentiary institution was insufficient:** there was an absence of equipment necessary for the provision of a sufficient volume of medical care, necessary in view of the person's health condition, and a special unit or ward, with proper medical personnel, was lacking, as well. **The person had not been transferred to a specialized medical institution, and the clarifications of the Ministry of Justice of the Republic of Armenia did not appropriately justify the absence of the need to transfer him to the specialized healthcare institutions.** As a result, the Human Rights Defender found that the state failed to safeguard the exercise of the person's right to health, including proper medical care and assistance, which implies also the state's obligation to organize care in a civil hospital when the necessary medical assistance cannot be provided in a place of deprivation of liberty.

With respect to this case, the Criminal Appellate Court of the Republic of Armenia decided to release the detained person and to apply bail as a preventive measure, based on, among other things, the legal position expressed in the decision adopted by the Human Rights Defender. In the reasoning of its decision, the Appellate Court discussed the Defender's application to the Ministry of Justice, in which the Defender stated that it was necessary to immediately transfer the detained person to the relevant specialized medical institution.[11]

Moreover, the Human Rights Defender noted the inadequate volume of medical services provided to persons deprived of liberty in penitentiary institutions and raised the issue that, in virtually all the clarifications provided about the person's health condition, the Ministry of Justice had used impermissibly generic language, for instance stating that the person was under "dynamic supervision of the medical staff" of a particular penitentiary institution of the Ministry of Justice, or that the person "continued to receive the prescribed medication treatment subject to dynamic supervision." The "dynamic supervision" notion has been abused to the extent that, in some cases, it has gained a negative connotation.

Having reviewed the clarifications provided by the Ministry of Justice with respect to these and numerous other complaints related to the provision of proper medical assistance to persons deprived of liberty, the Defender has found that they are generic and repetitive, not allowing an individualized approach to each person in need of medical assistance. **Clarifications on the health condition of each person deprived of liberty must be individualized and contain clear**

[11] http://pashtpan.am/media/veraqnnich-azat-ardzakum.html

information, including facts related to the person's health condition, tests performed, and the volume of medical assistance provided.

Moreover, the exercise of the person's right to benefit from the services of other paid medical specialists has not been safeguarded in line with the international and domestic legal requirements.

Hence, in the absence of proper justification of non-necessity to transfer the person to a specialized civil medical institution, as well as the vague meaning of the terms "dynamic supervision" and "medication treatment," combined with the failure to issue the relevant medical reports, the Defender has found violations of persons' right to health. This practice is impermissible also in the sense that it does not allow the monitoring or inspection bodies to gain a clear understanding of the health condition of detained or convicted persons. Hence, it becomes impossible to recommend appropriate measures to improve their health.

The monitoring carried out by the staff of the Human Rights Defender and the review of complaints lodged by persons deprived of liberty have shown that the inadequate volume of proper medical care and services in penitentiary institutions is due to a number of factors, the combination of which predetermines the level of health care available to persons deprived of their liberty. These factors are the key prerequisites for safeguarding the right to medical care and services: the independence and proper qualification of the medical personnel, adequate staffing, the availability of equipment, facilities, and sufficient medication of proper quality, as well as the provision of state-guaranteed free health care and services, each of which is specifically analyzed below in this Report.

4. Provision of State-Guaranteed Free Medical Care to Persons Deprived of Liberty

The provision of proper medical care, especially state-funded medical services, to persons deprived of liberty, is among the most important issues in this field.

In the course of his activities, the Human Rights Defender has identified the following two main aspects of problems related to the provision of free medical care and services to persons deprived of their liberty:

1. Can the state fulfill its obligation to safeguard the person's right to health, if it refuses to provide appropriate medical care on the basis that additional financing is not available for overspending in programs providing medical services to the population under state-guaranteed free or discounted medical care and services?
2. Is it legitimate for the state to refuse to take measures to safeguard the right to health, when persons deprived of liberty need medical care to be provided, on the ground that such medical care is provided as a part of paid medical services offered to the population using state-of-the-art expensive technology?

As to the first question, it must be noted that the review of complaints received by the Human Rights Defender shows that medical intervention subject to state funding is mostly not organized due to the insufficiency of funding. This is unacceptable.

The review of one such complaint received by the Human Rights Defender showed that a person deprived of liberty had serious health problems. It also became clear that he had much difficulty attending to his needs in a prison cell.

When the Defender demanded to provide the necessary medical care to the person, the Ministry of Justice informed the Defender that a specialist doctor had been invited to the prison in order to provide advice on the issues raised by the complainant, and after an examination, had recommended surgery.

In order to perform surgery in the framework of state-guaranteed free medical care, the Penitentiary Department of the Ministry of Justice applied to the Ministry of Health of the Republic of Armenia. According to the answer received, "**there has already been overspending in programs providing medical services to the population under state-guaranteed free or discounted medical care and services, and additional funding has not been allocated for them yet.**"

In another case, as per an application by a person deprived of liberty, coronarography was prescribed after an examination by the cardiologist of the "Hospital for Convicts" penitentiary institution. However, the administration of the penitentiary institution did not take any steps. Moreover, they suggested that the inmate organize the heart examination on his own. The Defender reviewed the complaint and found out that, in response to the letter of the Penitentiary Department asking to organize the said examination, the Ministry of Health of the Republic of Armenia had stated that there had been overspending in the program, that additional funding had not been allocated yet, and that the issue could not be solved at the time being, for which the Ministry of Health apologized and noted that it would revert to the issue in the future, once the resources become available.

Thereafter, in an interview with the concerned person during a visit to the Noubarashen penitentiary institution, it became clear that **the person had been examined after several months, despite the fact that the person regularly reported acute heart pain after the surgery.** This situation is impermissible, especially taking into account that the person's health condition was deteriorating beyond his control, despite his need for medical care.

Furthermore, as it transpired from the review of the aforementioned and other similar complaints, the clarifications of the responsible state bodies made it clear that state-funded medical assistance to persons deprived of liberty could be organized in the framework of programs providing medical services to the population.

Although it is clear that the state's financial resources are essential for safeguarding the right to health for the general population, including persons under the state's control and custody, the cited insufficiency of allocations does not in any way relieve the state of **the obligation to take effective measures and to provide free medical assistance to persons whenever possible, in accordance with the prioritization of the health needs of persons.**

General comment no. 21, issued on 10 April 1992 by the UN Human Rights Committee with respect to Article 10 of the International Covenant on Civil and Political Rights, is relevant here. It provides: "*Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party.*"

Moreover, in the judgment in the case of Akhmetov v. Russia, the European Court of Human Rights found as follows: "*The Court thus accepts that the authorities took steps aimed at providing the applicant with radical treatment outside the penitentiary system. However, in view of the*

particular circumstances of the present case, it finds that those measures were not carried out with ***sufficient expedition****. Taking into account the particularly grave and complex nature of the applicant's condition,* ***the authorities should have been mindful of the danger of it becoming irreversible due to the delay in radical treatment****. Therefore, they ought to have started to investigate the possibility of treatment in a civilian hospital shortly after having received the recommendation for such treatment rather than awaiting for more than a year the outcome of the examination by the Special Medical Commission.*"[12]

This supports the conclusion that, while time limitations in programs of provision of free medical care and services *per se* are not problematic, **the absence of funding, overspending under state programs, and other similar arguments cannot justify such delays in the provision of the necessary medical care, which can cause the person's health situation to deteriorate.**

In this connection, **collecting information and compiling statistics on the number and health condition of detained and convicted persons held in penitentiary institutions would help to better predict the necessary volume of medical care and the related funding.**

As to the failure to provide paid medical services using state-of-the-art expensive technology, the Human Rights Defender continues to receive similar complaints, in which persons deprived of their liberty report to be suffering from "generalized chronic destructive osteomyelitis of the upper and lower jaws," but proper medical care is not provided to them. More specifically, the penitentiary institution provides to them only bandage, but not either means to treat the wounds, or pain relief medication. They are provided instead by relatives, and the convicts themselves have to apply the bandage.

According to the clarification provided by the Ministry of Justice, the surgeries necessary in all of the aforementioned cases are, under Decree 57-N of the Minister of Health of the Republic of Armenia dated 28 September 2013, considered *medical services provided using state-of-the-art expensive technologies, which are provided to all groups of the population, including detained and convicted persons, on a paid basis.*

The review of complaints received by the Defender supports the conclusion that the state's failure to provide the relevant medical services is due to the fact that the medical assistance necessary for persons deprived of their liberty is not included in the state programs of state-guaranteed free medical care and services, and is rather a medical service that is provided on a paid basis.

Importantly, while the volume of medical care and services provided to persons deprived of liberty depends on the financial resources of the state, it cannot justify the state's absolute inaction on the basis that the medical assistance necessary for a person is an expensive service provided using state-of-the-art technology, which is not guaranteed by the state. In other words, in the cases reviewed by the Defender, **the problem was that the penitentiary institutions did not take any measures to prevent further deterioration of the person's health condition or to provide the relevant medication and necessary materials.**

The state's obligation to take measures to protect the health of the person under any circumstance arises also from the jurisprudence of the European Court of Human Rights. In the case of Kaprykowski v. Poland, the European Court found as follows: "*The Convention does not guarantee a right to receive medical care which would exceed the standard level of health care*

[12] Judgment in the case of Akhmetov v. Russia, application no. 37463/04, para. 83.

available to the population generally." However, the Court drew attention to the following fact: "*The change to generic drugs resulted in an increase in the number of his daily seizures and made their effects more severe and as such contributed to the applicant's increased feeling of anguish and physical suffering.*" As a result, the Court concluded: "*The placing of the applicant in a position of dependency and inferiority vis-à-vis his healthy cellmates undermined his dignity and entailed particularly acute hardship that caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty.*"[13]

Hence, it can be concluded that the state's obligation to safeguard the right to health of persons deprived of liberty implies, among other things, the implementation of an effective system to ensure free and timely medical care and services without any delays. Besides, whenever the necessary medical care cannot be provided under state funding to a person deprived of liberty, the state should take all measures possible to ensure care and access to medical services in view of the person's health condition.

