ANNUAL REPORT

THE ACTIVITY OF HUMAN RIGHTS DEFENDER OF REPUBLIC OF ARMENIA IN 2016 AS NATIONAL PREVENTIVE MECHANISM

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Content

INTRODUCTION

The Optional Protocol of December 18, 2002, to the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984 (hereinafter: Optional Protocol), envisages the creation of an independent National Preventive Mechanism endowed with broad powers and guarantees to have free access to and conduct relevant studies in all the places of detention or any other places where people may be deprived of their liberty.

After ratification of the Optional Protocol, with an amendment made in 2008 to the RA Law on Human Rights Defender of October 21, 2003, the RA Human Rights Defender was recognized as the independent national preventive mechanism as stipulated by the Optional Protocol. Later, due to constitutional amendments of December 6, 2015, on December 16, 2016, the RA National Assembly adopted the RA Constitutional Law on Human Rights Defender. According to Paragraph 2 of Article 2 of this law, the status of National Preventive Mechanism (hereinafter: preventive mechanism) shall be reserved to the RA Human Rights Defender. According to Article 27 of the aforementioned law, the aim of the Defender's activity in its preventive mechanism status is to prevent torture and other cruel, inhuman or degrading behaviour in places of detention. The implementation of functions of this mechanism is ensured through the Torture and Ill Treatment Prevention Department of the Human Rights Defender (HRD) Staff.

After being recognized as a preventive mechanism by the law in 2008, an Expert Council for Prevention of Torture had been functioning affiliate to the HRD (hereinafter: the Expert Council). Taking into account that the legal force in relation to the composition of the council expired, an Expert Council with a new composition was created by RA HRD during 2016. Non-governmental organizations, representatives specialised in the sphere of prevention of torture and ill treatment and independent experts from the same sphere (sociologist, psychologist, doctor, etc.) were included in the Expert Council.

The aim of the Council is to reveal the problems concerning the conditions of detention in the places of deprivation of liberty and to provide recommendations for their solution.

Visits to all RA Ministry of Justice (MoJ) penitentiary institutions, the RA Police Detention places and psychiatric institutions were implemented in 2016. Representatives of the Expert Council also participated in them.

In 2016 the visits were implemented with clear methodology. 110 visits were made to penitentiary institutions of the RA MoJ, 10 out of which according by the schedule approved by HRD, on a regular basis (as planned), and 100 visits were made upon need. In addition, 9 visits were made to the RA Police Detention facilities, and one visit to a psychiatric institution affiliate to the RA Ministry of Health; at the same time also repeated and ad hoc (upon necessity) visits were made to these institutions.

In addition to implementing the visits, the RA HRD Torture and Ill Treatment Prevention Department has also discussed individual complaints concerning the rights of persons kept in detention facilities.

During the visits conditions of the detention facilities were examined, and private conversations were held with persons deprived of their liberty and people serving in those facilities. The revealed problems were discussed with representatives of the administrations of detention facilities, relevant documents concerning the persons deprived of their liberty were examined, comparison and analysis of the obtained information was performed, and the gaps and shortcomings of legislative regulation were revealed.

In relation to the problems recorded during the visits and as a result of studding individual complaints, and the efficient solutions to them, discussions were held in HRD staff, clarifications were requested about the conducted visits from competent bodies, decisions on recording violations of human rights or freedoms were made, by proposing legal and practical mechanisms for their solution. Recommendations on making amendments and addenda to the legal acts regulating the sphere were made.

Also individual complaints filed with the HRD, visits to places of detention, as well as information and research published by mass media, international organizations, public organizations and monitoring missions have served an information source for the preventive mechanism.

This report presents the individual and systemic problems documented in 2016, measures undertaken towards their solution, and the recorded positive developments.

CHAPTER 1. MAIN PRINCIPLES AND STRATEGIC DEVELOPMENT DIRECTIONS OF THE NATIONAL PREVENTIVE MECHANISM

The sphere of torture and ill treatment is such by its nature that demands continuous and consistent work in line with the principles adopted internationally in this field. The question is particularly sensitive because it concerns such places, where people are kept against their own will, namely are deprived of liberty. These places are risky both in terms of ensuring rights and security, thus they demand strictly professional approaches, which being devoted to revealing of concrete problems shall lead to concrete results.

Several fundamental approaches have formed the core of preventive mechanism. First of all this concerns the establishment of **presumption of confidence towards a person deprived from liberty.** This means that **an individual approach should be displayed towards each person kept in a detention facility,** despite of the severity or nature of the act established allegedly, or by a court sentence. This approach should be based on the **risk assessment method** of **behaviour** of the person deprived of liberty. Moreover, in case of those who have already been convicted for a crime, the **basic mechanism of gradual preparation of their release should be applied from the very first day of their entry to the detention facility.** One of the fundamental principles of functioning of the preventive mechanism is also the involvement of persons deprived of their liberty in the process of making decisions concerning them: **any person, including a person deprived of one's liberty, who may not be alienated in making decisions related to him (her).**

The enlisted initial approaches also derive from the fundamental idea that **the requirements of fair trial and absolute prohibition of ill treatment do not cease to function, when a person appears in a detention facility.**

One of the most important principles of the work of **preventive mechanism** is also the **protection of confidentiality of information obtained** in the result of work performed in a place of detention. This should be viewed also in the context of another principle, which relates to **joint work and non-infliction of damage** in relation to achieving results. Together with that, the representatives of preventive mechanism have also applied **two main kinds of internationally adopted recommendations** directed to the solution of the recorded problems – **immediately provided recommendations, as well as demands or recommendations presented to competent bodies in writing, after the necessary examinations.**

With the above-mentioned, as it was highlighted in the introduction of this report, based on the Optional protocol, the RA Law of 2008 on Human Rights Defender[1] was amended by Article 6.1, through which the RA HRD was recognized as national preventive mechanism.

[1] Was repealed on February 4, 2017.

This single provision, however, did not define the scope of functions of the HRD as a National Preventive Mechanism and the detention facilities, and did not prescribe for cooperation with civil society in the status of National Preventive Mechanism. There were no sufficient guarantees for public servants working for the preventive mechanism and public organizations and independent experts. Legal principles for their joint work were absent. The current regulations did not allow also ensuring the confidentiality of information obtained in the result of the work of preventive mechanism in the detention facilities. Moreover, the former regulations did not allow paying the members of the Torture Prevention Committee affiliate to the Defender and failed to solve the issue of maintaining the confidentiality of information obtained within the scope of the preventive mechanism status.

Among other things presented in the Report provided to the Republic of Armenia on October 15, 2014, about the visit made in 2013 by the UN Torture Prevention subcommittee with the aim of providing support to the National Preventive Mechanism, also the state commitment was stressed in regard to provision of the resources needed for the National Preventive Mechanism, which implies remuneration of civil society representatives involved in the work of the National Preventive Mechanism.

The Association for the Prevention of Torture has also addressed the issue of financing preventive mechanisms, including the issue of ensuring proper remuneration of civil society.

As a result, Article 28 of the RA Constitutional Law on Human Rights Defender (hereinafter: Constitutional Law) already both stipulates the powers of the Defender as a National Preventive Mechanism, and provides a clear scope of places of deprivation of liberty (detention places).

At the same time, pursuant to Paragraph 5 of Article 28 of Constitutional Law, in order to receive professional support within the scope of the National Preventive Mechanism status, and based on the requirements posed by an announcement about that which is uploaded on the official web-site or disseminated through other public means, independent experts and (or) representatives of non-governmental organizations are involved by the Defender, who obtain the status of an expert of National Preventive Mechanism. The Constitutional Law also stipulates that the remuneration of the work of these experts shall be performed at the expense of state budget, from financial means allocated to the Defender's staff. Moreover, unlike the previous law on Human Rights Defender, the acting regulations establish a requirement for special financing of activity of the Defender in the capacity of National Preventive Mechanism *(see 2nd part of Article 8 of Constitutional Law).*

Independent experts and representatives of non-governmental organizations are being involved in the work of National Preventive Mechanism based on a contract concluded with them, in an individual status, which provides an opportunity for their remuneration, and establishment of mutual rights and duties

At the same time, the guarantee foreseen by the Constitutional Law for the persons who occupy a position in the Defender's staff, to provide explanations or be questioned only on the basis of written agreement of the Defender also extends to the experts of National Preventive Mechanism *(see Paragraph 2, Article 11 of the Constitutional Law).*

Implementation of functions of the Preventive mechanism in 2016 was ensured by Torture and Ill Treatment Prevention Department of the Human Rights Defender (HRD) Staff, which has both implemented monitoring visits to detention places, and examined the individual complaints; this kind of approach does not correspond to the international standards of the functioning of National Preventive Mechanism.

According to Paragraph 8 of the National Preventive Mechanism's analytical assessment document of the UN Torture and other Cruel, Inhuman or Degrading Treatment or Punishment subcommittee of January 25, 2016, the main function of National Preventive Mechanism shall be regular visits to detention places with the purpose of examining the treatment towards people deprived of their liberty. While the examination of individual complaints, according to the criteria of the same document, is not included in the mandate of National Preventive Mechanism.

With the aim of solving this problem, it is planned to create a separate subdivision within the HRD staff to examine the submitted individual complaints.

During 2016, the logic of decisions on submitting recommendations on elimination of violations of human rights and freedoms by the HRD in the capacity of Preventive Mechanism has also undergone principle changes. In addition to information about the alleged violations of human rights and freedoms, the decisions also highlight circumstances significant to record violations. In the reasoning part of the decisions there have already been established clear legal criteria, recommending general means for the solution of the revealed systemic problems, and in parallel to recording of violations, also individual measures directed to them have been recommended in relation to specific complaints. These are all are the rules which are also applied by international court instances, including the European Court of Human Rights.

With a view of **Preventive Mechanism Capacity Building** in 2016 several necessary pieces of equipment were procured, events, discussions and trainings have been organized, which are briefly presented below.

On July 11-15, 2016, within the framework of Strengthening Healthcare and Human Rights Protection in prisons in Armenia trainings for trainers were organized through the cooperation of the Council of Europe, European Union, and the RA Ministry of Justice, where representatives of the RA HRD Staff participated.

The HRD Staff representatives, who participated in the training, were invited to hold the trainings of the RA MoJ Penitentiary department servants in the course of 2017. Main purpose of the training is to develop the knowledge of the employees about the medical treatment in

prison and rights of persons deprived of their liberty, and particularly discuss the issues of medical ethics, specifics of vulnerable groups in places of detention, prohibition of torture and ill treatment in penitentiary institutions, as well as other topics concerning the fundamental rights of persons deprived of their liberty.

On September 15, 2016, the Draft of Psychiatrists' Professional Code of Ethics that was sent to the opinion of the Defender in advance was discussed jointly by the Torture and Ill Treatment Prevention Department of the Human Rights Defender (HRD) Staff employees and the Working Group of the Armenian Psychiatric Association.

On December 6, 2016, an extended meeting of the Expert Committee affiliate to the RA HRD was organized, which was attended also by representatives from the RA MoJ, the RA MoJ Penitentiary Service, the RA General Prosecutor's Office, the RA Investigation Committee, the RA Special Investigative Service, and several non-governmental organizations.

Legislative amendments of conditional early release system were at the core of the discussions directed to the solution of current legislative and practical problems. Also the cases of suicide in the places of detention in Armenia, their statistics and the measures that have been and will be undertaken in this direction were also reflected upon.

Also some legislative issues revealed during the implementation of the powers of the RA HRD as a National Preventive Mechanism and mechanisms to their solution were discussed, in particular, issues connected with the legislative limitations for transferring the convict from one penitentiary institution to another, providing short-term leave to convicts and detainees with a view of ensuring the contact with close relatives and the lack of legislative regulation for issuing identification documents for detainees.

The provided recommendations, observations and opinions have been submitted in writing to respective bodies with the aim of making legislative amendments in the discussed spheres and improvement of the legal practice.

During the discussion some of the main concepts and provisions of the **Psychiatrists' Professional Code of Ethics** were clarified, and the HRD staff considerations and respective international experience regarding several problematic provisions were presented and discussed.

Within the framework of cooperation between the HRD Staff and several international organizations, trainings and retraining were implemented in the sphere of human rights protection. Representatives of the HRD Staff, non-governmental organizations that are members of the Torture Prevention Committee affiliate to the Defender and independent experts, as well as relevant officials of the MoJ penitentiary system.

On August 27 and 28, 2016, within the framework of 'Supporting the Criminal Justice Reform and Combating Ill-Treatment and Impunity in Armenia' Council of Europe and EU

joint project, a two-day training entitled Medical Service in Closed Institutions was organized with participation of an international expert.

In September of 2016, within the scope of cooperation between the HRD Staff and OSCE, two-day training was organized on the topic of Protection of Human Rights in Penitentiary institutions.

On December 3 and 4, 2016, two-day training with participation of international experts entitled 'Women and Minors in Places of Detention' was organized jointly by the Council of Europe and European Union.

In October 2016, due to the support of International Prison Reforms organization special equipment was procured for the measurement of temperature, humidity, light, territory and area in the places of detention. The above-mentioned equipment was used during the monitoring visits to penitentiary institutions, detention facilities and other detention places, which has raised the effectiveness of torture prevention activities.

CHAPTER 2. PENITENTIARY INSTITUTIONS

Overcrowding, Uneven Distribution in Cells

During 2016, the RA Ministry of Justice has undertaken steps to solve the issue of overcrowding, and particularly 6 premises of Armavir Penitentiary institution (1240 units) were put into operation, which has created an opportunity to have a larger number of people deprived of liberty. As a result, more than 649 persons deprived of liberty, including 20 persons convicted to life imprisonment, have been moved to Armavir Penitentiary institution.

Nevertheless, during the year of 2016, in some of the RA MoJ Penitentiary institutions issues of overpopulation and uneven distribution were recorded.

Thus, during visits, in some of the cells of Nubarashen Penitentiary institution, overpopulation issues were recorded, for example the cells number 6, 5, 4 and 04, the area of which is about 30-35 square meter, had been populated by up to 10 persons deprived of their liberty at the time of the visit.

Issues connected with the permissible limit per person have been also recorded in other cells of the same penitentiary institution. Thus, the area of cell number 45 on the 3rd floor of the penitentiary institution is about 35 square meters, and has been furnished with 12 beds during the visit, where 12 persons deprived of their liberty were kept. During the examination, it has been revealed, that the two beds situated under the window are not used, in the result of which there is an issue to sleep in shifts. It has been also discovered that the number of persons deprived of liberty sometime reaches to 15 in the cell.

In another 35 square meter cell, 12 beds were placed at the time of the visit, where 12 persons deprived of their liberty resided. During a private talk, one of the detainees has mentioned that for 10 days he (she) did not have a place to sleep. 14 persons deprived of liberty were kept in the cell, and he and one other detainee residing in the cell used to sleep in shifts. The person has mentioned that after being provided a place to sleep, there was a problem to provide new bedding and linen.

Overcrowding issues were also recorded in Vardashen penitentiary institution. In each cell 2-6 detained people were placed. Thus, in case of placing 2 persons deprived of liberty, cells with smaller size of about 7-8 square meter area were used (including the toilet), and in cells with an area of 17 and 19 square meters (including the toilet) up to 6 persons deprived of their liberty were kept. During repeated visits the above mentioned problems however were solved. During visits it was also recorded that in another 15 square meter cell 5 persons deprived of liberty were kept.

Analysis of the visits to penitentiary institutions has shown that the uneven distribution of persons deprived of their liberty in the cells was not always conditioned by the requirements stipulated by legislation, or considerations of safety and coexistence.

The issue of uneven distribution in cells has also been recorded in penitentiary institutions which are not overcrowded, as a result of which the size of the living space allocated to one person deprived of liberty under the RA legislation has again not been preserved. Thus, no overcrowding issue was recorded in Artik Penitentiary institution at the time of the visit (number: 373, factually placed: 353), however in different types of correctional institutions, problems of uneven distribution were recorded. For example, despite the fact that not all the convicts were provided with a place to sleep, however in a semi-closed correctional institution instead of the planned 45, 83 detainees were kept. Besides, in Goris Penitentiary institution 35 places are provided, while at time of the visit 51 detainees were kept in this penitentiary institution.

According to Article 20 of the RA Law on Holding Detained or and Arrested Persons, as well as the requirement of Article 73 of the RA Penitentiary Code, the size of living space allocated to arrested, detained and convicted persons ***may not be less than 4 square meters per each person.***

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: the CPT) has stated in its 2nd general report, that the need to keep larger number of persons than foreseen in the places of detention has an extremely bad impact on all the services and measures provided there and significantly decreases the overall quality (level) of life. Moreover, the overcrowding of a detention place or any part thereof can by itself be inhuman or degrading (see CPT 3rd General report, which includes the period between January 1 –December 31, 1992, paragraph 46).

The ECtHR case law expresses the principle legal position according to which keeping the persons deprived of their liberty in an overcrowded condition can by itself be qualified as an inhuman and degrading, even if the competent bodies have not pursued such an aim (see ***Labzov*** *v.* ***Russia, June 16,*** *2005, Application N 62208/00, paragraph 44, Novoselov v Russia, June 2, 2005, Application N 66460/01, paragraph 41, Mayzit v Russia, January 20, 2005, Application N 63378/00, paragraph 39, Novoselov v Russia, June 2, 2005, Application N 66460/01, paragraph 41, Kalashnikow v Russia, June 15, 2002, Application N 47095/99, paragraph 97, Pirs v Greece, April 19, 2001, Application N 28524/95, paragraph 69, etc.).*

It should be noted that in relation to the lack of minimal personal space, the European Court of Human Rights has found a violation of Article 3 of the European Convention of Human Rights (hereinafter: ECHR) also in connection with several rulings against Armenia (Kirakossyan v Armenia, December 2, 2008, Application N 31237/03, paragraphs 40-59 and Karapetyan v Armenia, October 27, 2009, Application N 22387/05, paragraphs 33-47).