5. Medical Staffing of Penitentiary Institutions; the Need for Their Institutional Independence

Sufficient Staffing and Qualifications as Key Prerequisites of Proper Medical Care and Services

The provision of proper medical care and services to persons deprived of their liberty largely depends on the sufficiency and professional qualification of the medical services staff.

The staff of the Human Rights Defender and the Ministry of Justice of the Republic of Armenia has been having regular discussions in this field with a view to identifying and addressing the existing gaps.

According to Paragraph 34 of the CPT Standards, "*while in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime. The health care service should be so organized as to enable requests to consult a doctor to be met without undue delay.*"

Paragraph 35 of the CPT Standards provides: "*A prison's health care service should at least be able to provide **regular out-patient consultations and emergency treatment** (of course, in addition there may often be a hospital-type unit with beds). The services of a qualified dentist should be available to every prisoner. Further, prison doctors should be able to call upon the services of specialists. As regards emergency treatment, a doctor should always be on call. **Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognized nursing qualification***."

Moreover, Paragraph 41 of the CPT Standards provides: "*In comparison with the general population, there is a high incidence of psychiatric symptoms among prisoners. Consequently, **a***

[13] Kaprykowski v. Poland, application no. 23052/05, paras. 75-76.

doctor qualified in psychiatry should be attached to the health care service of each prison, and some of the nurses employed there should have had training in this field."

According to Rule 22 of the UN Standard Minimum Rules for the Treatment of Prisoners:[14]

"1) ***At every institution there shall be available the services of at least one qualified medical officer*** *who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.*

2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a ***staff of suitable trained officers****.*

(3) The services of a qualified dental officer shall be available to every prisoner."

Similar requirements on medical personnel are found in the Council of Europe's Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (Paragraphs 41.1 to 41.5):[15]

"***Every prison shall have the services of at least one qualified general medical practitioner.***

Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

Every prison shall have personnel suitably trained in health care.

The services of qualified dentists and opticians shall be available to every prisoner."

Recommendation no. R (98) 7 of the Committee of Ministers of the Council of Europe to Member States concerning the Ethical and Organizational Aspects of Health Care in Prison provides (Paragraph 11):

"*The prison health care service should have* ***a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment*** *of a quality comparable, if not identical, to those which exist in the outside environment.*"

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (adopted by Resolution 70/175 of the UN General Assembly on 17 December 2015) provide (Rule 27):[16]

"*All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.*"

[14] http://www.arlis.am/DocumentView.aspx?docid=18499
[15] http://www.coe.int/t/dghl/standardsetting/prisons/EPR/REP_Armenian.pdf
[16] https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

The World Health Organization Guide to Health in Prisons provides that proper care includes the following:

- *A medical practitioner working in prison should strive to have expertise, at least, in general medical practice, mental health, and dependence and infection control.*
- *Prisons that contain women or young people should employ* ***practitioners with skills who are sensitive to particular conditions of these groups***.

As to the provision of proper care, the Guide provides that the quality of care is affected by factors like:

- *The size of the prison population;*
- *The commitment of the governor or director to the health care of prisoners;*
- *Whether the population is composed (primarily) of short- or long-stay prisoners;*
- *Whether it is a prison for men or for women – women prisoners tend to have greater needs; and*
- *Whether many of the prisoners come from vulnerable groups or are young adults or older people, who are likely to require more intervention.*[17]

An overview of the aforementioned international legal texts supports the conclusion that they mostly contain generic requirements on the organization of health care in places of deprivation of liberty, such as the urgency of provision of medical assistance, proper care, and access to specific medical services (for instance, psychiatric and dental) due to the peculiarities of places of deprivation of liberty.

The binding general requirements in those international instruments include the requirement for **each institution to have sufficient staff positions for a general medical practitioner, qualified medical personnel having the relevant skills, the services of a psychiatrist and dentist, and the availability of urgent and first medical assistance around the clock.**

However, the international legal texts do not contain specific binding criteria on the exact number of medical personnel per penitentiary institution, the volume of medical services provided within the institution, and the scope of specialized medical services. It is implied that every state has some discretion in determining **its own model of ensuring health care and services in places of deprivation of liberty, which will contain arrangements for timely and proper medical care and services for every person deprived of liberty.**

The availability of medical personnel in penitentiary institutions includes the need for both sufficient staffing and proper qualifications.

To ensure completeness, this Report analyses the obtained data on the numbers of medical personnel in the penitentiary institutions of the Republic of Armenia.[18] The data shows that, in the Sevan penitentiary institution, for example, the paramedics work duty shifts under a 24-hour schedule (including days-off and holidays), while the doctor does not stay on duty. The monitoring showed that the workload is heavy, and the number of medical staff needs to be increased.

In another case, the medical personnel of the Artik penitentiary institution noted a need for greater staffing, namely for a nurse and a pharmacist, because the medical personnel are overloaded, and the workload of employees working night duty shifts could be thus alleviated.

[17] http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf

[18] The study was carried out on the basis of the findings of monitoring visits, as well as the letter of the Ministry of Justice of the Republic of Armenia dated 24 January 2017, in which it the Ministry provided information on the number of staff positions and actual staff numbers of the medical services units.

The monitoring by the Defender's staff and the interviews with persons deprived of liberty and the medical personnel support the conclusion that timely provision of medical care depends, among other things, on the sufficiency of medical service personnel.

The study of medical staffing in the institutions has revealed the following problems related to human resources:

1. In each penitentiary institution, a balance is not struck between the actual number of inmates and the number of medical service personnel; and
2. Due to the lack of clear specification and prescription of the volumes of medical care and services in the institutions, there are no consistent requirements on the qualifications of the medical service personnel.

A mere theoretical comparison of the number of medical staffing units in penitentiary institutions and the number of inmates held there shows a proper balance between the number of employees and inmates is not struck. **It is worrying that the Sevan, Abovyan, Goris, and Vardashen penitentiary institutions, in particular, have only one position each for a general practitioner, despite the number of inmates therein and the frequency of their complaints.**

Moreover, access to psychiatric and dental services, as an obligation enshrined in the international recommendations, requires the state to provide and organize sufficient financing, equipment, and human resources.

However, the collected data on human resources in the institutions shows that sufficient steps have not been taken to ensure access to psychiatric and dental services.

For example, **in the Goris penitentiary institution, there is a dental complex, but no staff position of a dentist. Moreover, dental services are not provided on a contractual basis, either.** In the Vardashen penitentiary institution, the study found that there is no position of a dentist, and whenever necessary, inmates invite and pay their preferred dentists.

It is worrying that access to psychiatric services is ensured only in the "Hospital for Convicts," Noubarashen, Abovyan, and Artik penitentiary institutions, where no psychiatric care is provided in other penitentiary institutions.

These assessments of the insufficiency of medical staff are confirmed by not only the study of their relative numbers, but also the complaints received by and the monitoring carried out by the Defender: the monitoring visits have shown that **the treatment of a person with mental health problems, who was kept in the Goris penitentiary institution, was determined through telephone calls to a psychiatrist. In the Sevan and Armavir penitentiary institutions, too, telephone counseling with a psychiatrist was used for prescribing treatment to inmates with mental health problems.**

Moreover, the inadequacy of medical personnel is also linked with the problems of providing medical services round the clock. The monitoring visits showed that**, in the Goris penitentiary institution, medical services round the clock were not available**, and a paramedic or doctor, who lived nearby, were invited upon necessity. The institution's doctor combined the job with employment in a civil hospital.

During visits to the Abovyan penitentiary institution, inmates raised a number of complaints about medical care needed by night being provided with a rather significant delay. The problem was that, in each of the two units, only one nurse was on duty. In the Noubarashen penitentiary institution, the convicts assured that the only paramedic serving night duty shifts could not cope with the calls for service, resulting in rather significant delays in the provision of medical services.

The international standards safeguarding the right to health of persons deprived of their liberty provide that the delivery of proper care and services depends also on the special needs of certain groups (women and juveniles). The United Nations Bangkok Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary prescribe *the necessity of meeting women's special health needs, access to the necessary medication and hygiene supplies in view of their physiological peculiarities, as well as the requirement to carry out measures to protect women's reproductive health.*[19]

The Kiev Declaration on Women's Health in Prison provides that *women's right to health implies the provision of medical services such as comprehensive and detailed screening when first admitted to prison and regularly throughout their stay, an individualized care, treatment and development plan, primary health care and specialist health care, and pre-release preparations in order to ensure continuity of care and access to health and other services after release.*[20]

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide: "*Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned.*"[21]

Thus, the study results support the conclusion that proper medical staffing of the penitentiary institutions of the Republic of Armenia should be achieved in the following main areas:

1. Clarifying the scope of medical services in each penitentiary institution,[22] which should include, as a minimum, the provision of urgent and primary medical assistance prescribed by the international legal documents, as well as access to dental and psychiatric services. Therefore, a sufficient number of medical staff with appropriate qualifications should be ensured.

2. The provision of secondary (specialist) medical assistance in a penitentiary institution can be organized taking into consideration the technical and logistic facilities of the institution, the number of inmates, the profile of the inmates (existence of vulnerable groups), and a number of other factors. Although the state has some discretion to select the arrangements for organizing the specialist medical assistance for inmates (for instance, to decide whether such medical assistance is to be provided inside the penitentiary institution or civil hospitals), the state's actions should aim at safeguarding the exercise of inmates' right to health upon the conditions and principles that underlie the organization of the country's general public health system. When determining the scope of medical care and services in each penitentiary institution, it is crucial to provide all the proper medical services in line with the special needs of vulnerable groups of inmates.