According to the RA MoJ official data, as of February 1, 2017, the actual and planned numbers of persons deprived of liberty are the following (*the overcrowded penitentiary institutions are highlighted).*

Penitentiary institution	Medical Institution (intended living spaces)	Open CI (intended living space)	Open CI as of 01.02.17	Semi-Open CI (intended living space)	Semi-Open CI as of 01.02.17	Semi-Closed CI (intended living space)	Semi-Closed CI as of 01.02.17	Closed CI (intended living space)	Closed CI as of 01.02.17	Detention place (intended living space)	Detention place as of 01.01.17	TOTAL (intended living space)	TOTAL as of 01.02.17
Nubarashen PI	-	20	6	62	40	50	24	138	85	**550**	**662**	820	817
Goris PI	-	50	3	10	7	20	16	100	41	**35**	**52**	215	119
Artik PI	-	25	3	141	128	**42**	**82**	115	83	**50**	**56**	373	352
Sevan PI	-	15	4	484	468	50	10	-	-	-	-	548	486
Kosh PI	-	25	-	**50**	**272**	465	172	100	4	-	-	640	448
Abovyan PI	-	29	7	**81**	**84**	40	21	15	7	100	40	265	159
Vardashen PI	-	200	38	**70**	**121**	25	22	10	5	**34**	**50**	339	236
Vanadzor PI	-	10	3	15	5	**30**	**86**	110	63	80	45	245	202
Prisoners' Hospital PI	424	10	2	**14**	**24**	**5**	**27**	**5**	**33**	**6**	**32**	464	118
Hrazdan PI	-	-	-	4	1	**24**	**67**	107	81	80	54	215	203
Yerevan-Centre PI	-	-	-	5	-	3	1	7	6	45	39	60	45
Armavir PI	-	5	-	83	11	550	294	402	173	200	171	1240	649
TOTAL	424	389	66	1018	1161	1304	822	1109	581	1180	1201	5424	3831

In summary, it should be underlined, that the state should undertake continuous steps to provide to persons deprived of liberty with a private space in line with domestic and international standards. The issue should be considered in relation to both, the minimum living space per person (four square meters) for each person deprived of liberty, and from the point of view of providing personal space with conditions compatible to human dignity.

Issues Related to Ensuring the Right of Persons Deprived of their Liberty to Health Protection

During the year of 2016, monitoring visits organized to the RA MoJ penitentiary institutions and the examination of individual complaints filed with HRD, several systemic problems were revealed related to ensuring the right of persons deprived of liberty to health protection. Those include particularly the following:

Ensuring Care in Penitentiary institutions

The complaints addressed to HRD and the implemented visits have revealed that the volume of health care provided to persons deprived of their liberty is not always sufficient. International standards demand that in similar cases the persons deprived of their liberty be transferred to a specialised medical centre. Meanwhile, the results of monitoring the penitentiary institutions show that in cases when sufficient volume of health care is not possible, no care of persons was organized in a civil medical institution. In relation with care provision, also the issue of care being organised by people without special medical preparedness has been examined. In particular, during the monitoring visits such cases have been recorded, when the person's care had been organized by other persons deprived of their liberty (cell-mates). In this regard it should be noted that in line with international standards, the state must ensure the continuous care of persons with special needs deprived of their liberty by specially trained professionals. Thus, the provision of care to a person deprived from one's liberty by a cell-mate can itself not represent a problem, if that care is being provided by such a person deprived of liberty, who has had passed a respective training.

Provision of State-Guaranteed Free Medical Care

Examination of the complaints addressed to HRD witnesses, that the needed medical interventions at the expense of state funds is not being organized due to insufficient allocation of respective funds. While discussing the alike complaints addressed to HRD, it has been revealed that the issue is mainly due to state-guaranteed free-of-charge or privileged medical care and service overpayments for which additional funding should be provided. Meanwhile, it should be noted, even though the right to health protection is directly dependent on the state's financial capabilities, this (the insufficient allocations presented as a justification) does not remove the responsibility of competent persons to undertake active steps and provide the state-guaranteed free medical care at the very first opportunity, by taking into account the priorities conditioned by the person's health condition.

During 2016, also issues related to the inclusion of persons deprived of their liberty within the scope of the project on Methadone Substitute Treatment were revealed, which are also conditioned by the continuity of the project and the need for sufficient funding.

Staffing of Medical Personnel, Adequate Medical Equipment and Medication in Penitentiary institutions

The research of adequate staffing of medical personnel allows to identify such issues connected with adequate personnel staffing, as availability of dental and psychiatric services, lack of qualified general practitioners and care professionals with relevant skills, problems related to daily provision of urgent and first medical care. Thus, for example according to results of direct observations, it has been revealed that in some penitentiary institutions no dental care is being provided. In such conditions, persons deprived of their liberty are obliged to invite their preferred doctor at their own expenses (for example Vardashen PI). The direct observations have also revealed that in Goris, Sevan and Armavir penitentiary institutions, access to psychiatric services is not provided, and the process of treating a person with psychiatric problems is determined by telephone consultation with a psychiatrist – a practice which is also not acceptable. In addition problems have been recorded in relation to insufficiency of medical staff with general expertise and provision of 24 hour medical care.

As for technical equipment, the direct observations, as well as the results of studying the legislation in the field of public health show that, the medical equipment and tools available in penitentiary institutions are very limited, worn-out and there is even a lack of equipment and tools for primary health care.

Based on the results of examination of the complaints addressed to HRD it has been revealed that there are also problems connected with provision of medication in penitentiary institutions. In particular, the complaints have highlighted that the penitentiary institutions do not have sufficient medications (for example medicine necessary to regulate high blood pressure). Due to the lack of necessary medications their non-efficient alternatives are being prescribed. It should be noted that the main directions and principles stipulated by the law for state policy on providing medication shall be applicable also towards the processes of organizing the health system in penitentiary institutions. In addition, the practice of organizing medical treatment in penitentiary institutions at the expense of other persons and not in line with the prescribed regulations is witnessing not only that the necessary medication volumes are not provided, but also can lead to the failure of the state to perform its duty of providing proper medication to persons under its control supervised by a doctor and based on doctor's instructions.

Failure to Practically Ensure the Independence of Medical Staff and Principle of Medical Secret in Penitentiary institutions

Results of studies provide grounds to suggest that in view of the current institutional subordination, the supervision over the sufficiency and quality of services provided by the medical staff is also being managed by the management of penitentiary service, thus failing to ensure the independence and freedom of the medical stuff. Meanwhile, it should be underlined that the issues revealed in the course of HRD activity related to the right of the persons deprived of their liberty to protection of health, inter alia, are conditioned by the lack

of adequate guarantees for the consistent maintenance of professional principles and ethics of the medical personnel.

Studies regarding medical secret have shown that data on person's health state and tests performed towards the person are accessible for the non-medical staff of penitentiary institution, due to which the principle of keeping medical secret is directly infringed.

As a result of consideration of the issues in the sphere of ensuring the right to health protection for the persons deprived of their liberty as individual public problems, those have been made an object of specific study and would be presented in a special report.

General Sanitary-Hygienic and Detention Conditions

During the visits to RA MoJ penitentiary institutions in 2016, problems connected with non-sufficient sanitary-hygienic and material conditions were recorded.

In particular, the conditions of all the cells on the first floor of Nubarashen Penitentiary institution were non-sufficient: the level of humidity in all the cells was high, the walls were wet, due to which the plaster of the ceiling and the walls have had come off in some sections. The high degree of moisture in the cells was due to the penetration of water from the windows of the cells as a result of snow melting.

HRD has addressed the conditions in Nubarashen Penitentiary institution also in connection with several complaints, which, generally concerned the penetration of sewerage into the cell, presence of insects, humidity, bad condition of toilets, open electric wires, etc.

Thus, in their complaint addressed to HRD, the persons kept in the cell number 3 of Nubarashen Penitentiary institution had mentioned that as a result of an accident, the sewerage water was flowing into the cell, due to which the level of humidity of the cell had increased, thus it was not possible to reside there. The aforementioned problems were also recorded during the visit paid by the preventive mechanism.

Complaints about the non-sufficient sanitary conditions of the cells and toilets have also been received from other cells of the same penitentiary institution. The humidity in the cell was due to the common wall with the toilet. In addition to the aforementioned, also presence of insects, broken toilet, open electric wires were recorded and the wall plaster had been off due to the moisture in some sections of the cell. The floor was concrete, and the lighting was dim.

According to RA MoJ clarification in regard to the aforementioned, the roof of the square for prisoners walk located on the 6th floor was covered by organic glass in June-August of 2016, within the energy efficiency plan framework. There are no water supply and drainage systems passing through the roof, and currently it is protected from atmospheric precipitation, as a result of which the humidity of the cells of the 5th floor has decreased.

Also the sanitary and hygienic conditions of the first floor corridor of Nubarashen Penitentiary institution are not sufficient. In particular, during the visit, the walls and the ceiling were damp and sewage water kept dropping from the ceiling. In the result of examining the cells on the first floor it was revealed that water is accumulated on the floor of the corridor once in a while and gets into the cells, and the persons deprived of their liberty have to close the open section of the lower part of the door with bedding. Staff of the penitentiary institution has also expressed their discontent with the corridor conditions.

The CPT 2016 Report on Armenia also raised the issue of non-sufficient conditions in Nubarashen Penitentiary institution, addressing the humidity of the cells on the first floor, non-sufficient ventilation and lighting, lack of permanent water supply, the problem of toilets not being completely separated in the cells, etc. (see the 2016 CPT report on the visit to Armenia on 5-15 October 2015, paragraph 63).

In response to this report, the RA Ministry of Justice provided a clarification, that persons deprived of their liberty that were kept under custody in the cells of the 1st floor of Nubarashen Penitentiary institution had been moved to cells situated on other floors. At the same time it was mentioned that the issue of transferring the quarantine cells and punishment cells No. 7, 8, 9 was in the process of discussion.

Complaints have been filed by persons deprived of their liberty also concerning the water supply to toilets, their bad state and limited number. Also problems of permanent water supply, and the water accessibility of toilets situated on the second floor. Persons deprived of their liberty are forced to bring the water from the first floor with containers. Washing facilities were in inadequate quantities too, and, according to prisoners, even during the cold winter months, many people are forced to wash outside.

One other block of Abovyan Penitentiary institution had been foreseen for juvenile convicts, which however was not exploited during the visit. Double-deck beds were situated in the cells, however according to paragraph 85 of the RoA Government Decree N1543-Ա of August 3, 2006, "single deck beds shall be placed in the cells or shelters provided for juvenile convicts."

It should be noted, that the cells foreseen for juveniles had been previously used as punishment cells and the iron bends foreseen for the punishment cells were still placed there.

There were also recorded non-favourable building conditions in Goris Penitentiary institution. According to the head of this penitentiary institution, the Goris Penitentiary institution has been being exploited as a place for liberty deprivation since the ends of the 19th century.

According to Article 73 of the RA Penitentiary Code, the living space provided for the convict in correctional institutions shall comply with the construction and sanitary-hygienic standards defined for common living space and shall ensure their health protection.

According to Rule 19.1 of the European Prison Rules,[2] all parts of every prison shall be properly maintained and kept clean at all times.

According to the clarifications of the Ministry of Justice, within the scope of service contract on Disinfection and Parasite Exterminating Services for State Needs between the Penitentiary Department and the Yerevan Preventive Disinfection CJSC signed on April 19 of 2016, the aforementioned company performs disinfection and parasite extermination services in the penitentiary institutions 3-4 times per month. The aforementioned works are supervised by the heads of economic support (logistics) departments of penitentiary institutions.

Nevertheless, during monitoring implemented in 2016 nearly in the entire penitentiary institutions there were insects (bedbugs, cockroaches, etc.).

In private conversations with prisoners, the latters have mentioned that that chemical means for the fight against insects are also provided by their relatives.

In some cases, traces of insect bites have been recorded in different parts of the body of individuals deprived of liberty.

According to paragraph 29 of the Procedure for the Organization of Medical and Sanitary and Preventive Care of Detainees and Convicts, their Access to Health Facilities and Involvement of Medical Staff for that Purpose established by the RA Government Degree N825-Ա adopted on May 26, 2006, provision of medical and sanitary care of detainees and convicts in penitentiary institutions shall be performed in line with the Republic of Armenia Sanitation Legislation, strictly adhering to its respective sanitary rules and hygienic norms, as well as by performance of sanitary-hygienic and anti-epidemic measures.

Thus, supervision over the maintenance of sanitary rules and hygienic norms shall be established in the RA MoJ penitentiary institutions, by paying specific attention to proper repair of cells (with the aim of reducing humidity), the number and state of toilets and washing facilities and the sufficient quality of works for disinfection and destruction of parasites.

Provision of Shower

As a result of monitoring carried out in the RA MoJ penitentiary institutions in 2016, problems related to showers of persons deprived of their liberty were registered. In particular, there were non-sufficient conditions of washing facilities, problems to organize showers for persons with mobility restrictions, deprived of their liberty, and problem of access to washing facilities and cell toilets for those people.

Non-sufficient state of washing facilities was registered in the narcological department of Prisoners' Hospital penitentiary institution.

[2] Recommendation Rec(2006)2 of the Committee of Ministers.

It turned out that two Asian toilets and a sink were installed in the sanitary facility of the narcological department. A part of the toilet was separated to organize showers, however was not exploited and needed repairs.

Based on mediation by HRD, repairs were implemented in the toilet of narcological department of the Prisoners' Hospital penitentiary institution, the toilet bowl, the sink and the toilet trap were replaced and repaired.

Non-sufficient sanitary condition has been recorded in Abovyan Penitentiary institution. Shower used to be organised on a concrete floor. According to information provided by persons deprived from liberty, water has been dropping from the ceiling for already two years, however no measures are being undertaken by the penitentiary institution. In addition, there is a lack of permanent water supply.

Convicts detained in Abovyan Penitentiary institution have access to shower once per week, as opposed to women's section, where showers are organised once per four days, according to a schedule.

As a result of monitoring of Goris Penitentiary institution, it has been recorded, that the rooms on different floors are equipped with bathrooms. During private talks with persons deprived of liberty the latters have mentioned that there were no problems connected with showers. Showers are being organised once per week, on Wednesdays, however persons deprived of liberty have created opportunities to have showers on the territory of some cell toilets by their own means.

One should note, that during the regular visit in 2016, renovation works were I process. A stone construction foreseen for toilet and washing facilities was in the phase of construction, a water tank had been installed on its roof equipped with a heater, and the door was also installed. The interior decoration works had not started yet then. The renovation work was performed by the convicts and by their means.

In addition to washing facilities built in the premises of Sevan penitentiary institution, also a common bathroom is operating on the territory of the premise for medical centre, canteen and laundry room, the conditions of which had been non-sufficient at the moment of the visit. There was a lack of ventilation and heating systems and there were no showers. Those persons deprived of liberty, who do not reside in the residential premises, use the above-mentioned washing facility. The facility is also used in those cases, when the water in the tanks of the residential premises is consumed.

According to paragraph 36 of the Internal Regulations of Detention Facilities and Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia as established by the RA Government Decree N 1543-Ն on August 3, 2006, (hereinafter: Internal Regulations), each person deprived or liberty or each convict shall be taking a bath or a shower in conditions of proper temperature specific to the climate, at least

once per week, or more frequently, if possible, if that is necessary for the maintenance of general hygiene.

In this relation the CPT has mentioned that persons deprived from their liberty should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation (see 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, paragraph 49).

In addition, during visits to Armenia and several other countries, the CPT has repeatedly urged the authorities to increase the frequency of detainees' bathing, based on the 19.4 Rule of the European Prison Rules. According to that rule, adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

According to the recommendations provided in the CPT Report on Armenia in 2016, **prisoners should have entitlement to have a shower at least twice a week** (see CPT on the visit to Armenia carried out from 5 to 15 October 2015, paragraph 73).

Thus, in order to properly organise the showers and baths of persons deprived of their liberty, measures should be undertaken to implement repairing works of washing facilities and toilets in the RA MoJ penitentiary institutions, and to secure a washing facility in open-type correctional institution of Sevan PI.

At the same time, based on the need to maintain common hygiene of persons deprived of their liberty, the internal regulation should be amended to enable the persons deprived of their liberty to have a shower at least 2 times a week.

In the course of 2016, complaints have been recorded connected with the problem to organise showers for persons deprived of their liberty who have mobility restrictions. Care of the above-mentioned persons is usually being organised by persons deprived of liberty who are involved in the technical and economic services of penitentiary institutions. Persons with mobility restrictions have a problem to access washing facilities and toilets.

In relation to organisation of showers for persons deprived of their liberty, it should be taken into account, that international standards prohibit the organisation of care of a person deprived of one's liberty by another person deprived of liberty. The state is obliged to provide permanent care for persons deprived of their liberty who have special needs, by specially trained professionals.

The above-mentioned conclusions are further re-enforced by the legal positions expressed by the European Court of Human Rights.

In particular, the European Court of Human Rights has not considered it appropriate that a considerable burden of care of a person with special needs deprived of liberty has been

imposed on another detainee who has had no proper qualification, even for a limited period of time (For example, Farbthus v. Latvia, Judgement, December 2, 2004, 4672/02, paragraph 73).

In connection with the above-mentioned problem, the CPT, for example, has called for caution in engaging other persons deprived of liberty for the care of persons with special needs who are deprived of their liberty (see the CPT 2012 Report on the Visit made to Italy in May 13-25 , paragraph 75).

Thus, it is necessary to exclude the care of persons with restricted mobility deprived of their liberty by other persons deprived of liberty that lack the appropriate qualification, as well as it is necessary to undertake measures to make washing facilities and toilets accessible for them.

Punishment Cell Detention Conditions

In the course of 2016, non-sufficient detention conditions have been recorded also in the punishment cells of some penitentiary institutions.

Thus, the walls of punishment cells in Abovyan Penitentiary institution have been humid, and the cells were in need of renovation.

Non-sufficient conditions have been recorded also in the punishment cells of Nubarashen Penitentiary institution (N 01, 02, 03), where the walls and the ceiling have also been wet, and the plaster had been off in several sections. In the above-mentioned cells the toilets had been not fully separated; due to a wall in front of the installed windows, the natural light had not been penetrating. Artificial lighting had been organised through lamps.

It should be noted, that the CPT has also addressed the conditions in punishment cells of Nubarashen Penitentiary institution, in its 2016 Report on Armenia, mentioning, that those are poorly lit, damp and dilapidated, polluted and filled with insects. CPT has highlighted that it is necessary to stop the exploitation of the punishment cells in Nubarashen Penitentiary institution, and ensure that the punishment cells in other penitentiary institutions have conditions needed for normal functioning of a person, by paying special attention to the provision of natural lighting and separation of toilets (see: CPT 2016 Report on the visit to Armenia from 5 to 15 October 2015, paragraphs 63 and 65).

Thus it is necessary to properly repair the punishment cells in the RA MoJ penitentiary institutions, and ensure their natural lighting and separation of toilets.

Detention in Quarantine Cells

In the course of 2016, problems connected with the conditions, including sanitary and hygienic state of quarantine cells have been recorded. In particular, the degree of humidity in all the three quarantine cells located on the first floor of Nubarashen Penitentiary institution has been high, and the walls have been wet.

The HRD has raised the issue of further exploitation of the aforementioned cells, in connection with which the RA MoJ has informed that the issue of possible transfer of the respective cells is under discussion.

Two out of 5 quarantine cells of Sevan penitentiary institution were not being used at the time of the visit due to renovation works.

Quarantine department of Abovyan Penitentiary institution, the cells of which sometimes are used as punishment cells, is also in need of repair.

According to paragraph 12 of the internal regulation, a detained person or a convict shall be kept in quarantine department at least in the same conditions, as a detained person or a convict is kept in other cell or facility of a detention place or correctional institution.

It should be noted that in Yerevan-Kentron and Kosh penitentiary institutions no separate quarantine departments are foreseen. Thus, the detained persons or convicts are immediately placed in residential zone, factually not being subjected to medical examination, as well as being deprived of the opportunity to get acquainted with and get used to the conditions of the correctional institute as provided for by Legislation. *Meanwhile, according to paragraph 2 of Article 65 of the RA Penitentiary Code, a sentenced prisoner shall be placed in a quarantine department for up to seven days for a medical examination and adaptation to the conditions of the correctional facility.*

In this regard it should be noted, that it is necessary to provide quarantine departments with the conditions needed for normal functioning of a person in all the RA MoJ penitentiary institutions, taking into account the importance of adaptation to the conditions of a correctional institution especially in case of being sentenced to imprisonment for the first time.

Organisation of Renovation Works

In the course of 2016, considerable steps have been undertaken by RA MoJ with a view of improving the conditions of persons deprived of liberty kept in penitentiary institutions. In particular, renovation works have been performed both, in the blocks of residential zones, including the cells, canteens, kitchens, rooms for long-term and short-term visits, sanitary units, rooms for reception of parcels, toilets, other parts of residential zones, and in working offices and administrative facilities of the penitentiary institutions.

Nevertheless, during the visits paid in 2016, as in recent years, nearly all of the persons deprived of liberty kept in all (Artik, Goris, Sevan, Abovyan, Armavir) penitentiary institutions have mentioned that the works to improve their detention conditions and renovation works have been performed due to their personal means.

For example, residential dwellings in the Open Correctional Facility of Artik Penitentiary institution have been repaired with the convicts' financial means.

Goris Penitentiary institution's Open Correctional Facility is located in Nrnadzor community. The road leading to the facility is almost impassable (about 20 km). Connection with the village is being organised only through vehicles of individual people. The construction, where convicts are residing, has been completely renovated by financial means and due to efforts of the convicts. The rooms are being heated in the winter with wood stoves. According to RA MoJ clarifications, no capital renovation works have been performed in the penitentiary institutions in the course of 2016, however in some of penitentiary institutions renovation works have been performed due to which the detention conditions have been improved to some extent.

Referring the renovation works performed by the RA MoJ, it should be noted, that nevertheless, the significant part of the works aimed at the improvement of detention conditions in penitentiary institutions and renovation works continues to be implemented due to personal financial means of persons deprived of liberty, and an alike practice is not acceptable, as it leads to the increase of corruption risks and inequality of the detention conditions of persons deprived of liberty.

Provision of Necessary Items to Persons Deprived of Liberty

During 2016 several complaints have been filed from persons deprived of their liberty detained in the RA MoJ penitentiary institutions about not being provided with objects and items necessary for them.

In some penitentiary institutions, for example, cases have been recorded, when the cells had not been equipped with a radio-receiver. According to paragraph 46 of the internal regulations, the detention facility or the correctional facility cell, among other things, should at least be equipped with a radio receiver.

The above mentioned problem however has been properly solved by the RA MoJ.

Women deprived of their liberty in Abovyan Penitentiary institution have mentioned that the penitentiary institution provides them with 1 pack of toothpaste, soap and other small quantity of hygiene items for 2 convicts per each month.

In some cases, the Preventive Mechanism has also recorded problems connected with the provision of objects and items necessary for persons deprived of liberty who are kept in quarantine (for example bedding items, water cups), which according to the clarification of the penitentiary institution staff, had not been provided because of preceding holidays or non-working days (for example Nubarashen PI).

According to paragraph 43.5 of Internal Regulations, a detained person or a convict should be provided for one's individual use items of hygiene, in the quantities defined by the RA Legislation. Paragraph 233 defines that it is forbidden for a detained person or a convict to

keep personal items in the punishment cell, with the exception of personal hygiene items, religious literature and pictures.

Issues regarding the bad quality of clothing and bedding items, failure to provide bedding items, their scarcity and shabbiness, as well as in some cases obstacles to get them through delivered parcels, have also been recorded in the RA MoJ penitentiary institutions.

Thus, persons deprived of their liberty in Abovyan Penitentiary institution have mentioned in regard to the bedding items obtained by them, that they are provided only one thin blanket, which is not sufficient for cold weather, especially in the absence of proper heating, and it is forbidden to get blankets from home. Dissatisfaction has been also expressed about the blankets being thin and old. The convicts have mentioned that it was not allowed to bring coloured linen from home, as the linen must be white.

Dissatisfaction with the quality and quantity of bedding has been also voiced by juveniles deprived of their liberty in Abovyan Penitentiary institution. Thus, during the visit, juveniles deprived of their liberty have mentioned that the temperature in the cells is low, while they are provided with only one cover-blanket, and an additional one is not being provided based on the clarification that only one blanket has been foreseen per persons.

During the visit two of the juveniles deprived of their liberty did not have linen and used to sleep on the matrasses. It should be noted, that during the recently paid repeated visit it has been recorded that they were provided with linen.

Problems connected with failure to provide bedding items have also been recorded in Nubarashen penitentiary institution.

According to European Prison Rules, prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate. At the same time every person deprived of liberty shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness (see the rules: 20.1, 21):

Almost in all penitentiary institutions there is an opportunity to acquire the goods and supplies that are permitted for persons deprived of their liberty. Nevertheless, persons deprived of their liberty who were kept in Abovyan Penitentiary institution, have expressed dissatisfaction from the work of the "kiosk" employee, mentioning that the person visits one a month at best (though there is a more frequent need), and the goods brought from shop are mainly of poor quality.

In summary, it should be noted that the state should undertake steps:

- **To ensure the provision of necessary items set out according to Paragraph 46 of the Internal Regulation;**
- **To provide persons deprived of their liberty with appropriate blankets, sufficient quality clothing, bedding items and linen in accordance with climate conditions;**
- **To provide women deprived of liberty with the necessary quantity and quality hygiene items, including ones for women care;**

- **To provide the necessary items to persons deprived of liberty with the view of ensuring the proper exercise of their right to file complaints to respective bodies concerning the violation of their rights and freedoms.**

Provision of Adequate Food for Persons Deprived of Their Liberty

During the monitoring visits to places for deprivation of liberty in 2016 several practical and legislative problems have been revealed which are related to the food provided to persons deprived of their liberty.

From this point of view it is necessary to distinguish:

1. The problem of providing dietary food to persons deprived of liberty who need a special diet;
2. The issue of not taking specific food by persons deprived of their liberty due to religious beliefs or cultural specifics;
3. The issue of providing additional food to pregnant women deprived of their liberty;
4. The issue of providing special dietary food to those who have children under 3 years of age, as well as the juveniles kept in penitentiary institutions.

While addressing the first problem, it should be noted that according to Paragraph 3 of Article 76 of the *RA Penitentiary Code, Paragraph 3 of Article 19 of the RA Law on Holding Detained or and Arrested Persons and the analysis of Attachment 1 approved by the RA Government Decree N 1182-ն, adopted on October 15, 2015, that sick people deprived of liberty shall be provided with additional nutrition, namely 20 g of vegetable oil, 25 g butter, 100 (14.3) g milk (or milk powder) and one chicken egg.*

Persons deprived of liberty in penitentiary institutions often have such diseases (for example diabetes), which demand not additional nutrition but on the contrary, a special diet. The elderly people deprived of liberty are not provided a special diet either.

Thus, Penitentiary legislation does not provide for an opportunity to assign and diets for persons who need special diets in the detention facilities.

It is noteworthy that such opportunity is provided to military servicemen and elderly people in elderly homes.[3]

According to paragraph 20.1 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the UN first Congress on August 30, 1955, every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

[3] For more details, please refer to Appendix 1 approved by RA Government Decree 706 of November 11, 1998, on Daily average nutrition norms of special consumers of the Republic of Armenia, (Average daily norm of nutrition of military servicement serving in the Republic of Armenia and other troops during peace times), Paragraph 11, and Paragraph 5.1 of the Appendix 1 approved by the 39-th protocol decision of the RA Government September 18, 2014, session.

Rule 22.6 of European Prison Rules directly sets out, that the medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

The CPT has highlighted the obligation of a state to provide special diet to persons conditioned by their health problems (See the 3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992, paragraph 38).

Provision of food to people deprived of liberty who do not take specific food based on religious beliefs and cultural characteristics is also problematic. Thus, in penitentiary institutions there are persons who profess Christianity, who should have a special diet during the fasting period, or people who profess Muslim religion, whose religious belief allows eating exceptionally such food which is not forbidden by Islam.

The above-mentioned problem has been raised by the RA HRD yet in 2010[4].

The issue discuss has been also addressed by the 2014-2015 activity report of public monitoring group performing monitoring in the RA MoJ penitentiary institutions.[5]

The issue of providing adequate food to persons deprived of liberty who does not accept specific food based on cultural peculiarities also is still open. In the places of deprivation of liberty, there are kept such persons who are vegeterenian, and do not use food of animal origin in their diet. As a result, because of cultural peculiarities, persons deprived of liberty are forced to get the food necessary for them through parcel deliveries. Persons deprived of liberty have mentioned during private talks that they are not allowed to receive or obtain fruits and row food by parcels.

The issue of providing fresh fruits and vegetables as supplementary food to pregnant women deprived of their liberty is also not regulated by the Legislation.

In this regard, the CPT has mentioned that every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables. (See the CPT 10th General Report on the CPT's activities covering the period 1 January to 31 December 1999, paragraph 26).

The issue of special foods for persons with children under the age of three, as well as for juveniles held in penitentiary institutions is also not regulated.

As opposed to Penitentiary sector, *the RA Government Decree N 815-Ն, adopted on May 31, 2007 on Approval of Minimum Standards for Child Care and Services for children kept in Orphanages, Child Care and Protection Night Institutions (regardless of its Organizational-Legal Form) sets out the type and quantities of food provided to children from the age of 5 days up to 7 months, from 7 to 12 months, from 1 to 1.5 years and from 1,5 to 3 years in child care (per one child) as well as the type and quantities of food provided to children between*

[4]See: the RA HRD as an Independent National Preventive Body; Report on the rights and legitimate interests of persons in RA MoJ Penitentiary Institutions, Yerevan, 2010, pg. 17:

5 See: http://pmg.am/images/2014-2015_PMG_Annual_report.pdf as of 30.03.2017, page 43.

the age of 3-18, in the orphanages, child care and protection night facilities (per one child), ect.

The above mentioned legal act also regulates the types and quantities of clothes, shoes and soft items for children under 3 years of age and those from 3 to 18 years cared for in child care institutions (per one child) and several other problems related to that.

In this regard it should be noted, that in October of 2016, also the **RA Government draft Decision on making amendments and addenda to the Republic of Armenia Government Decree N 1182 adopted on October 15, 2015, was sent to HRD for an opinion.**

In the result of examining the draft, the HRD staff had proposed several considerations and recommendations, which generally include the following:

- **Set up an opportunity to assign and organise special diets for persons kept in detention places who are in need of special diets.**
- **Foresee specificities for food provision to those persons deprived of liberty who do not take specific food due to their religious beliefs or cultural peculiarities.**
- **Regulate the issue of providing supplementary food to pregnant women deprived of their liberty in the form of fresh fruits and vegetables.**
- **Establish special food stuff for those who have children under the age of 3 with them in a detention place, as well as for juveniles kept in penitentiary institutions.**

The proposed and several other proposals have been also discussed with the representatives of the RA MoJ penitentiary department.

<u>Problems Connected with the Delivery of Food, Newspapers and Magazines, as well as Clothing and Other Items</u>

During 2016 in some penitentiary institutions problems have been recorded connected with the delivery of parcels, in particular a ben to receive some kinds of row food, some kinds of cloths, newspapers, magazines and postcards. Specific emphasis was placed on unequivocal legal requirements for transmitting these items through parcels and the differentiated approach of the Administration regarding the transfer of these parcels.

In the result of private talks with women detained in Abovyan Penitentiary institution it was revealed that the Administration in the penitentiary institution displayed a differentiated approach both to receiving parcels and to their contents.

Paragraph 16 of the Internal Regulations on the list of forbidden items, things and food foresees an exception for several objects, items and food that the detained persons or convicts may keep, receive or obtain through deliveries, parcels and packages.

Among other things, the aforementioned list also includes bedding, lingerie, hygiene items, literature, newspapers, magazines, postcards, vegetables and fruits.

In this connection it is necessary to set a strict control over barriers to receipts of parcels to exclude any differentiated approach by the administration of the penitentiary institution.

Ensuring the Right to Rest, Including Walking in Open Air or Gymnastics

During the monitoring visits paid to detention places in 2016 some practical and legislative problems have been revealed, which related the rest of persons deprived of their liberty, including the provision of right to walk in open air or practice gymnastics.

From this point of view it is necessary to point out the following:

1. The problem of ensuring the right to walk or gymnastics for juveniles deprived of their liberty;
2. The problem of differentiation of the duration of walk for arrested, detained or convicted women;
3. The problem of inconvenient places for walk.

Abovyan Penitentiary institution does not have conditions for exercising gymnastics in juvenile detention facilities. Although there is sport equipment secured in the sports hall of the institution provided for this purpose, those are in bad (damaged) condition.

In this regard it is noteworthy that in accordance with paragraph 87 of the Internal Regulations, places of detention (waling facilities) for juvenile detainees or convicts should be adapted for physical exercises, various games and sports.

Several international legal documents have reflected to the importance of providing opportunity to exercise gymnastics during the walk for persons deprived of liberty. Thus, Rules 27.3 and 27.4 of European Prison Rules specify that respective measures targeted to the increase of level of physical preparedness and provision of opportunities for exercising and leisure shall constitute a part of the routine of the detention place, and the Administration of the detention place should contribute to it by providing the appropriate devices and equipment.

Thus, the study of international and national legal regulations gives grounds to conclude that the daily routine of persons deprived of their liberty should include physical fitness, sports and entertainment programs. In this regard, the state should take the measures to ensure the activities mentioned above.

Information obtained through private talks with juveniles deprived of their liberty according to which they do not exercise their right to at least two-hour daily walk prescribed by the Legislation is also problematic. According to them, the duration of the walk is decided by the Administration and the walk as a rule does not exceed one hour.

Paragraph 4 of Article 56 of the RA Penitentiary Code stipulates that (…)juvenile convicts shall be entitled to at least two hours of outdoor walk per day.

A similar regulation is foreseen also for the juvenile arrestees and detainees (See: paragraph 2 of Article 27 of the *RA Law on Holding Detained or and Arrested Persons 27):* The above-mentioned provision is also extended to women arrestees or detainees. Thus, according to paragraph 2 of Article 27 of the *RA Law on Holding Detained or and Arrested Persons, the arrested or detained women (...) shall be entitled to daily walks for a duration that is not less than two hours, during which they are given the opportunity to practice gymnastics.*

In the context of the above-mentioned, it should be also noted that the Legislator has deviated from the general logic existing in the law, not envisaging a two-hour walk for female prisoners in the RA Penitentiary Code.

In some of the RA MoJ penitentiary institutions *(for example Nubarashen, Armavir, and Goris PIs)* the walking yards are small and separated territories, which in some cases are not provided with a cover.

One of the reasons for improper organization of walks is also the non-sufficient number of staff in the penitentiary institutions.

It is noteworthy, that the above-mentioned problems were raised also in the CPT 2016 Report on Armenia, where it is particularly mentioned that, "outdoor exercise was still not available in Nubarashen penitentiary institution on weekends and – when offered – it reportedly did not always last one hour. The bulk of the inmates had to use the same small and inadequate yards located on the roof of the establishment". (See: the CPT Report on the Visit to Armenia from October 5-15, Paragraph 63).

Taking into consideration the above, it is necessary to take steps to provide useful and sufficiently large areas for outdoor walk in the RA MoJ penitentiary institutions. At the same time, the walking areas should be provided with adequate protection against unfavourable weather, with main sport equipment necessary for physical exercise and sports, and in cases of availability of that equipment, ensure its functioning.

In relation to the issue discussed, it is very important to maintain the minimum duration of the walk as stipulated by the Legislation, and in order to ensure a unified approach, it is also necessary to foresee a two-hour walk possibility for women convicts.

Employment

During the visits made in 2016, the issue of employment of detainees and convicts has been examined.

Convicts serving their sentence in closed or semi-closed correctional institutions, as well as persons detained in penitentiary institutions are mainly in the cell during the day and cannot factually get involved in various activities related to the everyday maintenance services available in penitentiary institutions. Actually, mostly those convicts in the hospitals

or in the open correctional facilities are involved in these activities. In addition, the latters do not mainly participate in leisure activities and are almost deprived of the opportunity to exercise gymnastics or sports.

According to the data provided by Abovyan penitentiary institution, in the case of 165 convicts and 100 detainees, only 15 staffing positions are envisaged for technical and economic service and other activities (cleaning works, lighter production shop and livestock farm). Some of them are divided into non-complete work-time, thus actually 32 women convicts do work, including 3 convicts kept in an open correctional institution. 24 more staffing posts are provided by Support to Prisoners Foundation, where 3 convicted women work. The main positions are in the pasta and sewing workshops, and the main occupations include painting, carpet making, etc.

In Goris penitentiary institution in case of 180 convicts and 35 detainees, there are only 13 staffing positions only for convicts, out of which 7 (semi-closed correctional institution convicts) are for work in technical and economic services.

In practice, the main occupation of persons deprived of their liberty in closed and semi-closed correctional facilities is limited by TV viewing, reading of literature, and, in some cases, board games (for example, domino). Convicts of semi-closed correctional institutions, in addition to the above-mentioned activities, also participate in the improvement works of the building areas and development of plants and flowers.

In some of penitentiary institutions were visits were paid in 2016, there are created hairdressing, computer, painting, ceramics and other groups (Abovian, Artik, Artic and other penitentiary institutions).