[19] https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf
[20] https://www.unodc.org/documents/hiv-aids/WHO_EURO_UNODC_2009_Womens_health_in_prison_correcting_gender_inequity-EN.pdf
[21] https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf
[22] The logic underlying Paragraph 61 of the Republic of Armenia Government Decree 825-N is exactly the opposite: it provides that the scope of urgent medical care depends on the institution type, medical specialists and equipment available to the institution, and the location of the institution.

3. In each penitentiary institution, it is necessary to ensure the existence of qualified general medical practitioners, as well as access to dental and psychiatric services.

4. In each penitentiary institution, it is necessary to ensure round-the-clock availability of urgent medical assistance.

5. Measures to raise the professional quality of the medical personnel should be continuous, taking into account also the difficulties of practicing the medical profession in places of deprivation of liberty.

Medical Staffing of the "Hospital for Convicts" Penitentiary Institution

The direct observations of the Human Rights Defender with respect to the actual number of inmates receiving treatment in the "Hospital for Convicts" Penitentiary Institution, the number of beds per ward, and the number of specialist medical personnel show that safeguarding the inmates' right to proper medical care and services in the Hospital depends, among other things, on the sufficiency of medical personnel. The problem analysis was based on the professional qualification requirements and conditions for inpatient (specialist) medical care and services in the public health system. The analysis of the Republic of Armenia Government Decree 1936-N dated 5 December 2002, relative to the actual medical staffing of the "Hospital for Convicts" Penitentiary Institution, shows that although the ratio of medical personnel to beds, with the exception of the tuberculosis ward, is maintained, the insufficiency of medical personnel was documented both during visits of the Defender's staff and in the Defender's decisions finding violations of human rights or freedoms.

The "Hospital for Convicts" penitentiary institution does not have resuscitation and intensive care wards. Neither does it provide physiotherapy and palliative care services. Moreover, there is no dedicated infectious disease ward due with separated beds, which results in inmates with infectious diseases being assigned to other wards, including the psychiatric ward.[23]

Moreover, in one of his decisions finding a violation of human rights, the Defender noted that the "Hospital for Convicts" penitentiary institution does not have a neurological ward or division. Hence, given the insufficient volume of medical assistance offered, the failure to transfer the person immediately to a civil hospital violated his right to receive proper medical assistance.

In specialist hospitals, the necessary volume of round-the-clock medical assistance is defined specifically for each ward. According to the legal requirements, round-the-clock duty shifts of appropriate specialists must be organized in each ward of a hospital. Furthermore, a certain ratio of medical personnel to inmates receiving treatment must be secured.

Whereas, the monitoring shoed that the "Hospital for Convicts" penitentiary institution does not properly organize round-the-clock medical assistance: there is a medical team on duty, which is responsible for round-the-clock medical care and services. There is no staff position of orderlies to serve duty shifts. Nonetheless, the orderly of the psychiatric ward serves duty shifts. The daily shift is served by one doctor and two paramedics. At night, convicts working in the maintenance section fulfill the functions of orderlies.

Hence, the lack of round-the-clock medical care by sufficient medical personnel, as well as the lack of professional intervention when necessary are primarily due to the fact that not all the wards have round-the-clock duty shifts served by appropriate specialists. All the wards (at the

[23] This problem is discussed in the Report on the CPT's fourth periodic visit to Armenia, which took place from 5 to 15 October 2015 (CPT/Inf (2016) 31), paras. 91-93.

time of the visit, a total of 131 inmates were receiving treatment[24]) together had **only one doctor (general practitioner or dentist) serving the duty shift during the night.**

Thus, the study has revealed the following problems related to staffing in the "Hospital for Convicts" penitentiary institution:

1. It is necessary to clarify the scope of medical care and services offered at the "Hospital for Convicts" penitentiary institution, ensuring the availability of properly-qualified medical personnel;
2. To take measures to fill the vacant positions as soon as practically possible, and to ensure staffing of each ward in accordance with the prescribed number of beds; and
3. With a view to properly organizing round-the-clock medical assistance, to organize duty shifts of qualified doctors and other medical personnel in each ward.[25]

Besides, the problems of determining the scope of medical care and services and staffing needs at the "Hospital for Convicts" penitentiary institution are due largely to **the absence of a document regulating the activities of the "Hospital for Convicts" penitentiary institution as an institution the primary function of which is to protect the health of inmates.** In other words, the legal grounds of the work of the "Hospital for Convicts" penitentiary institution are limited to the general legislation regulating the performance of penitentiary institutions, without any specific regulations on its particular status of a hospital. Moreover, the rules on medical care and services in civil hospitals are not applicable, either, because they prescribe the organization of the public health system. Thus, **clear prescription of the scope of medical care and services would ensure certainty in the procedures of organizing the treatment of inmates in the "Hospital for Convicts" penitentiary institution or in civil hospitals.**

[24] The monitoring visit to the "Hospital for Convicts" penitentiary institution was carried out on 16 February 2017.

[25] The Concept Note on the Modernization of Medical Services in the Penitentiary Institutions of the Republic of Armenia (adopted by the Government of the Republic of Armenia), too, contemplates changes in the status of the "Hospital for Convicts" penitentiary institution. Irrespective of its institutional subordination, though, it is crystal clear that proper medical care and services can be ensured only with sufficient staffing.
https://www.e-gov.am/u_files/file/decrees/arc_voroshum/2017/01/ardzanagrayinNrq001.pdf

Safeguarding the Institutional Independence of the Medical Personnel: a Prerequisite of the Full Exercise of the Right to Health by Persons Deprived of Their Liberty

Given the crucial role of the medical personnel in the full exercise of the right to health by persons deprived of their liberty in penitentiary institutions, it is necessary to discuss the safeguards of the independence of medical professionals in line with the international legal principles.

Recommendation no. R (98) 7 of the Committee of Ministers of the Council of Europe to Member States concerning the Ethical and Organizational Aspects of Health Care in Prison provides (Paragraph 20):

"*Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.*"

Paragraph 71 of the CPT Standards provides: "*In order to guarantee their independence in health-care matters, the CPT considers it important that such personnel should be aligned as closely as possible with the mainstream of health-care provision in the community at large.*"

The Mandela Rules provide (Rule 25): "*The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel* ***acting in full clinical independence*** *and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.*"

However, under the domestic legislation stipulating the procedures of providing medical care and services in penitentiary institutions,[26] the medical personnel of penitentiary institutions are penitentiary officers that perform their duties under direct subordination to the institution's administration. With this institutional subordination, the adequacy and quality of services provided by the medical personnel are supervised by the administration of the Penitentiary Service, which runs contrary to the independence and autonomy of the medical personnel.

With the institutional subordination of the medical personnel of penitentiary institutions, the right to health of persons deprived of liberty is further undermined because of procedural delays in obtaining consent to provide proper medical services.

When an inmate needs to be transferred to a civil hospital because of his health condition, the administration of the penitentiary institution first applies to the Penitentiary Service, which in turn applies to the Ministry of Health of the Republic of Armenia. As a result, **the review of a request for state-guaranteed free medical assistance to an inmate takes months, and such a lengthy process causes the state funding for such period to run out, resulting in further unnecessary delays in the provision of medical services to the inmate.**

For example, inmates in the Abovyan penitentiary institution reported that when they needed to be examined or treated by a doctor of their choosing, for which they were ready to pay, the mandatory process of obtaining the consent of the Penitentiary Administration took as long as three months, and could even result in a refusal.

Similar problems were found in other penitentiary institutions, as well: an inmate held in the Vardashen penitentiary institution informed the Defender that, as a result of examinations in a specialist medical institution, he was prescribed monthly blood coagulation tests, as well as appropriate drug treatment. He claimed that his health condition deteriorated significantly because

[26] The Republic of Armenia Law on the Penitentiary Service; Government Decree 1256-N approving the By-Laws of the Penitentiary Service; and Government Decree 825-N.

of the failure to perform the test and to provide the prescribed medication, as he developed extensive hemorrhage on different parts of the body, and after about two months of undue delays, he was finally transferred to the Erebouni Medical Center.

With the current system of institutional subordination, the person's right to receive medical assistance from a paid doctor of his choosing is not always safeguarded, either.

For example, an inmate in the Armavir penitentiary institution assured that he was not properly examined or effectively treated in the "Hospital for Convicts" penitentiary institution. His health problems persisted, including swollen upper and lower limbs, hypertension, and continued need for drug treatment. The very first night after his return to the Armavir penitentiary institution of the Ministry of Justice of the Republic of Armenia, his health condition had deteriorated, and the administration of the penitentiary institution had to call an ambulance.

He then noted that he wished to be examined by a doctor of his choosing, for which he would pay, and to receive effective treatment, and to be transferred to the medical correctional institution, where round-the-clock care would be provided by specialist medical personnel. He requested the Human Rights Defender to support.

In another case, the person had been examined by a medical commission on 25 November 2016, as a result of which it had decided to confirm the need for consultation by an urologist. The urologist had then recommended treatment in the medical correctional institution.

The warden of the Noubarashen penitentiary institution then wrote a letter to the Head of the Penitentiary Department, asking to issue an order to transfer the person to the "Hospital for Convicts" penitentiary institution and to provide the necessary treatment to him there. However, the Penitentiary Department proposed organizing his treatment in the Noubarashen penitentiary institution, sending the urologist of the "Hospital for Convicts" penitentiary institution to Noubarashen for the consultation.

After the Human Rights Defender demanded to immediately transfer the person to the medical correctional institution or a civil medical institution, as well as to organize his examination and treatment there by a specialist doctor of the inmate's choosing with payment by the inmate, the Defender was informed that the person had been transferred to the "Hospital for Convicts" penitentiary institution for examination and treatment, which was, however, **three weeks after such medical instruction was received.**

In this context, it is worth emphasizing that **the person's right to receive the necessary medical care and services cannot be made contingent upon either a lengthy organizational process or, even more so, the discretion of an agency. Medical indication should be the objective criterion proving the need for provision of medical assistance to the person, together with the person's wish to be treated by a doctor of his choosing. If these circumstances are present, the state bears the positive obligation to take the relevant measures.**

According to the case law of the European Court, the State "*should not deny the possibility to receive medical assistance from other sources, such as the detainee's family doctor or other qualified doctors.*"[27]

The European Court has also found that "*the fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to reach a conclusion that such treatment was in breach of Article 3.*"[28]

[27] Judgment in the case of Aleksanyan v. Russia, application no. 30210/96, para. 155.
[28] Judgment in the case of Vladimir Vasilyev v. Russia, application no. 28370/05, para. 56.

It is crucial that the state's positive obligation to safeguard a person's right to health be carried out in such a way as not to subordinate life and health because of the person's inmate status. This is required by the international legal documents safeguarding the right of inmates to health.

It should be emphasized that the issues revealed in the course of the Defender's activities with respect to safeguarding the right to health for persons deprived of liberty are, among other things, contingent upon the guarantees of professionalism and ethics of the medical personnel, as well as flexible procedures for organizing medical care and services for such persons. Besides, to support the appropriate functioning of medical personnel in penitentiary institutions, adequate social guarantees need to be provided to the medical personnel.

Finally, the independence of medical personnel working in penitentiary institutions is essential for building trust in doctors and building a doctor-patient relationship that is anchored in utmost respect for medical confidentiality. This is a mandatory precondition for the medical personnel to carry out their mission fully.

Thus, **one can conclude that medical services in penitentiary institutions the can be organized effectively only if the complete independence of the medical personnel is guaranteed, avoiding a situation in which inmates perceive doctors as penitentiary officers, and ensuring that inmates perceive doctors the way that patients do in civil hospitals.**

6. Availability of Adequate Drugs of Appropriate Quality in Penitentiary Institutions

The availability of medication in penitentiary institutions is related directly to the requirement to provide proper medical care and services to inmates.

The inadequacy of drugs in penitentiary institutions was raised on the basis of the review of complaints received by the Defender, as well as the findings of monitoring visits by the Defender's staff. In particular, in an application addressed to the Republic of Armenia Human Rights Defender, an inmate held in the Vardashen penitentiary institution informed the Defender that, as a result of examinations in a specialist medical institution, he was prescribed monthly blood coagulation tests, as well as appropriate drug treatment.

He claimed that his health condition deteriorated significantly because of the failure to perform the test and to provide the prescribed medication, as he developed extensive hemorrhage on different parts of the body, and after about two months of undue delays, he was finally transferred to the Erebouni Medical Center.

He noted that the medication prescribed in the Erebouni Medical Center was provided only partially (three out of the eight drugs) after his discharge, and that the blood coagulation test indicated by the doctor was not performed altogether. According to the clarification presented by the Republic of Armenia Ministry of Justice, the person received five of the eight drugs prescribed on the basis of tests in the specialist medical institution, and the remaining drugs were not provided because the Penitentiary Service did not procure them through public procurements.

The Human Rights Defender has received numerous complaints about ineffective substitute drugs being prescribed in the absence of the necessary drugs.

The problem of inadequate availability of drugs was raised also during interviews with inmates during the monitoring visits of the Defender's staff. In particular, during a visit to the Vardashen

penitentiary institution, the institution was found to have the necessary types of drugs, but sometimes lacked sufficient quantities thereof (for instance, in the case of hypertension drugs).

A visit to the Abovyan penitentiary institution showed that the institution did not have the necessary drugs, and the persons held there had to purchase the necessary medication with their own funds or the help of their relatives. The doctor assured that medication brought by relatives was often not allowed to enter the institution, unless appropriately prescribed by a doctor. In the Sevan penitentiary institution, too, there was a shortage of medication, especially pain relief and anti-inflammatory drugs. For this purpose, institutions compile registers of drugs brought by relatives. Some of the drugs registered in the Sevan penitentiary institution, for example, were the same as the drugs available inside the institution. Given the insufficiency of the necessary drugs, the worrying practice discovered in the Hrazdan penitentiary institution was that the doctor himself prepared mixtures of various drugs and provided them to the inmates.

Due to the insufficiency of drugs, penitentiary institutions have widespread practice of organizing the medical assistance of inmates using drugs brought by their relatives. It is worrying that drugs brought for inmates by relatives are not subject to proper supervision: a number of penitentiary institutions were found to have cases of inmates being in possession of drugs that were not recorded in their medical cards as having been prescribed by the medical personnel.

Thus, **this impermissible practice of organizing drug treatment using drugs supplied by outside individuals, and not in compliance with the established procedure, shows that the necessary quantity of drugs is not available. Moreover, it can result in non-fulfillment of the state's positive obligation to provide proper medical assistance to persons under its control, including in particular the obligation to provide correct drug treatment based on medical prescriptions and under the supervision of a doctor.**

Recommendation no. R (98) 7 of the Committee of Ministers of the Council of Europe to Member States concerning the Ethical and Organizational Aspects of Health Care in Prison provides (Paragraph 49):

"*In consultation with the competent pharmaceutical adviser, the prison doctor should prepare as necessary a comprehensive list of medicines and drugs usually prescribed in the medical service. A medical prescription should remain the exclusive responsibility of the medical profession, and medicines should be distributed by authorized personnel only.*"[29]

The Mandela Rules provide (Rule 67): "*If a prisoner brings in any drugs or medicine, the physician or other qualified health-care professionals shall decide what use shall be made of them.*"

Paragraph 79 of the Republic of Armenia Government Decree 825-N dated 26 May 2006 (On Approving the Procedure of Organizing Prevention and Health Care of Detainees and Convicts, Using the Medical Institutions of Healthcare Authorities, and Engaging Their Staff for Such Purposes) provides that *for the purpose of providing urgent medical assistance in the medical correctional institution, the availability of appropriate facilities for receiving sick detainees and convicts, i.e.* ***the necessary drugs and equipment****, shall be constantly ensured.*

Under Paragraph 23(i) of the Decree, *the head of the specialized medical unit or station or team in the medical correctional institution shall be required, for the purpose of receiving drugs and other medical supplies, present correct and timely requests and follow up on the provision of the necessary medical materials to the unit.* Paragraph 24(7) of the Decree prescribes *the*

[29] https://bip.ms.gov.pl/Data/Files/_public/bip/prawa_czlowieka/zalecenia/987.pdf

obligation of an employee of the medical unit to present correct and timely proposals on requests for the purpose of receiving drugs and other medical supplies.

Paragraph 102 provides that *drugs and medical supplies shall be distributed in accordance with written requests received.*

Thus, the current legislative requirements on ensuring the availability of drugs in penitentiary institutions shows that, **despite the prescribed obligation of the medical personnel of the institution to take measures to ensure the availability of the necessary drugs, there is no document regulating the minimum mandatory list of drugs.**

To address the drug inadequacy problem, it is necessary **to introduce legislation prescribing the minimum mandatory list of drugs in penitentiary institutions, based on the defined volume of medical care and services provided in such institutions.**[30]

This logic of drug availability is consistent with the policies of both the World Health Organization and the Republic of Armenia.

The WHO Model List of Essential Medicines was adopted back in 1977. Essential medicines are medicines that cater to the priority health needs of the public. Experience has shown that persistent selection of a limited scope of essential medicines leads to improved quality of care, improved management of medicines, including improved quality of prescribed medicines, and more efficient use of the health care resources. The WHO Model List serves as a guideline for improving national and institutional lists of essential medicines, as well as a strong international instrument promoting equity in health.[31]

The List of Essential Medicines of the Republic of Armenia was approved by Decree 17-N of the Minister of Health dated 14 May 2013.[32] Paragraph 1(17) of article 3 of the Republic of Armenia Law on Medicines provides that *essential medicines are medicines marked under universal names, which are necessary for meeting the primary health needs of the population of the Republic of Armenia.*

Article 5 of the Law on Medicines provides that, *for the purpose of state regulation of the circulation of medications, the Government of the Republic of Armenia shall, among other things, provide state safeguards for securing the essential medicines to the population.*

Article 8 of the Law provides that *ensuring the physical accessibility and affordability of medicines is one of the key principles of state policy for providing medicines and developing pharmaceutics*.

Thus, the main directions and principles of the state policy on drug availability prescribed by law should be applicable to the health system organization process in penitentiary institutions, as well.

[30] The experience of Georgia could be presented as a success story.
https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804681ab
[31] http://www.who.int/medicines/publications/essentialmedicines/EML_2015_FINAL_amended_NOV2015.pdf?ua=1
[32] http://www.arlis.am/DocumentView.aspx?docid=84107

7. Availability of Sufficient Medical Tools, Equipment, and Physical Facilities

Ensuring the proper quality of medical services in penitentiary institutions to a large extent depends also on the availability of the required medical tools, equipment, and devices.

The requirement to ensure equipment for the proper quality of medical care and services is enshrined in the relevant international legal documents.

Paragraph 22 of the UN's Standard Minimum Rules for the Treatment of Prisoners provides: "*Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.*"[33]

The Mandela Rules provide (Rule 27): "*Where a prison service has its own hospital facilities, they shall be adequately staffed and* ***equipped to provide prisoners referred to them with appropriate treatment and care***."