All penitentiary institutions have libraries. However not all the persons deprived of their liberty are using them. For example in Goris penitentiary institution, about 30% of persons deprived of liberty are using the library. There are about 1200 books in the library, and the updated literature is mainly religious. The penitentiary institution Administration undertakes steps to replenish the library. For example, the Administration has contacted the Writers' Union and they have donated large-scale fiction literature to the library of the penitentiary institution. Nonetheless, the library is not stocked with foreign language literature and there is also a lack of updated legal literature.

The library of Sevan penitentiary institution is mainly completed with soviet literature, new books are received very rarely and from individuals. No procurement is done for the book replenishment, and the library lacks a reading hall. 40-50 convicts are constantly using the library (about 10 percent of the convicts). There is no computer room in this penitentiary institution.

The issue of schools in some institutions of the penitentiary system is problematic. During the monitoring it has been recorded that the school of Abovyan penitentiary institution does

not function anymore, and many of juveniles kept in this institution have not yet completed their education.

Also a problem has been recorded during the visit to the Artik Evening School state non-commercial organisation (SNCO) operating on the territory of Artik penitentiary institution. In particular, in the course of private conversations with the persons deprived of their liberty who studied in the SNCO and the staff training them it has been revealed that in the educational institution there is a lack of textbooks foreseen for 9-12 forms. According to the training staff, as a result of insufficient number of books, the efficiency of teaching the subjects decreases. Besides, there is also a lack of Russian and English language teachers. In addition, the teaching staff noted that the legal acts regulating SNCO activities need revision and improvement. In fact, they do not include the peculiarities of the educational institution. The SNCO had addressed the representatives of the Ministry of Education and Science with a request to solve these problems, however, in vain.

In this connection, a discussion took place in the RA Ministry of Education and Science with participation of a RA HRD representative and the SNCO director. In the result of this discussion, it was proposed to the Director to submit an application through RA Shirak Regional Office to the RA Ministry of Education and Science concerning the required textbooks, to which a corresponding solution would be provided on the part of the Public Education Department within the scope of the RA Legislation.

The RA Ministry of Education and Science have expressed its willingness to support the Artik penitentiary institution Artic Evening School and revise the legal acts regulating its activities.

According to Article 17 of the RA Penitentiary Code, main correctional means for convicts are (…) their engagement in work, education, culture, sports, and other similar occupation as well as the social influence.

Paragraph 107 of the internal regulation defines that employment cells shall be organized in detention facilities and in closed and semi-open correctional institutions, with the aim of engaging the detained persons in work in the cells. In the semi-open and open correctional institutions, industrial or agricultural employment cells or zones can be organized (see paragraph 108).

The CPT has mentioned that "A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. (See the CPT 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, paragraph 47).

The scarcity of employment programs for persons deprived of their liberty was mentioned still in the 2010 report on the visit of the CPT to Armenia. In its Report of 2016 on Armenia, the CPT has re-expressed a concern that in the penitentiary institutions persons deprived of

liberty were locked up in their cells for 21 to 23 hours per day, in a state of enforced idleness. This is particularly a serious problem in the case of persons sentenced to long-term imprisonment (including to life-time imprisonment (See the CPT Report on the Visit to Armenia from 5 to 15 October 2015, paragraph 48).

The European Prison Rules also contain detailed criteria both for ensuring that people deprived of their liberty have proper access to useful work, and for providing them opportunities for leisure (sports, games, cultural events and other forms of leisure) (See the rules: 26.1-26.3, 26.6, 26.9, 26.10, 27.3, 27.6, 28.1-28.5, etc. 9).

According to the Rule N 28.7 of the European Prison Rules, as far as practicable, the education of prisoners shall be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

According to the RA MoJ clarifications, 34,8% of persons held in penitentiary institutions during the year of 2016 were involved in various activities, in particular, currently 165 prisoners are involved in the technical and economic service of the penitentiary institutions. Together with the Support to Prisoners Foundation, 626 convicts had been involved in various kinds of work, including 223 convicts were involved in a non-paid work by their consent. In order to ensure the employment of convicts and to take up-to-date and effective social rehabilitation measures, 342 events were organized in 12 penitentiary institutions in 2016 where 8,327 detainees and convicts participated. 276 people are involved in autonomous unions. During 2016 several cultural, educational, sport and religious events had been organized with a view of ensuring the useful employment of persons detained in penitentiary institutions.

At the same time, 187 convicts were provided an opportunity to exercise their right to education, including the right to higher and post-graduate education.

Despite the measures undertaken by the RA MoJ to ensure employment in the penitentiary institutions, the problem of developing adequate programmes for the employment of convicts and detainees continues to remain an imperative. It is necessary to ensure for persons deprived of their liberty an opportunity to spend a large part of the day outside of the cells, taking into account the special needs of separate groups (detained or convicted adult persons, women deprived of liberty, juveniles, etc.), by engaging them in different kinds of purposeful activities (work, education, sport, etc.).

<u>Communication with the Outside World</u>

As a result of monitoring carried out in the RA MoJ penitentiary institutions in 2016, issues related to the realization of the right of persons deprived of their liberty to connect with the outside world were recorded. Particularly these included problems to use the phones

(taxophones) in the penitentiary institutions, call to the toll free HRD hot line 1-16, have short and long-term visits, as well as provision of short-term leaves of persons deprived of liberty and issues connected with censorship of letters. Also cases had been recorded, when as a result of being placed in a penitentiary institution far from one's place of residence, persons deprived of liberty were deprived the opportunity to communicate with their family members and relatives.

In the Abovian penitentiary institution, a number of complaints were recorded regarding the inconvenient room for short-term meetings, in particular, the room was cold, did not heat up and lacked facilities for separation. The convicts also have noted that those relatives coming to see them have to wait 4-5 hours each time, before the meeting is allowed.

According to convicts, rooms for long-term meetings lack the proper conditions. Sanitary situation is not sufficient, thus they refuse to exercise the right to have long-term meetings. The convicts have also proposed to create opportunities to organise the short-term meetings with their remotely residing relatives through video calls.

Relatives visiting Sevan penitentiary institution for a long-term meeting do not have an opportunity to get out for a walk, because there is no separate place for walk available.

It should be noted that in the territory of the mentioned penitentiary institution more spacious rooms for long lasting visits, as well as one child room have been constructed.

During 2016, the problem of the room for long-term visits in Yerevan-Kentron PI was not yet resolved.

In Abovian penitentiary institution, the convicts have expressed their dissatisfaction regarding the taxophones, mentioning that the cost for phone calls provided by the Armentel CJSC is expensive.

It was revealed that for more than 5 months, the penitentiary institution was provided with telephone connection from Crossnet in addition to the taxophones installed by Armentel CJSC. The convicts had mentioned that the Crossnet phone connection was cheaper than the one provided by Armentel CJSC (19 AMD per one minute of cell phone conversation and 4-5 AMD per landline).

At the women's' section the 2 Armentel taxophones are installed in the office of the staff, and the convicts interfere with the work of Administration, as they mentioned themselves.

As a result of monitoring in Hrazdan penitentiary institution it has been revealed that some persons detained there cannot call to the hotline of 1-16 of the HRD due to being socially vulnerable and having no possibility to buy a card. Though the Hrazdan PI administration had provided an opportunity to call on the HRD hotline number, it was not possible to call due to technical problems.

There was also a problem to call the HRD hot-line toll free number in Vardashen penitentiary institution.

With the view of resolving the above-mentioned problem, based on the HRD mediation, the RA Public Services Regulatory Committee has been informed that in the result of the undertaken operative work, the problem of impossibility to make free calls from taxophones placed in penitentiary institutions to the 1-16 toll free number of HRD hotline was resolved.

Meanwhile, currently it is not possible to call the Defender's Hot Line telephone number from all the taxophones of penitentiary institutions, which is conditioned by the old and new models of these taxophones.

At the time of the visit, it was not possible to call the Sevan penitentiary institution on the HRD hotline at two of the taxophones. During the visit it was not possible to call to the HRD hotline from both of the taxophones in Sevan penitentiary institution. Two taxophones operating in the penitentiary and the log-book of the persons who used those were examined. According to the records of the respective log-book only 28 calls had been made in the period of January-November 2016.

In Abovyan and Armavir penitentiary institutions, persons deprived of liberty have filed complaints about censorship of their correspondence (the letters are presented to the Administration without an envelope).

There were cases of non-provision of a short leave in Abovyan penitentiary institution. Persons deprived of liberty claimed that short leave was not even provided in case of the death of close relatives.

According to Article 12 of the RA Penitentiary Code, a convict shall have the right to communicate with the external world, including having correspondence, visitors, use the phone, literature and available mass media.

According to paragraph 1 of Article 92 of the RA Penitentiary Code, the administration of the correctional institution shall provide appropriate conditions to ensure the contact of the convict with his or her family and with the external world. For this purpose, short-term and long-term visit rooms, communication stations and possible conditions for the access to mass media shall be created in the correction institution.

The right to private and family life has also been reinforced in several international legal documents. *Thus, according to paragraph 1 of Article 8 of ECHR, everyone has the right to respect for his private and family life, his home and his correspondence.*

According to Rule 24.1 of European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

In 2016 also complaints have been received from persons deprived of liberty that due to being allocated to penitentiary institutions located far from the place where their close relatives were residing, and failure to be transferred from there to another penitentiary institution they have bene deprived of the opportunity to communicate with their close

relatives. The above-mentioned problem had been justified based on the absence of such a ground in Article 69 of the RA Penitentiary Code.

In particular, an applicant has mentioned in an application filed with the RA HRD, that she had applied to the RA Minister of Justice and the Allocation Committee functioning in the central body of the penitentiary department affiliate to the Ministry, with request to transfer her husband who was serving a punishment in the RA MoJ Armavir PI, to Goris PI.

The applicant has also mentioned that her husband was place in Armavir PI without taking into consideration that his family resides in Syunik marz, and that in such circumstances the family members will be deprived of the opportunity to visit the convict regularly.

In the light of the above, the HRD has decided to file a proposal on eliminating the violation of human rights and freedoms. As a result, the convict had been re-located to RA MoJ Goris Penitentiary institution.

According to Rule 17.1 of European Prison Rules, persons deprived of their liberty shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

The above-mentioned criteria have also been set out in the sub-paragraph 3 of paragraph 2 of Article 70 of the RA Penitentiary Code, according to which the aim of Regulation established in correctional institutions is to ensure the contact with family and the external world.

Besides, according to the legal positions of the ECHR, keeping persons deprived of their liberty in a far detention place is an interference with the exercise of rights guaranteed by Article 8. When expressing such a position, the ECHR has particularly taken into account the big distance of detention places from the places where the relatives of persons deprived of liberty reside, their geographic location, state of transport infrastructure, etc. (See Khodrokowski and Lebedev v Russia Judgement, applications N 11082/06 and 13772/05, paragraph 838, see also Vintman v the Ukraine, application N 28403/05, paragraph 79). Thus, it is an inseparable part of the right of persons deprived of their liberty in respect of their family life is the help of prison authorities to maintain contact with their close relatives (see Messina v. Italy (No. 2) judgment, application N 25498/94).

According to CPT Law, the contact with outer world is very important for persons deprived of liberty. First of all the detained person shall get an opportunity to maintain relations with one's family and close friends (See the on the CPT 2nd General Report on CPT's activities covering the period 1 January to 31 December 1991, paragraph 51).

There were also complaints that during the short visits to the Nubarashen penitentiary institution, persons deprived of their liberty were separated by a glass partition and communicated by internal telephone.

As a result of examinations it has been recorded that in the rooms for short-term visits, the glass partitions have been removed, and it is planned to renovate those, which would allow

ensuring better conditions for the visits. The issue of communicating through a glass separator continues to be unsolved in Armavir PI.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has mentioned in its report on visit to Austria in 2014 for the period covering September 22 through October 1 that meetings of persons deprived of liberty with their family members should as a rule be provided without physical separation. Meetings with partitions should be exclusion and be applied only in certain cases, when there is a security problem.

The case of Moiseyev v Russia examined by the ECHR also concerns the issue mentioned above, where the applicant had been separated from relatives with a glass partition during their visits and had communicated with them with internal phone. Moreover, the phone conversation was possible in the presence of warden. In this case, the European Court has found a violation of the right guaranteed by Article 8 of the Convention (see Moiseyev v Russia Judgement, October 9, 2008, complaint N 62936/00, paragraphs 80, 257-259).

During 2016 also complaints have been filed regarding the provision of short-term leave, conditioned by the fact that the legislation failed to take into consideration of the individual risk posed by a person and the short leave was connected only with the degree of gravity of the crime that the person committed.

Thus, according to paragraph 1 of Article 80 of the RA Penitentiary Code, convicts, with the exception of those sentenced for particularly dangerous recidivism or particularly grave crimes, may be granted short–term leaves in exceptional personal circumstances (such as the death or serious life-threatening disease of close relatives, or a natural disaster that has inflicted considerable material damage upon the convict or his or her family) or for the purpose of social rehabilitation.

A similar regulation is contained in paragraph 8 of Article 17 of the RA Law on Holding Detained or Arrested Persons, by stipulating that short term leave can be provided to detained persons, ***with the exception of those sentenced for particularly dangerous recidivism, in*** *case of death or serious life-threatening disease of close relatives, or a natural disaster that has inflicted considerable material damage upon the person or his or her family.*

It is noteworthy in this regard, that the CPT has repeatedly highlighted in its 2016 Report on Armenia, that a system under which the extent of a prisoner's contact with the outside world is determined as part of the sentence imposed (and by the regime under which he/she serves his/her sentence) is fundamentally flawed. (CPT Report based on the results of the visit to Armenia from 5 to 15 October 2015, paragraph 107).

In the case of Varnas v. Lithuania the ECHR has found a breach of the right of Varnas not to be discriminated when exercising his right to respect for family life (See the above-mentioned case judgement of July 9, 2013, application N 42615/06, paragraph 104). In this case, the Lithuanian authorities did not allow Varnas having long-term meetings with his

wife, when he was in the isolator, though these visits had been allowed to him in penitentiary institution, where he was serving a sentence immediately before being transferred to investigation isolator.

At the same time, restriction on meetings with wife posed on Thomas Varnas did by no means relate to the problem of ensuring security, and the provision of differentiated conditions for the visits did not have any justification. The refusal to grant the applicant a conjugal visit was explained by local authorities not only by theoretical security considerations, but equally on the lack of appropriate facilities in the investigation isolator, which has not been accepted as a justification by the European Court (See paragraph 121).

It is necessary to state that the right of private and family life of a person somehow deprived of liberty, as a condition to ensure the dignity and physical integrity of a person, suggests the obligation of the state to undertake such measures which are necessary to guarantee the exercise of the above mentioned right by a person deprived of liberty.

Respect for the right to private and family life is an essential safeguard for the re-socialization of a sentenced person. In order to ensure the re-socialization of persons deprived of their liberty, such conditions of serving the punishment are needed which would be sufficient for the convict not to lose the rules and skills he has acquired in the community before being punished. The punishment should contribute to the regulation of the life and work of convicts, strengthening family and social ties.

Some of the problems raised are conditioned by Legislative shortcomings, for the improvement of which the RA HRD staff has developed a draft law on making amendments and addenda to respective legal acts.

Thus, it is necessary to take measures to ensure the proper organization of the exercise of right of persons deprived of their liberty to communicate with the outside world:

- **Ensure that persons deprived of liberty have guaranteed conditions to use the taxophones freely and without additional obstacles, in line with the established order.**
- **Ensure an unimpeded opportunity to call on 1-16 HRD hot-line.**
- **Provide sufficient room conditions for short and long term visits to persons deprived of liberty (proper separation, sanitary and hygienic conditions, temperature, furnishing), and ensure an opportunity of walk for long-term visits.**
- **Exclude any case of subjecting the complaints and correspondence of persons deprived of liberty to censorship.**
- **Settle the problem of being allocated to penitentiary institutions far from the place of residence of close relatives on legislative level.**
- **To review the legislative barrier to provide short-term departure of certain group of detainees and convicts. .**
- **Ensure opportunities to provide long-term visits to the RA MoJ Yerevan-Kentron penitentiary institution.**

- **Create opportunity for organising the short-term meetings with close relatives residing in large distances or abroad through video calls.**

Lack of Transport Communication with RA MoJ Penitentiary Institutions

The RA HRD has received verbal and written complaints from persons who had come to visit detainees and convicts at the Armavir penitentiary institution that in the direction of Chobankara village of Armavir region, nearby which the penitentiary institution is operating, no public transportation route has been provided. The latters have also mentioned that they are obliged either to go by foot from Vagharshapat (Echmiadzin) – Margara highway through the road to Armavir PI for about 3.5 kilometers or to take a taxi. The situation is even worse during winter and summer months.

Taking into account the above-mentioned, HRD has sent an inquiry to RA Ministry of Justice, proposing to consider the issue of providing a special transportation means from Vagharshapat (Echmiadzin) – Margara highway to Armavir PI.

In response to the inquiry, the RA MoJ has provided information through a note of November 25, 2016 that the Penitentiary department has sent a note to the Ministry of Transportation, Communication and Information Technologies regarding the raised question, which in its turn has sent the above-mentioned note to consideration of the RA Armavir Regional Office.

In respect to this issue, the CPT has mentioned that in the cases, when a prison is constructed a distance away from all means of public transport, the Prisons and Probation Service should take responsibility for providing affordable transport to the prison on a regular basis. (See the CPT 2008 Report on the visit to Denmark from 11 to 20 February 2008, paragraph 63).

This international position is based on the concept of positive obligations of a state. In particular, according to this concept, the body responsible for holding a person at the place of deprivation of liberty is primarily responsible for the protection of that person's rights.

Together with the above-mentioned, according to paragraph 2 d of Article 10 of the RA Law on Automobile Transport, the RA authorised government body (…) shall ensure the development and implementation of road transport network communication, upgrade and harmonization strategy.

Thus, it is necessary to provide transport communication means in the direction of detention places that are difficult to access.

Working Conditions of the Employees of Penitentiary Institutions

The HRD has addressed the working conditions at penitentiary institutions also in the Annual Report on National Preventive Mechanism in 2015 [6] (see pages 392-394 of the annual report). The issues raised in the report remained relevant also in 2016.

Thus, the facilities of keeping detainees and convicts at Abovyan PI are separate from each other, and not all the representatives of the staff have the radio appliances or other communication means necessary to maintain communication with each other.

There are no separate toilets available for the servants on a 24-hour duty in the block for holding detainees in Abovyan PI.