According to the case law of the European Court of Human Rights, the lack of proper medical care *per se* raises a problem under Article 3 of the Convention even when the person's health condition does not require immediate release. The Court added that **the lack of the necessary medical equipment can raise a problem under Article 3 of the Convention if it negatively affects the person's health condition or results in some degree of suffering.**[34]

As to the domestic legal requirements on the availability of equipment, although Government Decree 825-N prescribes *the obligation of the medical personnel to analyze the information on the adequacy of the medical equipment and supplies of the medical correctional institution relative to actual demand, and to present appropriate recommendations,* there is no legislative requirement to provide a mandatory minimum volume of medical equipment and tools in each penitentiary institution.

Thus, the quantity and quality of equipment and supplies in penitentiary institutions are inadequate because of uncertainty about the scope of medical care and services and the lack of clear legislation in line with the conceptual framework for ensuring availability of human and technical resources.

More specifically, the monitoring by the Human Rights Defender has shown that, in the Abovyan penitentiary institution, in particular, convicts have reported that lab tests (blood and urine tests) are not performed; they are only performed on a paid basis. In the Vardashen penitentiary institution, too, lab tests (blood and urine tests and tool examinations) are not performed; they are mostly organized on a paid basis in other health care institutions or the "Hospital for Convicts" penitentiary institution. For example, the doctor had indicated weekly blood coagulation tests for one of the convicts, but the institution could not perform those tests, and the tests had to be performed with the help of and paid for by the convict's relatives.

During visits, both the medical personnel and the inmates assured that the institution lacked the necessary medical equipment. Despite the presence of numerous patients with diabetes, the institution did not have glucose meter test strips.

Similar problems were found in the Noubarashen penitentiary institution, as well (this institution also operates a clinical lab), where the relatives of sick inmates had to bring specimen collection containers, make an arrangement with the testing lab or clinic, and ask the lab specimen

[33] http://www.arlis.am/DocumentView.aspx?docid=18499

[34] Judgment in the case of Grishin v. Russia, application no. 30983/02, para. 72; judgment in the case of Mirilashvili v. Russia, application no. 6293/04.

(blood or other) to be transferred to them through the doctors. This procedure is not consistent with the principles and requirements of medical care and services. Besides, in an application lodged with the Defender, an inmate from the Noubarashen penitentiary institution informed the Defender that he needed a dental prosthesis, but could not receive the required dental services even if he paid, because the institution did not have an X-ray machine.

It was established during the visits, especially in the Goris penitentiary institution, that the dental complex there did not have a tool sterilizer, although it had a dental chair and some tools. There was no staff position of a dentist, hence the dentists were invited from the city clinics or the Medical Commission of the Ministry of Justice in order to provide dental services, and they provided the services with their own materials and tools. Therefore, the dental service was provided on a paid basis, whereby the inmates had to pay.

A dental room was equipped on the first floor of the Artik penitentiary institution, which had a dental chair, a disinfecting lamp, and an autoclave. However, the institution offered only a limited number of dental services, including tooth removal and treatment, and certain prostheses, and only on a paid basis, because the doctor sometimes had to pay to purchase medicines and fillings material.

The available data on the technical and human resources available in penitentiary institutions shows that some institutions are lacking dental units, or also the staff position of a dentist (such as the Yerevan Kentron and Hrazdan penitentiary institutions), while others had a dental unit, but no staff position of a dentist (such as Kosh, Vardashen, and Goris). As to the Artik penitentiary institution, it had the staff position of a dentist, but lacked a dental unit.

In view of the requirement to ensure access to dental services in each institution, it is necessary to put in place all the conditions, including appropriate materials for the provision of dental care free of charge.

As to the availability of other necessary equipment, the observations have shown that **the equipment available in penitentiary institutions is highly limited, and even the equipment and tools needed for primary care are lacking.**

As a baseline for the minimum equipment necessary in penitentiary institutions, it would be appropriate to rely on the technical (equipment and tools) and professional qualification requirements for specific types of medical services, which are stipulated by the Republic of Armenia Government Decree 1936-N dated 5 December 2002 (“On Approving the Technical and Professional Qualification Requirements and Conditions for Medical Care and Services in Polyclinics (mixed, adult, and children’s), Specialized Offices, Family Physician’s Offices, Medical Ambulatories, Rural Health Centers, Ob/Gyn Units, Women’s Consultations, and Specialized Hospitals”).

The problems of availability of medical equipment and tools necessary for proper care and services at the “Hospital for Convicts” penitentiary institution were raised during staff interviews, as well as direct observations. Based on the requirements prescribed by Government Decree 1936-N on the technical facilities of specialist hospitals, the technical facilities in the surgical, infectious diseases, and general therapy wards of the Hospital were reviewed. It became clear that all three wards lacked the necessary volume of medical equipment and tools.

In its reports, the CPT has repeatedly mentioned the need to strengthen the technical and human resources of the "Hospital for Convicts" penitentiary institution, as well as to improve the condition of its buildings.[35]

In the course of the visit to the Hospital, it became clear that some technical equipment is lacking from the wards altogether (such as a gastric lavage tube, a funnel, and Janet's syringe), or the existing ones were very old and could not be used fully (such as the surgical toolkits). Some of the medical equipment needed in a ward was placed in other wards, which too confirms the need to take measures to acquire additional medical equipment.

In this area, it is worth mentioning that, starting from 2015, the Council of Europe and the European Union have been implementing the "Strengthening the Health Care and Human Rights Protection in Prisons in Armenia" project, one of the aims of which is to improve the material conditions in the health units of penitentiary institutions.[36]

The monitoring visits by the staff of the Human Rights Defender revealed a number of other issues related to the conditions in health units of penitentiary institutions, including the sanitation and hygiene situation.

During a visit, it was discovered that the separated dental office on the second floor of the Goris penitentiary institution was in an unacceptable sanitary condition, dusty, with a damage and damp ceiling.

An inpatient unit has been separated on the first floor of the women's section in the Abovyan penitentiary institution, which includes five patient rooms with five beds and three medical offices for the medical personnel to receive patients, to perform interventions, and to rest. The medical services unit does not have water or a water closet, and the patients treated there have to use the second-floor water closet and bathroom. In the cupboard of the medical room, four used syringes were found, with names written on each of them. According to the outpatient register and the information from inmates, they receive injection medicine treatment in the medical services unit. Hence, it can be assumed that those syringes have been used several times.

In the Artik penitentiary institution, the medical unit is located on the first floor of the fifth building designed for the semi-open inmates. The six patient rooms of the medical unit have 13 beds. The inpatient rooms have water, a separated water closet and bathroom. One patient room has been set aside for isolating contagious patients. At the time of the visit, the outpatient examinations office and the interventions room, which were next to the medical unit, were being renovated.

Representatives of the Human Rights Defender of the Republic of Armenia, including specialist physicians, visited the Noubarashen penitentiary institution of the Ministry of Justice of the Republic of Armenia and inspected the conditions in some of the cells in the medical unit.

It transpired during the visit that humidity in cell number 7 (within the medical unit) was high; the walls had traces of dampness, and in some cases, the plaster had fallen off. Half of the cell floor was covered with concrete, the other half with linoleum.

The inspection of the conditions in cell number 6 (within the medical unit) showed that humidity in the cell was relatively low. That cell, however, also had traces of dampness, with the

[35] For example, the Report on the CPT's periodic visit to Armenia, which took place from 6 to 17 October 2002 (CPT/Inf (2004) 25), paras. 131-143; Report on the CPT's periodic visit to Armenia, which took place from 10 to 21 May 2010 (CPT/Inf (2011) 24), paras. 112-116.

[36] http://www.coe.int/hy/web/yerevan/strengthening-the-health-care-and-human-rights-protection-in-prisons-in-armenia

plaster having fallen off in some places. The cell floor was covered with linoleum, and the water closet condition was satisfactory.

The problems identified in the Report with respect to the availability of medical equipment and tools in penitentiary institutions, as well as the provision of adequate room conditions, need to be solved urgently, as they directly affect the practical safeguarding of inmates' right to proper medical care and services.

8. Protecting Medical Confidentiality and Ensuring Proper Medical Documentation in Penitentiary Institutions

Strict compliance with the requirements of medical ethics, including medical confidentiality, is a key prerequisite of the full exercise of the inmates' right to medical care and services.

The importance of protecting medical confidentiality in places of deprivation of liberty has been highlighted in the relevant international legal documents.

The Council of Europe's Report on the Organization of health care services in prisons in European member states provides (Paragraph 4.2) that *the standards of medical confidentiality generally observed in prisons are lower than those in a free society. Where the universal criteria apply, only the prison health staff is allowed to take note of the medical documentation of the prisoners. Others, for example the members of the prison general staff, are only given information for professional purposes and under the condition that they keep the information secret … The circumstances under which disclosure of medical information is authorized and the related procedures have to be governed by law.*[37]

The Nelson Mandela Rules provide: "*The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.*"

The CPT Standards provide (Paragraph 50): "*Medical secrecy should be observed in prisons in the same way as in the community. Keeping patients' files should be the doctor's responsibility.*"

Paragraph 40 of the CPT Standards provides: "*A personal and confidential medical file should be opened for each patient. The file should contain diagnostic information (including the results of any special examinations which the patient has undergone) as well as an ongoing record of the patient's mental and somatic state of health and of his treatment. The patient should be able to consult his file, unless this is unadvisable from a therapeutic standpoint, and to request that the information it contains be made available to his family or lawyer.*"[38]

The CPT highlighted that "*a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners.*"

Articles 19 and 19.3 of the Republic of Armenia Law on Population Medical Care and Services provide that providers of medical care and services shall "*…ensure the confidentiality of the fact that a person has sought the help of a doctor, and of information revealed during the examination*

[37] http://www.coe.int/t/dg3/health/Prisonsreport_en.asp
[38] http://www.cpt.coe.int/lang/arm/arm-standards.pdf

of his health condition or during the diagnosis and treatment," and that "*medical personnel shall ... protect medical confidentiality, except for cases stipulated by the legislation of the Republic of Armenia.*"

The Republic of Armenia Government Decree 825-N dated 26 May 2006 provides that ***medical confidentiality shall be safeguarded and protected by the medical personnel*** (Paragraph 7). ***The medical card shall be considered a document containing medical confidentiality****, and shall not be handed over to the detainee or convict. Medical cards shall be kept in the medical services unit or ward or team, in a fire-proof box, and the head of the institution's medical services unit or ward or team, or the person replacing him, shall be responsible for their recording and storage* (Paragraph 51). *If a sick detainee or convict is sent to the medical institutions of the healthcare authorities for medical examinations or treatment, the medical card, with the note "Medical Confidentiality," places in a sealed envelope, shall be provided to the sick detainee or convict or escorting person* (Paragraph 53). *For each inpatient detainee or convict, **a history of disease** shall be compiled in accordance with the approved template, **which shall be a document containing confidential medical information**, and shall not be handed over to the detainee or convict. They shall be kept in the medical services unit or ward or team, in a fire-proof box, and the head of the institution's medical services unit or ward or team, or the person replacing him, shall be responsible for their recording and storage. The register of inpatient care provided to detainees and convicts shall be kept together with the histories of the disease.*

To become familiar with the information contained in the history of the disease, a detainee or convict or a person specified with their written consent shall be issued an excerpt from such history of the disease, with regard to the health condition of the detainee or convict (Paragraph 55).

Despite the provisions of the domestic legislation regulating the publication of medical documents containing confidential information, the monitoring by the Human Rights Defender showed that the requirements on protecting medical confidentiality are not met in practice.

It was discovered during the visits that in the Artik, Sevan, Abovyan, Noubarashen, and Goris penitentiary institutions, the medical examinations journals stay with the daily officer on duty. Moreover, the visits revealed cases in which the administration identified persons by referring to their disease or defect. It is worrying that the non-medical personnel of penitentiary institutions are also aware of the types and dosages of medicines given to inmates.

This data *per se* shows that the data on the health condition of persons and the medical examinations performed on the person is accessible to the non-medical personnel of penitentiary institutions, which directly undermines the right to receive proper medical assistance.

In practice, the violation of the ban on disclosing confidential medical information is to an extent related to the improper processing of medical documents in penitentiary institutions, as well: the visits to the Sevan and Artik penitentiary institutions revealed that medical cards were not properly compiled in these institutions.

The review of medical documents in the Artik penitentiary institution showed that histories of the disease had been opened for some patients, but they had not been properly filled out. There were also problems in relation to documenting outpatient care results only in the outpatient care registers, without any records made in the histories of the disease or the medical cards.

Documenting the Provision of Medical Care after the Discharge of Inmates from the "Hospital for Convicts" penitentiary institution

Based on complaints received by the Human Rights Defender with respect to the provision of proper medical care to inmates held in the "Hospital for Convicts" penitentiary institution, it was discovered that the care provided during the period after discharging patients and filling out histories of the disease, prior to their transfer to another penitentiary institution by the escorting officers, including the medicines administered, are not documented in the medical cards and the histories of the disease. Notes on the medical care provided after discharging the patient are made only in the working journals.

Paragraph 81 of the Republic of Armenia Government Decree 1936-N dated 5 December 2002 provides that *the medical discharge of a sick detainee or convict from the medical correctional institution is final after the Medical Commission has approved the discharge decision made by the treating physician.*

Within a one-month period of discharge, a sick detainee or convict is transferred to the place of serving the sentence.

The legislation provides that, for up to about a month after the medical discharge (although the administration has assured that it lasts seven to ten days in practice), the person may remain in the penitentiary institution, under government control. Hence, **the need to properly document any medical intervention with respect to the person is important from the viewpoint of ensuring the quality of medical care provided, the inmate's subsequent treatment and surveillance, identifying the reasons for administering such treatment (deterioration of the person's health condition, sustaining injuries, and so on), and taking appropriate measures.**

9. Implementation of the Methadone Substitution Treatment Program in Penitentiary Institutions

Methadone substitution treatment (hereinafter "MST") is designed for persons having opioid dependency. The MST Program was introduced in Armenia in 2009 (in the penitentiary institutions, in 2010). At present, it is considered one of the most effective means of treating opioid dependency.

This is based on international research,[39] as well as the Report on the Implementation of the Methadone Substitution Treatment Program in the Republic of Armenia. According to the Report, MST, especially when combined with adequate psychological and social support measures, improves the health (physical and mental) of patients with opioid dependency, reduces the risk of HIV and other known blood-transmitted viruses, as well as the risk of overdose and IDU-related diseases and conditions, reduces mortality, creates stable prerequisites for reintegrating and improving the social situation of patients (including crime reduction), and ultimately helps to improve the life quality of patients.[40]

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[39] "Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention", WHO/UNODC/UNAIDS position paper 2004, p. 15, http://www.who.int/substance_abuse/publications/en/PositionPaper_English.pdf
Robert E. Booth, Karen F. Corsi, Susan K. Mikulich-Gilbertson "Factors associated with methadone maintenance treatment retention among street-recruited injection drug users" https://www.researchgate.net/publication/8604428_Factors_associated_with_methadone_maintenance_treatment_retention_among_street-recruited_injection_drug_users

[40] Report on the Implementation of the Methadone Substitution Treatment Program in the Republic of Armenia, 2013, p. 4, http://www.realwrp.com/hodvacner

As to places of deprivation of liberty, comprehensive evaluation of MST results there has not been carried out yet. Therefore, there is still no official data on its effectiveness. Nonetheless, taking into consideration summaries and statistics based on extensive research,[41] as well as interviews with inmates, MST has been largely positive for the health, psychology, and social situation of inmates with opioid dependency.

However, during the monitoring visits, representatives of the Defender's staff have discovered a number of issues related to MST, namely:

1. There is currently no state budget funding for MST. The Program is carried out with the support of the Global Fund. It means that, if the support were to stop, the normal functioning of the Program would be endangered.

It is also worrying that, due to the limited scope of the Program, persons with opioid dependency, including inmates, often do not want to engage in the MST Program.

According to official information provided by the Ministry of Health, the 2016-2018 Medium-Term Expenditure Framework has allocated funding for purchasing methadone for 500 patients, but currently, only 491 patients are receiving MST. 44 applications to be included in the Program have been received. Patients are enrolled in the order of priority.[42]

To ensure the sound implementation of the MST Program and to improve its accessibility, appropriate funding from the state budget should be allocated.

For appropriate funding, in Slovakia, for instance, MST is financed from both the state budget and non-governmental organizations and other sources.[43]

2. Although Paragraph 35(4) of the Republic of Armenia Minister of Justice Decree 279-N dated 13 July 2016 provides that *drug addiction can be treated using not only medical, but also psychotherapeutic and social methods*, MST is in practice normally not accompanied with adequate measures of psychological and social support to inmates with opioid dependency.

The international best practice in this field, too, indicates that MST should be combined with other, social-psychological support. In the penitentiary institutions of the United Kingdom, for instance, the MST Program is implemented in combination with psychological measures and includes treatment of convicts with social-psychological, as well as counseling means.[44]

Thus, the effectiveness of MST can be improved by prescribing a binding legislative requirement **to combine MST with psychotherapeutic and social activities.**

3. The review of complaints received by the Human Rights Defender has revealed cases of inmates having applied to the competent authority for enrolment in the MST Program, but not receiving any (written or oral) response on the outcome of the review of their applications for a prolonged time.

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[41] At the time of introducing the MST program in penitentiary institutions, only one inmate with opioid dependency was involved in the program, but on 31 December 2014, 131 inmates were involved in the program. See S.R. Nazinyan, Clinical Guidelines on the Methadone Substitution Treatment of Opioid Dependency, Yerevan 2015, p. 21.

[42] Such a problem exists in other countries, as well: in Ukraine, for example, 300 persons with opioid dependency are waiting for their turn. In Poland, the number of persons waiting for their turn in the MST program exceeds the number of persons already involved in the program.

[43] Methadone Maintenance programme, Quality level, Slovakia. European Monitoring Center for Drugs and Drug Addiction (referred in *Methadone Substitution Treatment: Peculiarities in the Penitentiary Institutions of the Republic of Armenia, p. 27)*,
http://pmg.am/images/metadonayin_poxarinox_bujum.pdf

[44] Ibid, p. 28.

For example, one inmate informed the Defender, through his complaint, that he had requested the competent authority to enroll him in the MST Program back in August 2016, but had not received any response as of the time of lodging the complaint with the Defender (30 November 2016).

The Defender raised the issue of not enrolling the inmate in the MST Program, in connection with which the Republic of Armenia Ministry of Health informed that the inmate's medical examination had been completed and that he was enrolled in the MST Program from 14 December 2016.

The majority of those complaints were resolved positively, and inmates were enrolled in the MST Program. One inmate's request for enrolment in the MST Program was rejected on the ground of not having the relevant indications under the Clinical Guidelines on the Methadone Substitution Treatment of Opioid Dependency (approved by Decree 1440-A of the Republic of Armenia Minister of Health dated 12 December 2005).

Thus, the review of the Methadone Substitution Treatment Program shows that measures should be taken to ensure Program sustainability and to expand its scope in order to enroll, to the extent possible, all inmates in need of methadone substitution treatment. Moreover, it is necessary to ensure the transparency of the procedure of reviewing applications to be enrolled in the MST Program, providing the reasons for refusing enrolment.