A poor state was registered in the corridor of the first floor of Nubarashen PI: the walls, ceiling and floor have always been damp during visits, to ensure normal working conditions.

Improper working conditions have also been recorded in Sevan penitentiary institution, where the administrative building, and toilet in particular, were in need of repair. No canteen has been foreseen in the penitentiary institution, and there is also no food store or catering facility nearby.

There were also issues related to the accessibility of public transport facilities for the penitentiary institution. For example, during the visit made to Sevan penitentiary institution it has been revealed that the bus provided for official purposes had been under repair for a long time and was not being exploited.

Besides, the servants who reside far from Sevan penitentiary institution are not provided with residences situated close to the penitentiary institution. Such opportunity however is foreseen for the servants of Abovyan Penitentiary institution.

According to RA MoJ, a number of penitentiary institutions have been repaired, as a result of which the working conditions of penitentiary institutions have somewhat improved. Thus, repair and renovation works have been performed in the duty premises of Nubarashen penitentiary institution, and three offices were renovated. Renovation works have been carried out also in the administrative block of Prisoners' Hospital penitentiary institution. Two rooms for investigation activities and meetings with advocates have been reconstructed and painted in Hrazdan PI.

Rooms for rest of penitentiary institution servants in Sevan and Goris PIs have been renovated and painted, so were also the hall and checkpoint of Sevan penitentiary institution.

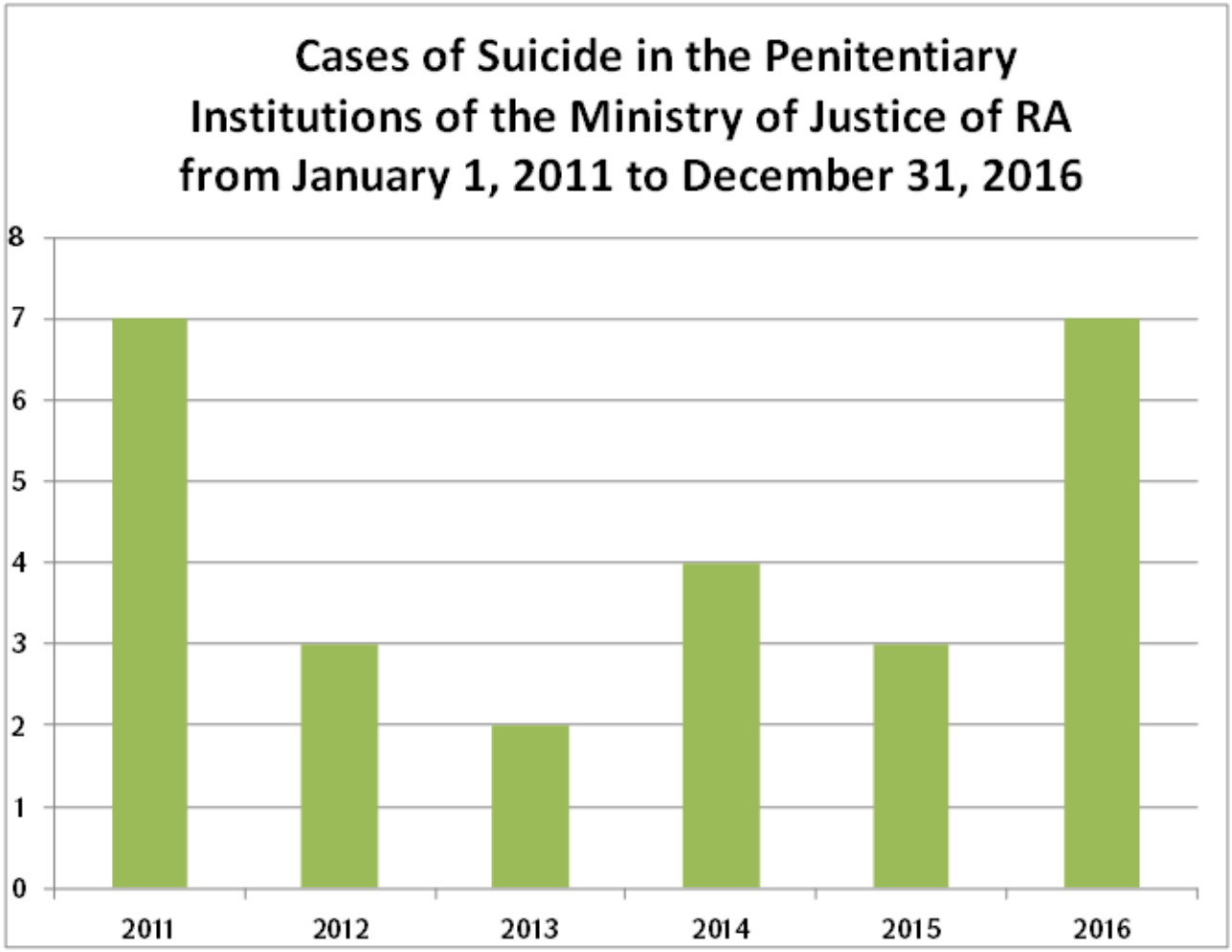
The toilet was reconstructed for the employees of Yerevan-Kentron penitentiary.

In order to solve these problems, it is necessary to improve the administrative buildings of RA MoJ penitentiary institutions. The penitentiary servants should be provided with adequate working rooms, indoor communications, a separate dining room and toilet facilities with adequate sanitary conditions. Particular attention should be paid to the availability of transport and provision of service housing if necessary.

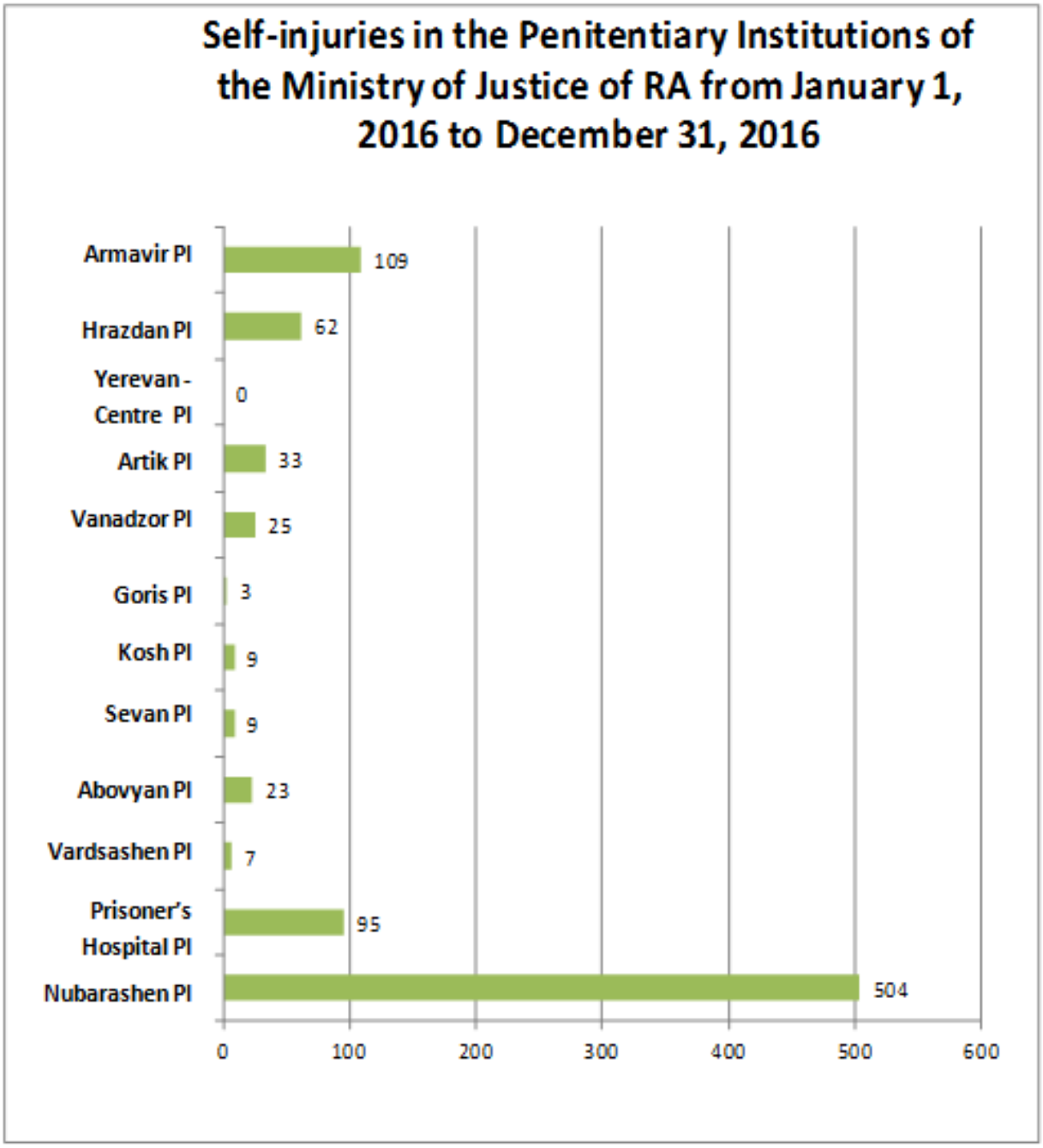
[6]See:http://www.ombuds.am/resources/ombudsman/uploads/files/publications/a42b07b145e69f9193cda108ef262d7c.pdf, as of 30.03.2017, pages 392-394.

Suicides and Self-Injuries: Preventive measures

According to statistics provided by RA MoJ, from January 1, 2011 to December 31, 2016, 26 cases of suicide were recorded (see graphic image below), of which 7 were recorded in 2016, among persons held in penitentiary institutions.



From January 1, 2016 to December 31, 2016, 879 cases of self-injuries were registered in penitentiary institutions (see graphic image below).



Being deeply concerned about the increase in suicide and self-injury in places of deprivation of liberty and attaching importance to the need to exclude them, discussion procedures were initiated on HRD own initiative, according to the norms of the RA Law on Human Rights Defender.[7] Proper written explanations were required from competent state bodies

Information was provided to HRD by the RA MoJ regarding the measures undertaken within the scope of RA MoJ authority for each of the suicide cases recorded in December 2015-January 2016 in Armavir PI, the revealed problems and the steps planned for their solution. It has been noted that criminal cases were initiated in penitentiary institutions on each case of suicide and preliminary investigations had been carried out.

[7] Was repealed on February 4, 2017.

Official inquiries have been instituted at the Armavir PI by the Order N. 1-L of the Head of the penitentiary service in connection with the suicide cases by persons deprived of their liberty registered in Armavir PI on January 4 and 6, 2016, on the ground of possible violations that could have been made by penitentiary servants while performing their duties. However the inquiries were suspended, on the ground of absence of proof that the servants had participated in disciplinary violations and because of the exhaustion of all the possibilities for obtaining new factual data.

According to RA MoJ, within the framework of the service investigation conducted at Armavir penitentiary institution, relevant instructions have been given to the Head of the PI to increase the number of inspecting staff within the staffing capacity of the institution, to increase the control in quarantine and punishment cells, as well as to increase the control near the cells of the isolated detainees and convicts, and to enhance (activate) the social and psychological work with the convicts.

According to the provided data, with regard to improving the effectiveness of psychological work with detainees and convicts, within the framework of reforms performed in penitentiary service, the RA MoJ PIs have been supplemented by 4 additional psychologist positions in 2015-2016, which also is important for prevention of suicides.

According to RA MoJ, self-injuries are made by the same persons. In particular, about 250 self-injuries in RA MoJ Nubarashen penitentiary institution have been made by only 2 persons, which, according to the latter's claim, are connected with the complaints about the process of investigation of criminal cases against them. Self-injuries were mainly seen on the right and left ankles, the abdomen, the neck and sometimes by nailing the feet to the floor.

Based on the legal positions of the European Court of Human Rights on the right to life, HRD deems it important to state that the State bears responsibility for the death of persons detained, convicted or otherwise being held under its jurisdiction. The competent state bodies are obliged to take all measures for a comprehensive, complete and objective investigation of the circumstances of the case.

In connection with the death of persons held in places of detention, including committing suicide, as well as self-injury or self-harm, the RA General Prosecutor's Office has informed that 57 cases of deaths were registered in 2016, 8 of which were suicides. Criminal cases have been instituted by 3 out of 49 cases of death, and by 5 out of 8 cases of suicide. Two of the criminal cases filed in connection with deaths were terminated due to the absence of a criminal case, and the preliminary investigation into one case still continues.

3 of the criminal cases filed for leading to suicide have been closed, and criminal proceedings initiated on 2 cases were suspended on the ground that the alleged person to be involved as the accused was unknown.

In connection with the prevention of suicide cases in penitentiary institutions, the RA Prosecutor General's Office noted, that there is no legal act on specific actions in that

direction. Consequently, one can conclude that the General Prosecutor's Office does not have a general suicide prevention programme, and measures are being taken only on specific cases.

In the context of the above, it should be noted, that in accordance with sub-paragraph 6 of paragraph 27 of the N. 59 Order of the Prosecutor General of the Republic of Armenia of 20 June 2008, on Establishing the Rules of Procedure of the Prosecutor's Office of the Republic of Armenia, the Office of the Prosecutor General, within the scope of control over the lawfulness of the application of punishments and other enforcement measures and within the limits of exercising the powers vested on it by law (…) shall prepare draft methodological recommendations on the application of punishments and other compulsory measures. The above-mentioned regulation provides wide access to the General Prosecutor's Office to initiate methodological programs containing clear instructions on suicide and self-injury cases, which would lead to discussions about the circumstances that contribute to suicides or self-injuries, and would contain clear measures to eliminate them.

Despite of the measures taken by competent authorities to prevent suicides, as well as self-injuries or self-harm, it should be noted, that those are not sufficient. Concrete steps should be undertaken to implement practical frameworks in line with international, including CPT standards.

Particularly, according to the CPT criteria, passing a medical examination on admission to places of detention and work carried out in quarantine department for adapting to the conditions of the correctional facility must play an important role to prevent suicides. A regular medical examination may reveal some of those individuals deprived of their liberty who are subject to this risk, and partly ease the feeling of anxiety that all new entrants have when they access the places of detention.

At the same time, it should also be noted that before and after the trial, as well as in the pre-release period and increase risk of suicides is observed.

Suicide risk groups should be under special control as long as it is needed. In addition, means for deprivation of life (such as cell window bars, broken glass, belts, ties, etc.) should not be accessible to such persons.

The role of administrations of detention facilities is very big in terms of ensuring such measures. The administration should be familiar with the signs of danger of suicide, and this implies preliminary training.

In this respect it should be noted that the representatives of the HRD staff have invited to hold trainings for penitentiary servants in the RA MoJ Legal Education and Rehabilitation Programme Implementation Centre SNCO, which will continue also in 2017. Within the framework of the trainings, among other issues, specifics of conditions for detention of people deprived of liberty that are on the edge, including those keen to suicide or self-injury, and urgent actions for implementation are being discussed.

In this regard, it is necessary to disclose the persons deprived of their liberty who belong to suicide and self-harm risk group, ensure special control over them, ensure that means of deprivation of life (cell window bars, broken glass, belts, ties, etc..) are not accessible for them, implement preliminary training of the administration on revealing the signs of suicide risk and on the necessary means to be undertaken in this regard.

Attitude towards Persons Deprived of their Liberty

Complaints made by persons deprived of liberty during the visits to penitentiary institutions about ill treatment of the staff of penitentiary institutions have significantly decreased as compared to the former years.

However, complaints have been filed with the RA HRD both in writing and also during the monitoring visits made to detention places, about violence or threats towards persons deprived of their liberty.

According to one of the filed complaints, some persons kept in Nubarashen penitentiary institution have been subjected to violence by the administration. Based on the filed report, the Preventive Mechanism Staff visited the Nubarashen penitentiary institution the very same day.

The detainees, in particular, reported that they had been beaten by the staff of the penitentiary as a result of disagreement with the supervisor, and thus all had received various bodily injuries.

The staff of the penitentiary institution explained the use of physical force by the fact that the convicts displayed aggressive behaviour, did not obey their legitimate demands, cursed and disrupted the normal course of service.

In the result of the information obtained through the visit and examination of the materials, the HRD has sent respective letters to the RA General Prosecutor's Office, RA Special Investigation Service, and the Ministry of Justice of the Republic of Armenia.

In relation to the fact of exercising physical force by the employees of Nubarashen PI towards the convicts, the same day materials had been prepared and a criminal case had been instituted according to paragraph 1 of Article 319 of RA Criminal Code by the RA Investigation Committee, according to paragraph 2 of Article 309 by, the RA Special Investigative Service.

In another case, one of persons deprived of liberty in Armavir PI has informed the RA HRD by filing an application, as well as during a private conversation at the penitentiary institution with the Preventive Mechanism staff members, that he had been taken to the relevant police department of the RA Police, where they made him testify under violence, threat and through illegal actions. The person had added that during the period of being kept in the respective department, he had regularly been beaten, cursed, humiliated and they also

threatened to treat his family members in the same way. The applicant claimed that he was not allowed to smoke, to use the toilet, and was not provided with water and food.

Based on the note from HRD, the RA Special Investigation Service has prepared materials, based on which a decision was made to institute a criminal case under paragraph 2 of Article 309 of the RA Criminal Code.

According to information received from the RA Special Investigation Service a decision was made in regard with the instituted case on the grounds of sub-paragraph 2 of paragraph 1 of Article 35 of the RA Criminal Code (absence of corpus delicti in the act) not to perform criminal prosecution and close the criminal case.

Preventive mechanism staff has visited Nubarashen PI at the alert of Helsinki Association Human Rights NGO, and had a private conversation with a person deprived of liberty in this PI, who had received a bodily injury as a result of an incident at the penitentiary institution according to the alert.

During a private conversation, it was found out that the person deprived of liberty was not provided with the necessary medicines. There started a quarrel in relation to the above-mentioned with the employee of the penitentiary institution, and in the result of scuffle, the person deprived of liberty fell down and got a bodily injury.

During the visit, the person deprived of liberty was not yet provided with medical assistance, and the latter's X-ray examination was organized by the intervention of the Prevention Mechanism staff members.

The information obtained by HRD in connection with the incident was transferred to the RA Special Investigative Service, which had decided to institute a case based on the Article 118 of the RA Criminal Code. The person deprived of liberty was recognized as a victim and interrogated by a lawyer. The preliminary investigation of the criminal case is not over yet.

In accordance with Article 6 (b) of Decree N 999-Ա of the RA Government on the Approval of the Disciplinary Regulations of the RA MoJ Penitentiary Service of July 13, 2006, Discipline obliges each penitentiary servant to carry out one's official duties skilfully and courageously, treat the convicts and detainees in human manner and not humiliate their dignity.

According to paragraph 1 of instruction 3, 2014, of the RA MoJ Penitentiary Department Head is has been assigned to establish permanent control over the staff discipline and their compliance with the regulations.

In the above-mentioned context it should be noted that the state shall bear a positive obligation to conduct an effective and impartial investigation into the exercise of torture and other forms of ill-treatment. It is necessary to achieve, by the principle of inevitability of responsibility, that each case of ill treatment would be disclosed and persons performing it would be hold responsible. Only this principle is able to prevent any manifestation of ill-treatment.

Hindering the Functioning of Preventive Mechanism

It is noteworthy, that throughout 2016 the Preventive Mechanism had actively and efficiently cooperated with the Penitentiary Department of RA MoJ, Penitentiary Department, and the representatives of administrations of penitentiary institutions.

They have been willing to provide unhindered access to penitentiary institutions, possibilities to organise private conversations, provide the necessary materials, documents and information, and supporting the work of the preventive mechanism in other ways.

As a result of the dialogue on separate issues, as well as working discussions, a number of issues have been raised and the ways of their joint solution were highlighted.

In the course of 2016, during the visits to RA MoJ penitentiary institutions complaints have been received that the employees of penitentiary institution have exerted threats towards persons deprived of liberty for having applied to HRD or having provided information to the HRD representatives.

According to Article 52 of the RA Constitution, anyone has the right to receive support from HRD in case of violation of one's rights and freedoms set out by the Constitution and the laws by state and local self-government bodies and officials, and in cases stipulated by the Law on Human Rights Defender, also in cases of their violation by organisations.

According to sub-paragraph 5 of paragraph 1 of Article 8 of the RA Law on Human Rights Defender,[8] complaining to the Defender or interference by the Defender shall not lead to the enforcement of criminal, administrative or other punishment against the complainant or any discrimination.

According to paragraph 5 of Article 15 of the RA Penitentiary Code, any form of persecution against a convict in case of lodging proposals, requests and complaints on violations of his or her rights and lawful interests, shall be prohibited. Persons who carry out such persecution shall bear a liability established by law.

Thus, any interference with the exercise of person's constitutional right to submit an application or complaint to the RA HRD or the representative thereof is not acceptable. They jeopardize the implementation of the constitutional mission by HRD and are subject to criminal liability.

Persecution of persons for having applied to HRD is particularly subject to criticism.

In this regard, it is important to note the instruction of the Minister of Justice on August 29, 2016, based on the Defender's note, by which it was assigned to the Head of the RA MoJ Penitentiary Department to perform strict supervision in order to exclude cases when the employees of the RA MoJ penitentiary institutions exercise pressure or threats against persons who have applied to the RA HRD or his representatives.

[8] Was repealed on February 4, 2017.

In 2016, during the visits made to RA MoJ penitentiary institutions, several cases of interference with the work of Preventive Mechanism staff were recorded.

For example, during the visits to penitentiary institutions, instead of providing respective copies from personal files of detained persons, in particular the copies of forbidding the visits and telephone calls by the body conducting the proceedings, it has been proposed to study the content of those documents on the spot, and in another case, it was required to submit a written request in order to get the copies of these documents.

In connection with the mentioned problem, the RA MoJ Penitentiary Department Head issued a respective order and an internal investigation was conducted. In the result of this investigation, the Head of the penitentiary department had been strictly warned and instructed to exclude the cases of not providing the materials and documents required by RA HRD in the manner prescribed by RA Legislation.

In another case, the work of the Preventing Mechanism was hindered the penitentiary institution because of the failure to hand in the camera.

According to Article 10 (2) of the Constitutional Law, any hindrance of the exercise of HRD powers vested on him by the Constitution of the Republic of Armenia and the above-mentioned law, as well as threatening or insulting the Defender, or a disrespectful treatment towards him shall result in criminal liability.

Article 332.1 of the Criminal Code of the Republic of Armenia prescribes liability for hindering the exercise of HRD powers as stipulated by the law, including interfering with its activities in any way, preventing the entry of HRD or a competent person as authorised by him to any place.

It is necessary to properly inform the representatives of the administrations of RA MoJ penitentiary institutions about the duty of state bodies to support the activity of HRD in accordance with the Constitutional Law, as well as about the liability prescribed for hindering the activities of HRD.

CHAPTER 3. PSYCHIATRIC INSTITUTIONS

Article 28 of the Constitutional Law has set out the scope of places of deprivation of liberty in order to ensure the unimpeded exercise of the HRD of its power to visit the places of deprivation of liberty, by pointing out also the psychiatric institutions.

Experience shows that monitoring visits to psychiatric institutions play a crucial role in ensuring the rights of people with mental health problems, as well as in preventing potential abuses. The role of monitoring in such institutions has also been emphasized in various international treaties (Optional Protocol, European Convention for the Prevention of Torture, etc.).

It is necessary to emphasise the willingness of psychiatric institutions to cooperate and their support to the work of the Preventive Mechanism, with a view of ensuring the rights of people with mental health problems.

Studies conducted in 2016, as well as joint work with the Ministry of Health, have revealed a number of issues that, in particular lead to the following picture.

Shortage of Staff

In terms of proper assurance of human rights in institutions that implement psychiatric help and service the problem of filling the vacant positions remains not fully resolved. At the same time there is a lack of relevant criteria of the ratio between patients and service personnel.

Thus, in Sevan Psychiatric Hospital CJSC, where the number of medical and service personnel is 185 employees according to staffing, the number of vacancies is 10, out of which 7 are vacant positions for psychiatrists.

Up to 70 people with mental health problems are kept in each department. There are 3 healthcare providers in the department at night. The intended staff is insufficient to provide individual approach to each person, especially when there are persons with beds or mobility restrictions in the departments. In this regard, it should be noted that 4 workers in the overloaded departments are not adequate to provide proper supervision and care for persons with mental health problems.

At the same time, vacant positions are also available in other psychiatric institutions. Thus, the number of planned medical and service personnel in Nubarashen Psychiatric Centre CJSC is 285, out of which 9 are vacant, in Avan Mental Health Centre 19 positions out of 109 are vacant, and in Lori Regional Psycho-Neurological Dispensary CJSC there are 2 vacant positions out of 20 planned staff.

Thus, in order to ensure proper control and care towards persons who have mental problems, it is necessary to fill vacant positions in psychiatric institutions, adding the number of healthcare workers at the same time.

Detention Conditions: Overcrowding

In the course of 2016, improper detention conditions have been revealed in psychiatric institutions of the RA Ministry of Health, including overcrowding, poor sanitary-hygienic situation, etc.

Thus, for example, the 4th, 5th and 6th departments of Sevan Psychiatric Hospital CJSC were overcrowded during the monitoring. It has been recorded that the surfaces of the rooms do not match the number of beds and no private space is provided for people with mental health problems.

Thus, in the 4th department for men, where during the visit 52 persons with mental health were getting treatment and care at the moment of the visit, all the 4 wards were overcrowded: 11 beds were placed in an area of 30-36 square meters, 17 beds were place in an area of 60 square meters, and 15 beds in 55 square meters. The 7th special type department of Nubarashen Psychiatric Centre CJSC and "Syunik Regional Neurological Psychiatric Dispensary" CJSC were also overcrowded.

In the above-mentioned context it should be noted, that in line with CPT criteria, the living space per patient in the residential facilities of psychiatric institutions cannot be less than 6 square meters (See: CPT Report on the Visit to the Republic of Macedonia in 2014, paragraph 145).

The RA acting legislation does not establish criteria for the size of living space allocated per person in psychiatric care and service institutions. Decree No 1911- Ն of the Government of the Republic of Armenia of November 2, 2006 on approving the Healthcare System Optimization Programs of the Regions of the Republic of Armenia has established the number of beds in the institutions providing psychiatric care and services in the RA regions, which however does not include Sevan Psychiatric Hospital CJSC. Meanwhile, no such regulations exist in regards to psychiatric institutions of the city of Yerevan.

Thus, the state should undertake steps to ensure private space for persons with mental health problems held in psychiatric institutions in line with national and international standards. The problem should be considered in terms of providing each person with mental health problems with the minimum living space (six square meters) and private space in line with human dignity.

Necessary living conditions

All psychiatric institutions mainly need repair, proper furnishing, upgrading to necessary household items, and proper heating regime.

During the visit to Sevan Psychiatric Hospital CJSC, the wards did not have doors, and the floor was cemented (department 4) or tiled (department 5). Corridors (4th and 5th departments), serving at the same time as a recreation and entertainment rooms, also had tables and chairs installed there for having meals, and no separate dining room was provided.

There were no personal cabinets in the wards of Sevan Psychiatric Hospital CJSC. Personal belongings of people with mental health problems have had been kept in the room of the housekeeping nurse. As a result of their study it has been found that in most cases those were not separated from one another and were without any sign. There were cabinets only in 2 wards of the 6th department, at the request of 2 different persons with mental problems, and one of those had been locked. Cabinets were not also available in Gyumri Mental Health Centre of Shirak Region because of insufficient financial conditions. Armash Health Centre

after Academician A. Hayriyan CJSC and Syunik Regional Neurological Psychiatric Dispensary "CJSC are partially provided with private area and cabinets.

In Sevan Psychiatric Hospital CJSC the bedding in the department wards was dirty in some cases and the mattresses were warn-out and thin, sometimes two or three mattresses were placed simultaneously.

In the 5th department (one for women), in different wards there was a water dripping directly on the beds, and the 2 corner beds were completely wet. In one of the wards, the beds had been placed next to each other, and there was no private space provided.

In the 4th department, cloths of persons with disabilities were worn out. Though representatives of the medical staff have mentioned that its them who take care of these persons, however some of persons with mental problems have claimed that they are helping the persons with disabilities to use the toilet, eat and satisfy other living needs.

In the 4th department there were 9 persons who had night enuresis, however 3 diapers were available for them in the department. According to the Register of Medical Supplies, for the last time, the 4th department had been provided with 20 pieces of diapers in October. It is necessary for persons with mental health problems to be provided with the required number of diapers and / or with polyethylene mattresses.

It should be noted that such disadvantaged living conditions can hinder effective treatment.

A bucket of water was provided for drinking the medication (despite of the fact that there was water in the toilet), the disposable cups have been insufficient and have been used multiple times without complying with hygiene rules.

At the time of the visit to the Sevan Psychiatric Hospital CJSC, temperature was 18˚C in the wards, and persons with mental health problems were walking in winter clothes and with long or semi-long boots.

According to explanations provided by the Ministry of Health, partial renovation works had been implemented in the Sevan Psychiatric Hospital CJSC. Departments 1-8, the workshop, kitchen and reception, the toilet in the yard and the area of the institution had been improved; however there is still a need for large-scale renovation works, particularly in the washing facility. In 2016 the sewerage system was repaired in Nubarashen Psychiatric Centre CJSC and the roof, water pipes and the heating system (partially) were renovated in Nork Psychiatric Centre CJSC. In Avan Mental Health Centre CJSC repairs of the roof, the external wall of the main block, the reception entrance, entrance to the outpatient department, psychologist's office, the hall, doctors office, the internal network of hot and cold water supply to the main block and the sewerage, renovation of the elevator machine room and local repair of the roof cover have been made. An X-ray cabinet has been repaired and an art, musical and sports rehabilitation salon (centre) has been set up in the Syunik Regional Neuro-Psychiatric Dispensary.

Partial cosmetic renovation was carried out in Gyumri Mental Health Centre of Shirak region. Hospital corridor, one ward, the reception floor were renovated in Lori Regional Psycho-Neurological Dispensary CJSC, and the windows on the second floor were replaced by European ones. 2 wards were renovated and 6 European windows were installed in Armash Health Centre after Academician A. Hayriyan CJSC.

Thus, in order to promote effective treatment of people with mental health problems, it is necessary to provide them with favourable living conditions, including:

- **Reduce the population of bedrooms;**
- **Organise renovation and improvement works with a view of ensuring good conditions in the wards, including the renovation of the roof of the 5th department of Sevan Psychiatric Hospital CJSC;**
- **Provide separate canteens in the departments;**
- **Provide to persons with mental health problems a space where then can lock their belongings;**
- **Undertake steps to provide polyethylene mattresses to those who suffer from night enuresis, and provide sufficient number of diapers to the Departments;**
- **Provide persons with mental health problems with clean and proper bedding and cloths;**
- **Ensure the right of persons with mental health problems to relax – sleep, by switching off the lights in the wards during the night hours;**
- **Exclude the use of disposable cups for many times and or provide individual cups;**
- **Ensure thermal regime in the departments;**
- **Consider the needs of elderly people and (or) needs of persons with disabilities, and organise the care, including personal hygiene, of persons with mental health problems in a proper way.**

<u>Organisation of Laundry and Shower (Bath)</u>

Problems have been revealed in psychiatric institutions connected with the organisation of showers/baths, in particular in Sevan Psychiatric Hospital CJSC the conditions of the bathroom were not sufficient at the time of the visit, there were no wardrobes in the cloakroom, the walls had been mouldy, the floor from concrete, the windows were old, and the plaster on the walls off. The building for organising showers and baths was in need of capital repair. Showers were organised once per 10 days. In this connection it is necessary to highlight that necessary sanitary conditions, including shower opportunities, should be ensured for all the persons with mental problems, without any restriction.

There were also problems connected with the proper organization of laundry. For example, the laundry house of Sevan Psychiatric Hospital CJSC was repaired and equipped with washing machines, dryers and ironing equipment. However, clothes, including the lingerie, were washed jointly, without ensuring their proper disinfection.

Thus, it is necessary:

- **To repair the bathroom building of Sevan Psychiatric Hospital CJSC.**
- **To provide persons with mental health problems in all psychiatric institutions an opportunity to have a bath without any restriction.**
- **Arrange in the laundry proper separation and disinfection of clothes, particularly of lingerie, and set a procedure for laundry organisation if needed.**

Freedom of Movement

In all the monitored departments of Sevan Psychiatric Hospital CJSC persons with mental health problems were in the corridors. In 4th and 6th departments several severely ill patients were in their wards. As claimed by persons with mental health problems, except for those with severe illness, all the others are forbidden to stay in the wards during daylight hours, to use beds, which limits their freedom of movement in the departments, as well as their ability to dispose their private space.

In the monitored departments, there were no ramps for persons with disabilities and those moving by wheelchairs. Toilets were mainly of Asian type, not adapted to persons with mobility restrictions and in need of repair.

Lack of proper facilities and ramps in psychiatric institutions for the access to toilets impedes with the free movement and well-being of persons with mental health problems.

According to the RA Ministry of Health, in the 1st, 2nd and 8th departments of Sevan Psychiatric Hospital CJSC, an adapted toilet with a toilet bowl and washing facility are installed. In Avan Mental Health Centre CJSC, persons with disabilities have adapted access only to the reception for going in and out. The Lori Regional Psycho-Neurological Dispensary CJSC is partially adapted for free movement and use of toilets. In Nork Psychiatric Centre CJSC and Avan Mental Health Centre CJSC, ramps are available only in the reception. There are ramps in the Lori Regional Psycho-Neurological Dispensary CJSC and Armash Health Centre after Academician A. Hayriyan CJSC.

Thus, it is necessary:

- **To provide opportunity to persons with mental problems kept in psychiatric institutions to dispose their private are by their will and feely move in the departments;**
- **Build ramps, and proper facilities for the use of toilets in psychiatric institutions to ensure the free movement and well-being of persons with mobility problems.**

Outdoor Walk

In the result of monitoring, problems regarding the organisation of outdoor walk for persons with mental health problems have been revealed.

Thus, in Sevan Psychiatric Hospital CJSC, persons with mental health problems mainly do not benefit from the right to outdoor walk during winter months. The medical staff forbids

them to get out to the walking yard, due to cold weather conditions, and this approach violates *the requirements of sub-paragraph 15 of paragraph 3 of Article 6 of the RA Law on Psychiatric Assistance, according to which persons being treated in psychiatric organisations have a right to rest, including open air walk.*

It is therefore necessary to ensure that all persons with mental problems have access to a day-to-day outdoor walk in accordance with the law.

Communication with the Outside World

During 2016, problems have been revealed in RA MoH Psychiatric Institutions regarding the insurance of communication with the outside world.

Many of persons with mental health problems live in a hospital for long years and do not maintain contacts with relatives, the others are just abandoned, and the social ties are broken. In some psychiatric hospitals, no positions for social workers are foreseen.

In particular, a part of persons with mental health problems being treated and cared in Sevan Psychiatric Hospital CJSC have not been aware about the right to make calls, and the others have claimed that they can make calls only once per month up to one minute duration.

With the aim to restore social contacts, it is necessary to ensure in psychiatric institutions positions for social workers, and also the exercise of the right to making calls as necessary.

Restraint Measures

According to Administration of Sevan Psychiatric Hospital CJSC, only medication means are being used to calm down persons with mental health problems, however there is no special register maintained for that persons, due to which it is difficult to assess the frequency and duration of application of those medications (as calming down measures), the consent of the person and other data. According to claims of persons with mental health problems, physical restraint measures are applied against persons with mental health problems before the injection of medication, and sometimes also persons with mental health problems take part in the exercise of physical restraint.

It should be noted that in case of medication restraint measures, it is necessary to maintain a register, by recording the circumstances mentioned above. Moreover, in case of application of physical means, persons having mental health problems should be never prescribed medications, except for the cases, when failure to take a medication can lead to serious consequences threatening their health.

In this regard, the RA MoH has provided a clarification that in order to ensure the implementation of recommendations of the 2016 CPT Report on CPT visit to Armenia from October 5 to 15, by the order N 2636-U. of the RA Minister of Health of August 23, 2016, the procedure for application of physical restraint, isolation and calming methods towards persons with mental disorders in organisations providing psychiatric medical assistance and services

have been approved, and provided to the directors of organisations providing psychiatric medical assistance and services as a guideline.

Thus, it is necessary to establish a procedure for application of medication restraint measures in psychiatric institutions and maintain a special register to record them.

Recording of Injuries

In 2016, issues regarding the recording of injuries in psychiatric institutions and the procedures for notification of law enforcement bodies have been raised.

According to clarifications of the RA MoH, in all the cases of getting injury in psychiatric institutions or being accepted to these institutions with injuries, the organisations providing psychiatric assistance and services make a respective record in a special register, in the health files, and immediately inform the RA Territorial Police Department.