10. Implementation of the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in the Legal System of the Republic of Armenia

1. The Protocol as an Effective International Legal Instrument in Combating Torture

The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is an international guide on documenting torture and its consequences. The Protocol is the result of three years of analysis, research and drafting, undertaken by more than 75 experts in law, health and human rights, representing 40 organizations or institutions from 15 countries. It was submitted to the United Nations High Commissioner for Human Rights on 9 August 1999.

It is the first set of guidelines to have been produced for the investigation of torture. The Protocol contains full practical instructions for assessing persons who claim to have been the victims of torture or ill-treatment, for investigating suspected cases of torture and for reporting the investigation's findings to the relevant authorities.

The principles of the Protocol subsequently received the support of the United Nations through resolutions of the United Nations Commission on Human Rights and the General Assembly.[45]

Moreover, when evaluating the lawfulness of states' actions in the context of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prescribes the absolute ban on torture, the European Court of Human Rights has attached importance to the Protocol, as a document containing particular criteria, in the evaluation, fact finding, and investigation of allegations of torture.[46]

In his general recommendations, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment emphasized that countries should be guided by the Protocol as a useful tool in the effort to combat torture, with a particular focus on its implementation in the national legislation.[47] In his 2008 Interim Report, the Special Rapporteur attached importance to applying the provisions of the Protocol on solitary confinement and its consequences from the viewpoint of safeguarding the rights of detainees.[48]

In its examination of cases concerning ill-treatment, the European Court has repeatedly noted that the medical reports submitted to the Court lacked detail and fell significantly short of both the standards recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which are regularly taken into account by the Court, as well as the provisions of the Protocol submitted to the United Nations High Commissioner for Human Rights.[49]

In another case examined under Article 3 of the Convention, the Court has already reaffirmed the European Committee for the Prevention of Torture's ("CPT") standards on the medical

[45] http://www.refworld.org/pdfid/461f9a362.pdf

[46] Judgment in the case of Bati and others v. Turkey, applications no. 33097/96 and 57834/00, para. 100; judgment in the case of Mehmet Eren v. Turkey, application no. 21689/93, p. 355.

[47] General Recommendations of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf

[48] Interim Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 28 July 2008.

[49] Judgment in the case of Böke and Kandemir v. Turkey, applications no. 71912/01, 26968/02, and 36397/03, para. 48; judgment in the case of Dilek Aslan v. Turkey, application no. 34364/08, para. 49.

examination of persons in police custody and the guidelines set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Istanbul Protocol" (submitted to the United Nations High Commissioner for Human Rights, 9 August 1999). The Court has held that all health professionals owe a fundamental duty of care to the people they are asked to examine or treat. They should not compromise their professional independence by contractual or other considerations but should provide impartial evidence, including making clear in their reports any evidence of ill-treatment.[50]

The European Court's position is that the authorities' own view on facts cannot be proven by the claim that the medical reports do not mention the causes of injuries inflicted upon the applicant's face. In this connection, the Court underlined that the opinion of a medical expert on the potential link between ill-treatment against the person and the discovered physical injuries is a mandatory requirement for the effective investigation of cases of ill-treatment in accordance with the international human rights standards, citing the provisions of the Protocol.

The Court analyzed this requirement in the context of the state's obligation to protect persons deprived of their liberty and thus placed in a vulnerable situation and ensuring their well-being. As a result, given the state's obligation to document injuries sustained by persons under its control, the Court concluded that the absence of truthful and justified explanations provided by the state is a basis for finding a violation of Article 3 of the Convention.

In the judgment in the case of Valeriu and Nicolae Rosca v. Moldova, the European Court cited the following provisions of the Protocol:

"(..) Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention center, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanor of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;

(b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, color photographs of all injuries;

(d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;

[50] Judgment in the case of Salmanoğlu and Polattaş v. Turkey, application no. 15828/03, para. 80; judgment in the case of Osman Karademir v. Turkey, application no. 30009/03, para. 54.

(e) The report should clearly identify those carrying out the examination and should be signed."[51]

Thus, the case law of the European Court shows that the Court's position is mostly aimed at prescribing the obligation of states to implement and respect the provisions of the Protocol.

It should be born in mind that **the international commitments of the Republic of Armenia and various recommendations in this field imply the need to adopt legislation prescribing the implementation of the Protocol as a practical manual of principles and procedures for effectively fighting torture and ensuring their mandatory application.**

2. Findings of the Monitoring by the Human Rights Defender of the Republic of Armenia on the Conformity of the Performance of Initial Medical Examination in Penitentiary Institutions with the Provisions of the Protocol

The monitoring carried out by the Human Rights Defender under the special mandate of the National Preventive Mechanism has enabled to collect information and to document the conditions and procedure of conducting the initial medical examinations in penitentiary institutions and documenting the results of such examinations. In a number of penitentiary institutions, the Defender has specifically reviewed the initial medical examination journals and their contents, and posed questions to the penitentiary institutions' administration, personnel performing the initial medical examination, and convicts. As a result, the information and facts collected by the Human Rights Defender in the capacity of the National Preventive Mechanism have allowed to identify the following main issues related to the initial medical examination of persons entering penitentiary institutions.

1. Failure to Comply with the Procedures of Performing the Initial Medical Examination

Compliance with the relevant technical requirements is important for properly organizing medical care and services, including the outcome of the initial medical examination of persons entering a penitentiary institution—as a preventive measure during which certain professional rules must be followed strictly.

However, direct observations in this field have revealed that, in the Goris penitentiary institution of the Ministry of Justice of the Republic of Armenia, in particular, the initial medical examination is performed in the investigator's room in the duty station or in the room short visits. Another example is that convicts entering the Abovyan penitentiary institution undergo an external medical examination at the access control point. The visit to the Sevan penitentiary institution revealed that the rooms for medical examinations are inconvenient and lack sanitation and hygiene. In the Vardashen penitentiary institution, the medical examination is performed together with the search, in the room for short visits.

The visit to the Sevan penitentiary institution revealed that body inspections are sometimes performed with the concurrent participation of several convicts. It is also worrying that the medical examination is performed together with the search performed upon entry into the penitentiary institution. The result is that, although the initial medical examination is performed in the institutions by a representative of the medical personnel (a doctor, nurse, or paramedic), penitentiary officers (security officers or the officer on daily duty) are involved in such

[51] Judgment in the case of Valeriu and Nicolae Rosca v. Moldova, application no. 41704/02, para. 43.

examination or in documenting its results. Besides, the initial medical examination is performed with the participation of the escorting police officers.

To this end, the CPT Standards provide (Paragraph 51): "*All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of prison officers. Further, prisoners should be examined on an individual basis, not in groups.*"

However, the monitoring carried out in the Goris penitentiary institution, for instance, showed that the initial medical examination in the institution is carried out in the presence of the duty shift chief, the guard, and the escorting police officers. In the Abovyan penitentiary institution, the medical examination is carried out in the presence of the female officers of the penitentiary institution, combined with the search, and is attended by the institution's nurse, the female guard on daily duty, and a female escorting police officer. The nurse or paramedic participates in the medical examination. In the Vardashen penitentiary institution, the medical examination is carried out in the presence of the daily officer on duty or his assistant, the guard, and the escorting police officers, which they confirm with their signatures.

2. Improper Documenting of the Results of the Initial Medical Examination

The visit to the Sevan penitentiary institution showed that one protocol is compiled on two to eight convicts, and the officers that are present review and sign the protocol, but the convicts do not sign it and do not otherwise become familiar with the results of the examination.

Direct observations during the visit to the Goris penitentiary institution showed that the examination results are recorded in the relevant register by the officer on duty, and the bodily injuries discovered are mostly not recorded.

This conclusion is supported by the results of the comparative study carried out by the Defender: with a view to assessing the incomplete documenting of the results of initial medical examinations and identifying the inconsistencies, the Defender compared the protocols of injuries of persons admitted to the Police Remand Center for Arrested Persons in the Syunik Regional Department of Police of the Republic of Armenia with the protocols of their external examination performed upon transfer from the Police Remand Center and admission to the Goris penitentiary institution on the same day. The Defender discovered that the injuries discovered on a person at the Police Remand Center were not present at the time of admission to the penitentiary institution. It leads to the conclusion that the external examination is not carried out adequately, and is mostly formalistic. The review of journals documenting the results of medical examinations showed that they mostly contained statements like "practically healthy," "does not report any complaints," and the like. In some cases, the only documented results of the examination were the person's own complaints about his health condition ("complains of psychosis, organic disorder of the person," "complains of Hepatitis C," and the like). The doctor explained that such records were made because they recognized all the inmates admitted to the penitentiary institution and were aware of their health issues, irrespective of the results of the examination performed. Similar records were made in the medical examination protocol. The paramedic assured that nothing is filled out in the medical card unless the person has complaints.

In the Abovyan penitentiary institution, too, a protocol is compiled in the relevant journal on the basis of the examination results. The journal is kept at the access control point.

Moreover, the review of medical documents and registers in the visited penitentiary institutions showed that, for purposes of determining the existence of potential injuries through

the person's external examination, none of the penitentiary institutions checked the hair, the oral cavity, and the feet.

Furthermore, another general observation is that **no symptoms of psychological violence are documented, either.**

As a result of visits to different countries, the CPT has articulated clear requirements by stating that the record drawn up by doctors following a medical examination of a newly-arrived inmate should contain: (i) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment); (ii) a full account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings.

Whenever the record of injuries is consistent with the statements made by the person regarding the alleged torture, it must be presented to the attention of the competent authorities. Subsequently, the results of each examination, including the person's statements and the doctor's conclusions, must be accessible to the inmate and his lawyer.[52]

In the context of its fourth periodic visit to Armenia, which took place from 5 to 15 October 2015, the CPT addressed issues related to the medical examination performed in places of deprivation of liberty, as a measure to prevent torture. Reiterating recommendations made in past reports,[53] **the CPT noted that the procedure of medical screening on admission, especially the recording and reporting of injuries, remained inadequate: it was still part of the initial handover procedure and both police convoy officers and custodial prison staff were routinely present during such screening, in violation of the principle of medical confidentiality.[54]**

As to the quality of documenting the examination results, the CPT's observations were consistent with the findings of the monitoring of penitentiary institutions by the Human Rights Defender of the Republic of Armenia.