In the result of monitoring, from the study of registers maintained in the departments of Sevan Psychiatric Hospital CJSC, as well the records on reported injuries and deaths to the Police it has been revealed that the Police is being informed only about those cases, when the person who has got an injury, is transferred to another institution of health protection bodies, or when there is a registered death. There is no legal procedure established to report to law enforcement bodies about the injuries got in psychiatric hospitals, which is the reason for differentiated approach.

In this respect, it is necessary to develop a procedure on informing law enforcement bodies about the recorded injuries in psychiatric institutions.

Access to Specialised Medical Services

The issues of organising specialised medical consultancy in institutions providing psychiatric assistance and services, including the provision of access to dental services, as well as to proper examination and necessary medical care with other institutions of health care bodies are still problematic.

According to RA MoH provided information, for institutions providing psychiatric assistance and services, specialised medical consultancy is provided in the territorial health care institutions operating in their location, on contractual basis. In addition specialised doctors – neurologist, therapist, dentists, etc.- work in some psychiatric institutions. In particular, there are a neurologist, therapist and dentist in Nubarashen Psychiatric Centre CJSC a neurologist, therapist, epidemiologist and functional diagnosis specialist in Avan Mental Health Centre CJSC, a neurologist and therapist in Syunik Regional Neuro-Psychological Dispensary, and a therapist, surgeon, accoucheur –gynaecologist and a sonographer in Sevan Psychiatric Hospital CJSC.

During the monitoring in Sevan Psychiatric Hospital CJSC it has been recorded that nearly all the persons with mental health problems have also dental problems, namely have partial or

full adent, a need for treatment of teeth or gums, prosthesis, some of them also need an oculist, dermatologist or other specialised consultation.

Thus, it is necessary to develop mechanisms and ensure that persons with mental health problems have access to specialized medical, including dental services.

Screening Tests

Starting January 1, 2015, screening of blood sugar levels, blood glucose detection, cervical cancer prevention (POP) tests were launched all over Armenia within a project financed by the World Bank. However persons with mental health problems who were passing a long term treatment or were cared for in psychiatric institutions, had not undergone screening tests throughout 2016, while those are aimed at early determination and prevention of diseases.

Thus, it is necessary to develop mechanisms for potential screening examinations launched in the Republic of Armenia for persons with mental health problems.

Issue of Provision with Personal Identification Documents

In psychiatric institutions, some of the persons with mental health problems do not have passports, which hinder the process of medical and social expertise or organisation of retirement when reaching retirement age.

Thus, the efforts of Sevan Psychiatric Hospital CJSC Administration regarding the receipt of passports were ineffective in some cases, due to lack of personal data and registration. In response to mediation of the HRD, the RA Police has provided information, that already there have been measures undertaken to provide 2 persons with mental health problems with passports, and the for the registration and provision of passports to the remaining 17 persons additional information was needed.

The number of persons held in psychiatric institution who lack personal identification documents should be revealed and persistence should be displayed in terms of the process of providing them with passports.

Access to Urban Transport

Some of the psychiatric institutions are located in the areas adjacent to residential zones, in the result of which the urban transportation means are not accessible.

Thus, there is no accessible urban transportation means for Sevan Psychiatric Hospital, and in order to reach this institution from the city of Sevan, one should walk for 2 kilometres on foot or use the services of taxies driving to the neighbouring village. In this regard, the HRD has sent a respective note to the RA Ministry of Transportation, Communication and ICT, as a result of which and by the decision of Sevan Major a new schedule for Sevan community

inter-town micro-bus route has been established, which includes also the servicing of Sevan psychiatric hospital.

Opportunity to File Complaints

As a result of monitoring, issues were revealed in connection with the opportunities for persons with mental health problems to file complaints.

Particularly, applications and complaints in Sevan Psychiatric Hospital CJSC can only be delivered verbally through staff. As a result of monitoring is was recorded that there were no application-compliant boxes in any department.

Thus, persons with mental problems are not provided with an opportunity to confidentially file complaints.

It is also evidenced by the information provided by the RA Ministry of Health that the Ministry has not received any complaints from persons with mental health problems in the psychiatric institutions during 2016.

It should be noted, that the paragraphs 112-138 of the CPT Report on CPT visit to Armenia in October 5-15, have also addressed the above-mentioned problems persisting in psychiatric institutions.

CHAPTER 4. RA POLICE DETENTION CENTRES

During 2016, the RA Police has actively cooperated with the Preventive Mechanism, in particular has provided an unimpeded access to RA police stations and police detention centres, has supported to organisation of private conversations with persons kept there, has provided the necessary materials, documents and information and has otherwise assisted the work of the Preventive Mechanism.

In September of 2016, visits have been made to RA Police Syunik Regional Department's Kapan, Goris, Meghri, Sisian divisions and the RA Police Vayots Dzor Regional Department's Vayk and Yeghegnadzor divisions and places for holding arrested persons (hereinafter also PHAPs): Besides in 2016 regular visits were made to several other RA places of detention.

During the visits conditions of detention of persons deprived of their liberty and the situation of their human rights situation were studied, in the result of which some problems have been revealed. In particular, there were recorded issues regarding the contact of persons deprived of liberty with the external world, including the visits with the glass partition and special phone connection, detention conditions, material and living conditions, bath and shower opportunities, proper walk, as well as non-sufficient special transportation means for transfer of arrested or detained persons.

Problems Connected with the Visits with Glass Partition and Special Internal Telephone System

In private conversations held during the visit persons deprived of their liberty have expressed their dissatisfaction in connection with the provision of visits with glass partitions (so called closed visits). Visits in such conditions exclude physical contact between the person deprived of liberty and the visitor.

Addressing the procedure of closed visits, CPT has underlined that those are organise din such rooms (cells) where a partition excluding physical contact is present. For this very reason such visits suggest exclusively oral communication through the small holes available on the partition or through a special telephone connection.

It is noteworthy, that the research of *legal positions coined by CPT in relation to such visits state that the closed visits should be allowed only in exceptional cases and must be based on an individual assessment of the risk which prisoners may present. In this case the Administration of the detention place shall implement an individual risk assessment of the behaviour of a person deprived of liberty (See the CPT Report on the CPT visit to Lithuania on April 21-30, 2008, paragraph 88; CPT Report on the CPT visit to Greece on January 20-27, 2011, paragraph 78).*

The European Court of Human Rights has found a violation of the right guaranteed by Article 8 of the European Convention on Human Rights in connection with the

communication with relatives through a glass partition and on internal telephone system (See: Moiseev v Russia, October 9, 2008, Judgement, Application N 62936/00, paragraphs 80, 257-259).

There have already been taken measures in the RA MoJ penitentiary institutions with the aim of improving the rooms for visits, which should be also implemented in all the RA Police PHAPs.

Based on the above mentioned, the RA Police was recommended to transform the meeting rooms, dismantle the glass partition, to ensure the direct human contact between visitors and persons deprived of their liberty.

In the light of the above, the RA Police has informed, that based on security considerations, contact between the person deprived of liberty and those who pay a visit is being restricted with the aim to prevent the unnoticed transfer of unauthorised (forbidden) objects and to avoid the respective consequences.

In the light of the above-mentioned international standards, this argument can be deemed as reasonable only in exceptional cases, through the individual risk assessment of the behaviour of a specific person deprived of one's liberty.

Thus, it is necessary that the persons deprived of liberty in PHAPs are provided with sufficient conditions of rooms foreseen for visits, including the reform of the rooms for visits for the provision of a direct human contact between the visitors and the persons deprived of liberty by dismantling the gal's partitions.

Problems Related to Material Supplies and Bath Organisation

During the visit of the Preventive Mechanism to Sisian Detention Facility there were recorded cases when persons deprived of their liberty were provided with expired toothpaste, used toothbrush and soap.

Besides, it has been revealed from the study of registers on getting out from the cells, that the arrested and detained persons exercise their right to bath and shower only in the detention place of Kapan Division.

It should also be noted that posters about the rights of persons deprived of their liberty are posted on the visible part of the cells in all the places detention, and those also include the possibility for taking a bath (*According to the paragraph 28 of the RA Government Decree N 574-ն of June 5, 2008, on approving the internal regulation of places of detention functioning within the RA Police System, persons held in places of detention shall be provided with hot water and up to 15 minute shower opportunity for the sake of personal hygiene).*

Under such circumstances, a question arises as to why these people do not enjoy the opportunity of bathing.

Basing on the above mentioned, the RA Police was asked to clarify the reasons for the situation and take effective steps towards them.

In connection with the aforementioned, the RA Police has clarified that all the PHAPs affiliate to the RA Police sub-divisions are provided with hot water, however the detained persons are often constrained and do not wish to have showers or baths, despite of being informed about their right. All the PHAPs have been provided with new items necessary for hygiene, which are being provided to persons when being accepted to the PHAPs.

Despite of the above mentioned justifications, in order to secure the right to showers, it is necessary to properly inform persons deprived of their liberty in PHAPs about the opportunity of bath and or shower and simultaneously recording each time in the register of getting out of the cells each time when persons deprived of liberty use the opportunity to shower. It is also necessary to exclude cases of providing persons deprived of liberty with expired personal hygiene items to persons deprived of liberty kept in PHAPS.

Problems Connected with Detention Conditions

During the visits to Goris detention facility of the RA Police Syunik Regional Department and Yeghegnadzor detention facility of the RA Police Vayots Dzor Regional Department, problems connected with the conditions of cells have been recorded. In particular, the cell walls have had uneven surface, the lighting has been non-sufficient for reading and there have been problems related to ventilation. Such conditions may raise aggressive behaviour and tension among persons deprived of liberty.

Along with the aforementioned it has been recorded that cells planned for double occupation had one chair, and in such situation a person is deprived of the opportunity to sit during the meal time. During one of the visits a detained person has complained that there was no table in the cell. The HRD representative have raised this issue on the spot, and the issue was solved *(Detention Facility of the RA Police Yerevan Department).*

Cells in some of detention places have not been provided with call buttons, thus persons deprived of liberty were obliged to loudly call out the names of the administration representatives, or call them through striking the door *(RA Police Tavush Regional Department's Berd, Dilijan, Ijevan, Noyemberyan divisions, RA Police Aragatsotn Regional Department's Talin and Ashtarak divisions, the RA Police Ararat Regional Department's Ararat division and RA Police Armavir Regional Department's Armavir Division).* Some PHAPs investigation rooms have also not been provided with call buttons.

In some PHAP cells there were no radio receivers *(RA Police Kotayk Regional Departments Hrazdan PHAP).*

It should be noted that according to paragraph 27 of the RA Government Decree N 574-Ն of June 5, 2008, on approving the internal regulation of places of detention functioning within the RA Police System, the PHAP- isolation cells shall be provided with a table, chair, sanitary hub, drinking water tap (back), drawer for household items, ***radio receiver*** *and a garbage bin.*

Considering the aforementioned, the HRD has recommended the RA Police to provide call buttons, as well as a respective number of chairs in the cells of detention facilities, in order to make the taking of meals more comfortable.

Thus, it is necessary to provide the cells and investigation rooms of the RA Police Detention Facilities with call buttons, table and the needed number of chairs to make the eating of meals more comfortable, radio receivers, lighting necessary to right and to read, as well as proper ventilation systems.

Conformity of Special Vehicles Transporting Arrested and / or Detained Persons to International Standards

In private conversations during the visits persons arrested and detained in PHAPs have expressed their discontent about the inconvenience of special vehicles transporting them.

According to the statements of persons deprived of their liberty, during the transportation, they usually have to sit by four on benches foreseen for two persons[9] as a rule, by sitting on each other's knees. Besides, the cabins of special vehicles are not equipped with elementary ventilation and security systems (for example the car body ventilation hole, security belts). There is also no possibility of keeping the balance during transportation.

They have also mentioned that in some cases due to the fact that the covers put on the glasses of the cabin doors of the special vehicles, the light penetration is minimised and such conditions create a depressive state.

Besides the abovementioned, the arrested and detained persons have informed that due to limited seats they often get injuries during transportation, by hitting by their head the iron partition which separates the cabin and the cell of the special transportation means. According to the claims of persons deprived if liberty, in the result of such an incident the person has been transferred to a medical institution.

Paragraph 19 of the RA Government Decision N 351-ն of April 2, 2009, on approving the procedure of escort and detention of arrested and detained persons by the Police of the Republic of Armenia adjunct to the Government of the Republic of Armenia stipulates that the detained person shall have an opportunity to sit during an escort.

Such conditions are also not in line with the requirements of the paragraph 1 of Article 2 of the *RA Law on Holding Detained or and Arrested Persons, according to which (…) holding a detained person on remand (the concept includes also the transfer in its content) shall be implemented (…) based on the principles of humanism and respect for the dignity of a person.*

[9] It is revealed from the study of the technical specifications of the special vehicle, that the seats are allocated in 5+2 format , see the webpage : http://uaz.am/models/uaz-hunter as of 30.03.2017. This means that the 5 seats in the cabin are foreseen for the escort division staff, and the 2 wooden sitting facilities are for two arrested and detained persons.

The importance of decent transportation of persons deprived of liberty is also highlighted in several international documents. *Thus, according to paragraph 32.2 of European Prison Rules, the transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.*

There is also a similar regulation in the 2nd sub-paragraph of paragraph 45 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the first congress of the United Nations Organisation on August 30, 1955.

With a view of carrying out additional study of the above-mentioned problem, staff of the Preventive Mechanism have had private conversations with the employees of the accompanying unit, and have examined the technical capacity of special vehicle camera. During the conversation, the escort unit employees have informed that they usually accompany 3-4 arrested and or detained persons. They have also mentioned that the accompanying as a rule is being implemented by UAZ special vehicle.

The total volume of the car's camera, according to technical data, is 400 litres.[10] In other words, the area of the camera is 0.4 square meters.

The CPT has also addressed the size of the special vehicle camera. It has considered it not acceptable to transport persons in cameras with 0.4, 0.5 and even 0.8 square meters, despite of the duration of that transportation *(See paragraph 152 of the CPT Report on its visit to Azerbaijan from November 24 to December 6, 2002; paragraph 117 of the CPT Report on its visit to Lithuania in February 14-23, 2000; paragraph 129 of the CPT report on its visit to the Ukraine in September 10-26, 2000 and paragraph 68 of the CPT report on its visit to Poland from June 30 to July 12, 1996).*

The ECHR case law analysis allows one to conclude that transport of persons deprived of liberty in the above-mentioned conditions is considered by the ECtHR as a violation of Article 3 of the Convention (See: Idalov v Russia judgement of May 22, 2012, application N 5826/03, paragraphs 54, 61 and 103, Khudoyorov v Russia judgement of November 8, 2005, application N 6847/02, *paragraph 117).*

Based on the aforementioned, the HRD through a note addressed to the RA Police has proposed to bring the conditions of special vehicles in line with the adopted international standards.

In connection with the above mentioned, the RA Police informed that special vehicles of different models are being exploited in the accompanying units of the RA Police. During the escort by RA Police, depending upon the model of the special vehicle, the arrested or detained persons are placed in the cameras of the special transportation means based on the available number of seats. The RA Police has excluded the placement of more persons in the special vehicle than the vehicle can accommodate.

[10] See : http://avto-russia.ru/autos/uaz/uaz_31514.html, as of 30.03.2017.

It has also been mentioned that according to Article 7 of the RA Law on Holding Detained or and Arrested Persons, the detained person shall be as protected from public interest as possible when being transported, which is the reason for the covers of the glass of special vehicles. Besides, there are lighting devices used in the vehicles, which allow for adequate lighting.

As to hitting the iron partition which separates the cabin and the camera of the special vehicle by head on the part of arrested and detained persons during the escort due to limited space, and getting injuries, it has been mentioned that no such cases have been recorded and no complaints have been filed in that respect.

The RA Police has also mentioned that during the replenishment of special escort vehicles in line with international standards, the HRD recommendations will be taken into account.

CHAPTER 5. PROBLEMS OF LEGISLATIVE REGULATION

Problems Connected with the Provision of Identification Cards

Although the process of providing the convicts with passports (identification cards) is under the close attention of the leadership of Penitentiary department and measures are being undertaken to organise this process in a quick and efficient manner, however the HRD has received some complaints related to the provision of identification cards in the course of 2016.

In particular, several persons deprived of liberty have mentioned that their passport had expired; in other cases the complete lack of a document for personal identification has been mentioned. Complaints have been made related to the lack of sufficient funds for the payment of the state duty for the issuance of the identification card, as well as the undue delays or non-provision of identification cards.

For example, some convicts have no opportunity to pay the state duty established for issuing identification cards. In some cases this issue is solved at the expense of the personal finances of the head of the penitentiary, the staff and the cell-mates.

According to clarifications from RA MoJ, during 2016, the term of validity of passports of 76 detained persons and convicts had been prolonged, 185 persons were provided with ID cards and passports, motions have been filed in for recognition of 36 persons as RA citizens, and 48 persons have been provided with a public service number.

Another issue connected with passport provision has been registered in Hrazdan penitentiary institution, where one of the detainees had informed that he had applied to the Administration of the penitentiary institution with a request to be provided an identity card; however no measures had been undertaken to provide him with an ID or a temporary identification certificate.

The RA MoJ has explained the above mentioned problem with the fact, that the demand of the law had been taken into account, that administration of a penitentiary institution can undertake measures only to provide an identification card to persons with a status of a convict, and in the above-mentioned case the person was a detained person and not a convict.

The RA Law on Identification Cards stipulates the process of providing an identification card or a temporary certificate to a convict; however no regulation is prescribed for detained persons. *According to paragraph 2 of Article 6 of the RA Law on Identification cards, (...) temporary certificate can be issued to citizen sentenced to imprisonment also through the administration of penitentiary institution and to the convict authorized to have short-term departure, in line with general principles (...).*

This legal regulation defines both the right of a convict to receive a temporary certificate and the obligation of the penitentiary administration to organise that process. In order to ensure legal certainty and based on the fact that the main legal text regulating his sphere is the RA Penitentiary Code, there is a need to include a provision concerning the above-mentioned right of convicts also in the respective section of the Code on the rights of the convicts, making a reference to the Republic of Armenia Law on Identification Cards.

The necessity to make an appropriate amendment in the Penitentiary Code is also conditioned by the proper implementation of the right of a convict to participate in civil-law transactions set out in paragraph 13 of the 1st part of Article 12 of the Code since, in case of such transactions, there is a need to have an identity document (passport, identification card, temporary certificate, etc.). *According to paragraph 14 of the 1st part of Article 13 of the RA Law on Holding Detained or and Arrested Persons, an arrested or detained person also has a right to participate in civil law transactions.*

In the case of arrested or detained persons there also arises a need to have a document of personal identification to participate in civil law transactions, and in practice there may be cases when a person who does not have such a document, wishes to address the authorised state body and receive it to participate in the above-mentioned transactions.

Paragraph 2 of Article 6 of the RA Law on Identification Cards prescribes a right to get temporary certificate for persons sentenced to imprisonment, and does not foresee one for detained persons. Thus, in practice, there may be cases when the detained person who does not have an identification document due to the expiry of its validity, having lost it or due to other reasons, is deprived of the right to participate in civil law transactions.

According to 3rd paragraph of the Article 6 of the RA Law on Identification Cards, if, as per the grounds defined by the Law, the administration of penitentiary institution has taken from citizen, being sentenced to imprisonment, the temporary certificate or identification card, it shall be obliged to provide the temporary certificate or identification card to the convict in connection with a request on concluding civil law transaction.

It follows from the above-mentioned legal regulations, that in case of conclusion of civil law contracts by the convicts in penitentiary institutions, the convicts have the right to ask from the Administration of the institution and receive one's temporary certificate or identification card. Despite of the fact that the arrested or detained person also has a right to conclude civil law transactions, a similar regulation is not provided in their regard, which in practice may lead to restriction of his rights.

Based on the aforementioned, there arises a need to provide the rights stipulated for persons sentenced to imprisonment in the 2nd paragraph of Article 6 of the RA Law on Identification Cards also for the detained persons, and the ones in the 3rd paragraph of the same Article for the arrested persons.

According to paragraph 14 of the first part of Article 13 of the RA Law on Holding Detained or and Arrested Persons, an arrested or detained person has a right to participate in civil law transactions. According to paragraph 4 of Article 26 of the same law, an arrested person is prohibited to participate in civil law transactions. The contradiction between the different provisions of the same law is evident. According to one of these provisions, an arrested person has the right to participate in civil law transactions, and according to the other provision the person is deprived of that right.

Moreover, according to paragraph 7 of Article 24 of the RA Law on Legal Acts, in case of a contradiction between regulatory legal acts of equal legal effect or between different parts of the same legal act, the state and local self-government bodies shall, in their relations with natural and legal persons, apply the regulatory legal act or the part thereof which is preferable for natural and legal persons. Based on this, it is evident that in view of present regal regulations, paragraph 14 of the 1st part of Article 13 of the RA Law on Holding Detained or and Arrested Persons would be applied.

In this regard, the RA HRD staff has developed a draft law on making amendments and or addenda of legal acts regulating the sphere of providing identification cards to detainees and convicts, which will be circulated in the established procedure.

Problems Related to the Application of the Amnesty Act

Observations made during the visits to the places of detention, as well as the study of complaints filed with the RA HRD show that several problems arise in connection with the application of the Amnesty Act towards the convicts.[11]

[11] For the purposes of this Report, the Amnesty Act is deemed to be the National Assembly's Declaration on Amnesty in connection with the 20th Anniversary of the Proclamation of the Republic of Armenia as an Independent State NAO-277-N on 26 May 2011 and the NAO-080-N Decree on the Announcement of Amnesty in connection with the 22nd Anniversary of the RA National Assembly's Independence Declaration on October 3, 2013.

Thus, for example, one of the complaints addressed to the Defender revealed that the head of the penitentiary institution made a decision on the application of the amnesty act, which, however, was later abolished by another decision of the head.

Taking into account the above, the Defender has requested information on the legal grounds for the abolition of the decision on the application of the amnesty act by the penitentiary head.

With a letter in reply to HRD, the RA MoJ has informed that by the decision of the RA Criminal Court of Appeal of October 28, 2015, which came into legal force, the judgement against to person made on July 1, 2015, had been changed and the person had been found guilty pursuant to paragraph 1 of the 3rd part of Article 179 of the RA Criminal Code. The sentence had been imprisoned for 6 years and 6 months, with confiscation of personal property, but not more than (...) AMD. On the grounds of Article 66 of the RA Criminal Code, by partially adding the sentence assigned by the judgement of July 4, 2012, in accordance with the paragraph 1 of the 3rd part of Article 188 of the RA Criminal Code, the final sentence was an imprisonment for 7 years. By offsetting the preliminary detention of one month and 25 days between December 3, 2008, to January 1, 2009, to the assigned 7 year imprisonment sentence, the final imprisonment was 6 years, 10 months and 5 days, with confiscation of private property (…) AMD and depriving of the right to exercise entrepreneurship for a period of 3 years. The remaining part of the verdict was left unchanged.

Together with the above, the Ministry of Justice of the Republic of Armenia has informed that according to the decision of the RA Criminal Court of Appeal of 2015, the crime had been committed within the period of 2005-2011 October, and the crime committed according to the both verdicts had been viewed by the RA Criminal Court of Appeal as one criminal offence performed with one single intention, by giving two different criminal and legal qualifications, and the Amnesty Act shall be applied towards those persons who have committed the offence until May 1 of 2011 including.

In another complaint filed with the Defender, the applicant stated that the Court did not address the issue of the application of the Amnesty Act upon its verdict. He had applied to the court on May 16, 2016, in relation to this issue, which in its decision has completed the concluding part of the May 30, 2012 verdict with a new paragraph of the following content: Apply sub-paragraph 5 of paragraph 8 of the Amnesty Act, by reducing the sentence in one quarter. To make the calculations of reducing the part of the unserved sentence in the respective MoJ penitentiary institution.

By the decision of the Head of penitentiary institution the Amnesty act has been applied towards the person, and the unserved term of sentence has been reduced by one year, 2 months and one day. The applicant claimed that the unserved term of the sentence had been calculated wrongly, because the calculation should have been made not from the day when the judgement had come to legal face, but from May 30 of 2012, namely from the day when

the judgement had been made. According to the applicant, in case of correct calculations, the unserved part of the sentence would have been reduced not by one year, 2 months and one day, but by one year 4 months and three days.

Taking into account the abovementioned, the HRD has sent an inquiry to the RA Ministry of Justice, asking to provide information about the calculation of the reduction of the applicants unserved part of the sentence.

The RA MoJ note in response appeared to be not sufficiently reasoned. In other words, it doesn't contain the answer to the key question raised, namely on which legal grounds (legislative regulations) has the Head of the penitentiary institution been governed when making the calculations of the Amnesty act from the moment of its entering into legal force, namely from February 8, 2013, instead of making the calculations from the moment when the judgement had been carried out, namely from May 30, 2012.

The artificial delay of the process to apply amnesty is also problematic. During 2016 several complained about the above mentioned problem have been filed with HRD, which have all been positively solved as a result of discussions.

The issue of legal stipulation of the restriction to apply amnesty towards the commitment of torture continues to be important. The justification of this problem have been presented in annual reports on the activities of the RA HRD and the violation of the human rights and fundamental freedoms in the country in 2014[12] and on National Preventive Mechanism 2015 Annual Report on Cases of Violence.[13]

In the context of the above it is necessary to make the topic of legislative prescription of a ban on applying amnesty towards torture offences a topic of discussion.

In the future, when adopting a law on amnesty, it is also necessary to take into account the practical problems and their various interpretations.

24 Hour Temporary Isolation of a Person Deprived of Liberty Due to the Violation of Internal Regulations

During 2016, problems connected with the temporary isolation of persons deprived of liberty for up to 24 hours due to a violation of the internal regulation.

In a claim filed with the HRD, a convict serving a sentence in Hrazdan PI has informed that he had been isolated from May 28 to June 3, 2016, then, according to the decision of the Head of the penitentiary institution, a penalty was imposed on him in the form of transferring him to a punishment cell for 15 days. From the examination of the above-mentioned application it has been revealed that decisions on isolation with a similar content have been

[12]See :http://www.ombuds.am/resources/ombudsman/uploads/files/publications/206d2af54f5149a560ed7a616830d107.pdf as of 30.03.2017, pg. 39-40.

[13]See:http://www.ombuds.am/resources/ombudsman/uploads/files/publications/a42b07b145e69f9193cda108ef262d7c.pdf as of 30.03.2017, pg. 392-39.

formed for making the same violation for each day. Thus the convict had been in factual isolation for about 20 days, and from May 28 to June 3 he had been in isolation in conditions foreseen for being held in a punishment cell.

The above mentioned problem has been recorded in Hrazdan PI also in the 2015 annual report of the HR HRD as a National Preventive Mechanism.[14]

According to the sub-paragraph 20 of paragraph 24 of the RA Minister of Justice order N 194-Ա of November 21, 2011, on approving the procedure for the activities of the Republic of Armenia Ministry of Justice penitentiary service security insurance structural divisions, in cases of disciplinary violation, a need to eliminate the conditions of that violation, in case of a respective application of a detainee or a convict, based on the written report of the security group on duty or other employee of the penitentiary institution in the absence of the Head of the penitentiary institution, the detained or convicted person ***shall be temporarily isolated for maximum 24 hours, until the arrival of the Head of the penitentiary institution, by making a an appropriate*** *protocol.*

According to the 1st paragraph of the Rule 43 of the UN Standard Minimum Rules for the Treatment of Prisoners, in no cases should the restrictions and disciplinary fines be equalled to torture or other cruel, inhuman or degrading treatment or punishment. In particular, inter alia, also the indefinite or long-term isolation of persons deprived of liberty shall be prohibited.

According to Rule 44 of the same document, as isolation of persons deprived of liberty are deemed also those cases, when a person is kept alone throughout a day for 22 hours or more, without sufficient human contact. Under long-term isolation, it is necessary to understand the isolation of a person deprived of liberty for more than 15 days.

In accordance with the Guidance on isolation during deprivation of liberty developed by the United Kingdom National Prevention Mechanism in January 2017 ,[15] in case of long-term isolation, the isolation of a person deprived of liberty that exceeds 15 days, shall be immediately terminated. In case of applying isolation, it shall be foreseen for the shortest possible period.

According the same Guide, in order to pass a decision on isolating a person deprived of one's liberty, there should be a clear and transparent procedure which should be applied only in exceptional circumstances.

It is clear from the study of the above-mentioned provision that some of the regulations connected with the isolation of a person deprived of liberty are problematic, particularly,

[14]See:http://www.ombuds.am/resources/ombudsman/uploads/files/publications/a42b07b145e69f9193cda108ef262d7c.pdf as of 30.03.2017, pg 348.

[15] See: http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2017/02/NPM-Isolation-Guidance-FINAL.pdf as of 30.03.2017.

1. Making decisions on the isolation of persons deprived of their liberty and keeping them in punitive conditions where the authority to make a decision on the transfer of a prisoner to a punishment cell is reserved by law only to the head of the penitentiary institution.

2. The absence of a maximum limit on making a subsequent decision to temporarily isolate the detainee or the convict prior to the arrival of the head of the penitentiary institution for a maximum of 24 hours.

3. Lack of clear definition of the conditions in which the person deprived of liberty shall be kept in isolation (for example, in accordance with the conditions of a punishment cell or ordinary cell).

4. In case of detention of a person deprived of liberty in punishment cell conditions, the problem to offset the period of isolation when being shifted to a punishment cell within the time period applied as a penalty.

The presented problems shall be regulated by means of respective legislative amendments.

Early Conditional Release from Serving a Sentence

The existing early conditional release mechanism for persons deprived of liberty has not ensured the goal pursued by that institution and is in need of principle revision and reform.

The activities of an independent commission (hereinafter: the Independent Commission) for the early release of parole and the replacement of the unserved portion of the sentence with a more mild one are regulated by the RA Presidential Decree ՆՀ-163-Ն of July 31, 2006.

The legal act above does not establish a requirement for the Independent Commission to substantiate or justify the decision not to approve the petition of the administration of the penitentiary. According to paragraph 21 of the same decree, the decision of Independent Commission is not subject to appeal, except for cases, when those have been adopted by the breach of that procedure.

A similar regulation is included in the paragraph 4 of Article 115 of the RA Penitentiary Code, according to Decisions of the independent commission (…) shall not be subject to appeal except for cases when they contradict the law, and are adopted in violation of the procedure established by a decree of the President of the Republic of Armenia.

On March 22, 2016, the RA MoJ has circulated a draft package of legislative amendments aimed at changing the system of conditional early release.

In the opinion concerning this draft, the HRD has presented recommendations, taking into account the results of the examination of multiple complaints filed with the staff of the HRD with respect to early conditional release and the deficiencies and shortcomings of the legislation revealed in the course of discussions of these complaints. In particular, there are no available and predictable procedures and criteria for conditional early release, which would property inform the convict about the place and timing of the meeting held by the

independent commission, allow the person to get legal assistance in this connection, get acquainted the materials presented to the Independent Commission in his regard and get the copies of those materials free of charge, to abstain, appeal the decisions of the commission in the court, etc.

These recommendations were discussed during the expanded session of the Expert Commission on Torture Prevention affiliate to HRD on December 6, 2016. Also representatives from the RA MoJ, Penitentiary Service, RA Prosecutor General Office, RA Investigation Committee, several NGOs and representatives of mass media participated in this session.

Gaps in Legislative Regulation of Release of Detained Persons or Convicts Serving an Imprisonment from Custody and Punishment on the Bases of Severe Illness.

Through the course of 2016, several practical and legislative problems have been recorded, which were related to the process of being released from punishment on the basis of severe illness (and from custody in the case of detained persons).

In particular:

- The main principles and criteria for the selection of diseases in the list of illnesses that are incompatible with serving the sentence are problematic.

Often there are cases, when a person deprived of liberty, though not suffering from severe illnesses which impede serving the sentence as prescribed by Appendix 2 of the RA Government Decision of May 26, 2006 N 825-Ն (hereinafter: Decision 825-Ն) (and in case of a detained person, staying under detention), however suffers from another illness and is need of medical services through modern and expensive technologies which are not included in the scope of free or privileged medical care and service as guaranteed by the state based on the RA MoH Order N 57-Ն of September 28, 2013. In the light of the above mentioned problem it is necessary to revise the list of severe illnesses set out by the decision N 825-Ն.

- Decision N 825-Ն was adopted on May 26, 2006, while the Statistical Classificator for Diseases and Health Problems has been set out by the 10th revision, by the Order of the RA Minister of Economy N 871-Ն of September 19, 2013. Therefore, there is a need to adapt the list of diseases to the statistical classifier.

Mechanical adaptation of the diseases to the statistical classificatory connected with the diseases and health (ՀԴ-014-2013) is also problematic, however in practice it is necessary also to define the diseases according to clinical classification. Moreover, clinical classifications of several diseases according to the authors are different and it is necessary to refer to the author when pointing out to them.

- According to sub-paragraph a of paragraph 17 of the Decision 825-Ն, the Medical Working Commission performs the process of presenting the sick convicts **subject to the delay**

of execution of the court decision to the respective inter-agency medical committee established in line with the procedure approved by the RA Government Decision N 1636-Ն of December 4, 2003, on approving the procedure for the creation of Interagency medical commissions, in accordance with the list of sever diseases impeding the serving of sentence as approved by the sub-paragraph b of paragraph 1 of this decision. However it is not clear, what judicial decision is meant and what should one understand under the term 'delay'. In fact the RA Criminal Code does not provide for a regulation to delay the sentence on the ground of severe diseases.

- Decision N 825-Ն does not set out how and by whom and within which time limits shall the case of a sick convict be presented from a penitentiary institution to the Medical Working Commission. The aforementioned decision does not also define, if the convict has the right to apply on his own or through a legal representative to the commission. In other words, it is necessary to review the powers of authorised bodies and define clearer legal procedures for their operation.
- The deadlines for the Medical Working Commission to pass decisions and the scope of issues on which it may adopt decisions are also problematic. There is also no clear requirement for the substantiation of decisions.
- The subject of decisions of the Medical Working Commission and the scope of recipients should also be adjusted. According to paragraph 18 of the Decision N 825-Ն, the decisions of the Medical Working Commission are subject to mandatory enforcement. Meanwhile, it is not clear, for whom are those decisions mandatory and who should carry those out. In case of being mandatory for the Interagency Commission, the latter cannot make a contradictory decision to them.
- Appendix to Decision N 825-Ն sets out the diseases which impede the serving of sentence, however the diseases included in the list are practically taken into account in relation to detained persons suffering from severe diseases, while discussing the issue of applying detention as a measure of restraint. Such practice is conditioned by the fact that the process of consideration of exempting from detention on the bases of severe illness and its terms are not regulated by any legal act.
- According to paragraph 17 of the Appendix 1 of the Decision N 825-Ն, the Medical Working Commission shall perform a process of presenting the sick convicts subject to the delay of execution of court decision to the respective medical republican commission in the procedure established by the Decision N 1636-Ն. Thus, according to the above mentioned paragraph 17, functions of the Medical Working Commissions do not include introducing a sick convict subject to release from punishment to the interagency committee, but includes the introduction of those persons to the interagency committee, towards whom the execution of the court decision is subject to a delay. Meanwhile in practice, the Medical Working Commission is also being introduced with sick convicts who may be released from sentence due to illness, and to that end their case is being introduced by the Medical Working

Commission to the interagency commission that performs medical examinations. It turns out, that the Medical Working Commission does not have a power to introduce the sick convict to an interagency commission with a medical conclusion with the aim of releasing him from the sentence, however does perform such function.

- By the RA Government Decision N 1636-Ն of December 4, 2003, respective interagency commissions have been established, however the regulation of their work is not stipulated in the above mentioned decision or in another legal act. In particular, the procedure for adopting decisions in interagency commissions, the criteria, deadlines, duty to justify the decisions, the compulsory requirement to make them in writing and to inform the convict are more problematic. It is unclear what kind of expertise has to be been made by the interdepartmental committee to make a negative decision in the case of a positive decision of the Medical Working Commission.
- It is necessary to revise the composition and the principles of formation of the above mentioned commissions, as well as their powers and legal regulations.
- According to paragraph 2 of Article 79 of the RA Code of Criminal Procedure, if the person has got sick after the committal of crime or after the verdict has been passed, with another severe illness, which impedes the serving of sentence, than the court **may** exempt him from punishment, taking into consideration the gravity of the committed crime, the personality of the convict, nature of the illness and other consequences. It is clear from the analysis of the above mentioned norm that it is of a discretional nature.

It follows from the above that it is necessary to define precise and definite regulations also through norms of the RA Criminal Code and the RA Criminal Procedure Code, envisaging the shortest terms for trial, conditions of participation of the convict and his representative, procedures for judicial examination, judicial proceeding and for publication of the judicial act.