As for the quality of the recording of injuries, the CPT noted that it was generally rather low, with descriptions limited to mentioning the type of injury (e.g. "bruise", "hematoma", "scratch", "swelling") but with no further detail as to the precise location, size, color, etc.

Further, the CPT noted that in those cases where a statement of a prisoner regarding the origin of injuries was recorded, **no conclusions were made by the doctor at any stage of the procedure as to the consistency of the injuries with the statements made.**

The CPT considered it worrisome that medical examinations are usually performed without taking photos of the injuries.[55] The CPT considers that such practice should be developed in line with the international standards, especially the Protocol.[56]

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[52] Report on the CPT's visit to Azerbaijan, which took place from 24 November to 6 December 2002 (CPT/Inf (2004) 36), para. 26; Report on the CPT's visit to Albania, which took place from 13 to 18 July 2003 (CPT/Inf (2006) 22), paras. 45-49; Report on the CPT's visit to Lithuania, which took place from 17 to 24 February 2004 (CPT/Inf (2006) 9), para. 96.

[53] Report on the CPT's periodic visit to Armenia, which took place from 10 to 21 May 2010 (CPT/Inf (2011) 24), para. 107; Report on the CPT's visit to Armenia, which took place from 4 to 10 April 2013 (CPT/Inf (2015) 8), paras. 20 and 25.

[54] For details, see the Report on the CPT's fourth periodic visit to Armenia, which took place from 5 to 15 October 2015 (CPT/Inf (2016) 31), paras. 81-82.

[55] Report on the CPT's visit to Armenia, which took place from 4 to 10 April 2013 (CPT/Inf (2015) 8), para. 61.

[56] Paragraph 106 of the Protocol.

3. The Initial Medical Examination in the "Hospital for Convicts" Penitentiary Institution

To gain a complete understanding of the practical procedures of initial medical examination of persons admitted to the "Hospital for Convicts" penitentiary institution and the documenting of the examination results, representatives of the staff of the Human Rights Defender reviewed the admission registers of detainees and convicts transferred to the Hospital, the external examination journals, and the copies of the relevant protocols. Information on the examination procedure was received from the institution staff (doctor on daily duty).

The document review results and the information collected showed that every person admitted to the Hospital underwent initial medical examination:[57]

- The examination was performed by the doctor on daily duty, who also kept the external examination journals;
- In the "Hospital for Convicts" penitentiary institution, too, the initial medical examination was performed in the presence of the escorting police officer, the officer on daily duty or his assistant, and the guard;
- In the absence of a reception area, the external examination was performed in the duty station or the room for short visits;
- The review of journals revealed some inconsistencies: 69 persons have been admitted to the Hospital from 2017 up to the day of the visit. However, the external examination journals contained the results of external examinations of only 63 persons. The Hospital employee explained that such inconsistency could be due to the fact that, in some cases, the examination was performed with the concurrent participation of several inmates. Besides, there were cases of a person being registered in the admission journal, but not being admitted to the hospital, and therefore, no examination was performed;
- The review of the journals showed that, during October-December 2016, due to the absence of the journal, the doctors recorded the external examination results on separate sheets, which, according to the employees, had to be copied identically into the journals;
- After the examination, the officer on daily duty prepared a protocol that was signed by the doctor and the convict/detainee. The protocol was compiled only when admitting the person in case of need for urgent medical care. The external examination results of a person admitted to the Hospital based on a referral letter were recorded only in the admission journals of detainees and convicts transferred to the "Hospital for Convicts" penitentiary institution;
- Subsequently, the protocols were sent to the head of the penitentiary institution for signature, after which they would be attached to the inmate's personal file; and
- In case of discovering injuries as a result of the examination, the administration informs the Prosecution Office about them.

Thus, direct observations have confirmed the fact that in penitentiary institutions, including the "Hospital for Convicts" penitentiary institution, the results of the medical examination are not properly documented, the injuries are not described in the necessary level of detail, and records are sometimes made only on the basis of the words of the inmate, as well as with deletions and corrections.

The confidentiality of the initial medical examination is not secured in any penitentiary institution. Appropriate room facilities have not been ensured.

[57] In this context, it should be noted that in the past, medical examination was organized only when the person was transferred to a hospital due to a need for urgent medical assistance.

This practice is problematic from the point of view of not only safeguarding the right to health, but also properly investigating allegations of torture.

4. Legislative and Organizational Foundations for Ensuring Implementation of the Protocol

The legislative regulation of the initial medical examination upon admission to a place of deprivation of liberty is prescribed by the Republic of Armenia Law on Keeping Arrested and Detained Persons, as well as Government decrees regulating the activities of penitentiary institutions.

Paragraph 5 of Article 21 of the Republic of Armenia Law on Keeping Arrested and Detained Persons provides: "*In case of discovering bodily injuries on an arrested or detained person, the medical employee of the place of keeping arrested persons or the place of keeping detained persons, or the invited medical employee shall immediately perform a medical examination in which a doctor chosen by the arrested or detained person may participate. The medical examination shall be performed out of the hearing of the officers of the administration of the place of keeping arrested persons or the place of keeping detained persons and - unless the doctor concerned requests otherwise - out of their sight, as well. The results of the medical examination shall be, in accordance with the established procedure, recorded in the personal file, and the patient and the body conducting the criminal proceedings shall be informed about them.*"

Paragraphs 9 and 10 of the Internal Regulation of Correctional Institutions and Places of Holding Detainees of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia (approved by the Republic of Armenia Government Decree 1543-N dated 3 August 2006) provide:

"*9. Upon admission to a place of keeping detainees or a correctional institution, detainees and convicts, respectively, shall undergo the initial medical examination in the quarantine ward in accordance with the established procedure.*

10. After admission to a place of keeping detainees or a correctional institution, detainees and convicts, respectively, shall, for the purpose of undergoing a medical examination and becoming familiar with the conditions of the place of keeping detainees or of the correctional institution, be placed in special cells of the quarantine ward for a period of up to seven days."

The Republic of Armenia Government Decree 825-N dated 26 May 2006 (On Approving the Procedure of Organizing Prevention and Health Care of Detainees and Convicts, Using the Medical Institutions of Healthcare Authorities, and Engaging Their Staff for Such Purposes) regulates the organization of preventive medical care for detainees and convicts. Paragraph 37 of the Regulation provides:

"*Upon admission to a place of keeping detainees (including in transit), persons shall undergo an initial medical examination, the results of which shall be recorded in the respective journal for the purpose of providing medical assistance and documenting bodily injuries or other complaints concerning their health condition. The protocol of the medical examination of a detainee or convict shall contain:*

(1) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);

(2) a full account of the findings of an objective medical examination, and

(3) the doctor's conclusions in the light of (1) and (2).

All medical examinations shall be conducted out of the hearing and out of the sight of penitentiary or other officers."

Paragraph 37 of the Regulation further provides that if the detainee or convict claims that the bodily injury or health complaint detected through the medical examination is a consequence of any criminal act committed with respect to such detainee or convict, then *the person conducting the medical examination shall inform the administration of the place of keeping detainees or of the correctional institution thereof.*

The administration of the place of keeping detainees or of the correctional institution shall immediately inform the competent authorities thereof.

The review of the legislation on the initial medical examination of persons admitted to places of deprivation of liberty shows that the legislation contains a binding requirement to organize the process, as well as its conditions, namely the requirement to conduct the examination outside of the control of penitentiary or other officers and the requirement to document the injuries.

However, the issues revealed in practice indicate the need for developing and adopting more detailed and specific legislation, as well as practical guidelines.

As to the implementation of organizational measures to ensure the application of the Protocol, it must be noted that although penitentiary staff training courses are currently being organized, **the direct observation of practice undeniable confirms that the international legal requirements on the initial medical examination as a torture prevention safeguard are not respected in practice.**

It should also be noted that training organized for penitentiary officers by the Council of Europe,[58] including training on the implementation of the Protocol, is conducted with the involvement of representatives of the staff of the Human Rights Defender of the Republic of Armenia (including specialist doctors). To this end, the Defender's observations on the practical results of the training are based also on the direct assessment of the effectiveness of such training.

Thus, based on the reviews carried out, the following main activities could be suggested for ensuring the practical implementation of the Protocol:

1. Organizing the initial medical examination outside the administrative process of admitting a person to a place of keeping arrested persons or to a penitentiary institution, taking into consideration the different goals pursued by these two procedures and the different actors participating therein;

2. Safeguarding the confidentiality of the process by means of implementing the legislative provisions in practice. The confidentiality requirement applies to not only the examination process, but also the restricted access of the documents containing examination results and doctor's conclusions for the non-medical members of the administration. The solution of this problem should be viewed in light of the fundamental principles of independence and medical ethics of the medical personnel of penitentiary institutions;

3. Developing and using in practice the guidelines for conducting external medical examination and documenting the discovered injuries (including the anatomical drawings approved as annexes to the Protocol), as well as the relevant forms for documenting injuries;

[58] http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=20940&LangID=E#sthash.98JHRbg8.dpuf

4. Continuously training the staff of penitentiary institutions in order to acquire special knowledge and skills necessary for conducting the initial medical examinations and documenting their results in accordance with the Protocol; and

5. Introducing a procedure for the examiner to immediately report to the prosecutor the results of examinations, which discovered injuries inflicted by acts containing elements of an alleged crime, and precluding any interference or potential discretion of the penitentiary institution's administration over such reporting.