HUMAN RIGHTS DEFENDER'S OFFICE

OF THE REPUBLIC OF ARMENIA

ANNUAL REPORT

ON THE 2017 ACTIVITIES OF HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA ACTING AS NATIONAL PREVENTIVE MECHANISM

YEREVAN 2018

This project is funded by the European Union

EU for Armenian Citizens:

Promotion and Protection of Human Rights

Project

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INTRODUCTION

Torture or any other form of ill-treatment is absolutely unacceptable no matter who suffers such treatment and the place it is committed. Preventive action is the most important instrument to avoid such negative phenomenon. Prevention, in its turn, assumes continuous and coordinated measures, both at the legislative and practical levels, in line with international requirements. In addition, effective prevention can be achieved through the system of bodies with the mandate of specific functions and with all necessary mechanisms for their enforcement. Of course, the civil society, in line with its fundamental role of the democratic oversight, should also necessarily be involved in it.

This issue is particularly sensitive as regards the places where persons are held against their own will, i.e. they are deprived of their liberty. These places are very specific both in terms of safety and security, therefore they require absolutely professional approaches to working practices which being aimed at identifying specific challenges should generate concrete results.

The United Nations Optional Protocol to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 18, 2002 (hereinafter, the Optional Protocol) provided for the establishment of an independent national preventive mechanism which should have broad powers, have unrestricted access to all places where persons may be deprived of their liberty and make appropriate survey.

After the ratification of the Optional Protocol, the Law of the Republic of Armenia "On the Human Rights Defender" adopted on October 21, 2003, was supplemented by Article 6.1, by which the Human Rights Defender of RA was recognized as an Independent National Preventive Mechanism. However, this single provision of the Law neither defined the scope of the functions for Human Rights Defender acting as the National Preventive Mechanism nor the list of places of deprivation of liberty, it did not predetermine cooperation with the civil society in the status of a National Preventive Mechanism; the existing regulations did not assume remuneration for the members of the Torture Prevention Board adjunct to the Human Rights Defender; did not address the issues of the confidentiality of information collected within the status of the National Preventive Mechanism, etc.

Afterwards, due to the constitutional reforms made on December 6, 2015, the National Assembly of RA on December 16, 2016 adopted the Constitutional law of RA "On Human Rights Defender" (hereinafter referred to as the Constitutional Law) where pursuant to Article 2, Part 2, the Defender shall be entrusted with the mandate of the National Preventive Mechanism envisaged by the Optional Protocol. Article 28 of the Constitutional Law already defines the Defender's powers as the National Preventive Mechanism as well as provides a clear definition of places of deprivation of liberty. Under Article 27 of this Law, the objectives of the Defender’s functions as the National Preventive Mechanism is to prevent torture and other cruel, inhuman or degrading treatment in places of deprivation of liberty.

Currently, the operation of the National Preventive Mechanism is ensured through the Torture and Ill-treatment Prevention Department adjunct to the Human Rights Defender's Office, as well through the independent experts of the National Preventive Mechanism. The basic principles and directions of the performance of this Mechanism are presented below in this Report.

Cooperation with civil society is an integral part of the operation of the National Preventive Mechanism. This is primarily manifested by the activities of the Torture Prevention Board adjunct to the Human Rights Defender, which includes representatives of Non-governmental Organizations specialized in the prevention of torture and ill-treatment, and independent experts from the similar fields of activity.

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

After the entry into force of the Constitutional Law of the Republic of Armenia "On the Human Rights Defender", based on the new regulations the internationally accepted principles aimed at ensuring high quality and efficiency of professional work have been adopted during 2017.

Specifically, consideration of individual complaints or cases, and monitoring functions within the framework of the National Preventive Mechanism are separated. At present, these functions are implemented by two different subdivisions of the Defender's staff. Reviewing individual complaints or cases allows identifying specific circumstances in places of deprivation of liberty, while monitoring allows examining the whole system (practice, legislation, etc.) regardless of the fact or absence of any complaint. In addition, the work of these subdivisions complement each other: individual cases identify during the monitoring process go to the respective subdivision in charge and vice versa, systematic issues identified in individual complaints are submitted to the National Preventive Mechanism subdivision's consideration. There is a flexible information sharing system in place.

Pursuant to the Constitutional Law, lawyers as well as a doctor are involved in the Department for Prevention of Torture and Ill-treatment working on full-time basis. The Defender has also engaged independent experts from academic community and / or non-governmental organizations holding the status of experts (psychologist, sociologist, doctors, including a psychiatrist) of National Preventive Mechanism.

The Constitution and the adopted on its basis the Constitutional Law secures for the first time the financial guarantees for the National Preventive Mechanism. Firstly, according to Article 193 (4) of the Constitution, the State shall provide adequate funding for the Human Rights Defender's operations. Pursuant to this provision the Constitutional Law has already defined the specific funding requirements for the operation of the Defender acting as the National Preventive Mechanism. In addition, the remuneration of independent experts of the National Preventive Mechanism, unlike the previous period, is paid from the state budget through special allocated for that purpose funds for the Defender's Office. In this regard, it is especially important to note, that due to the requirement of a new Constitutional Law, the amount of the budgetary allocation for the Defender acting as the National Preventive Mechanism cannot be less than the amount of the previous year's allocation from the state budget.

Independent experts to work for the National Preventive Mechanism are employed on contractual basis, which allows not only to pay for their work, but also to compensate their travel and other costs incurred during the performance of the work.

The Human Rights Defender has approved the rules of performance and the code of conduct for the National Preventive Mechanism experts.

Specifically, the Defender's Order sets out the principles regulating the experts' activities, including: clear code of conduct for experts; the specific responsibilities of experts for the preparation, implementation, and then for the conclusion making phases of the monitoring visits; the ban on publishing the information collected by the experts or known during such activities within or outside of the framework of the National Mechanism; exclusion of the conflict of interest as well as the opportunity of involvement of the experts in other groups conducting parallel monitoring.

The Constitutional Law also makes a special reference to another guarantee for the operation of the Defender Office officials and for the operation of National Preventive Mechanism experts. Thus, persons holding positions in the Defender's Office and National Preventive Mechanism experts may provide explanations or be interviewed on the nature of requests or complaints addressed to Defender or on the respective decisions made by the Defender, or share such findings and decisions with third parties exclusively upon the written consent of the Defender (see Constitutional Law, Article 11, part 2).

Article 332.1 of the Criminal Code of the Republic of Armenia provides for liability for restricting the Human Rights Defender in exercising his or her legal authority, including intervening in any manner in any activities of the Human Rights Defender, or for denying unrestricted access to him/her or to any person delegated by or acting on his or her behalf pursuant to statutory power of the Human Rights Defender to any place.

In 2017, within the framework of the National Preventive Mechanism 160 visits have been made to the penitentiary institutions of the Ministry of Justice, places for keeping arrestees of the Police psychiatric organizations and other places of deprivation of liberty.

The Expert Board for Prevention of Torture has been acting adjunct to the RA Human Rights Defender since the date of being designated as National Preventive Mechanism by the law in 2008. In 2017, according to the new regulatory provisions, the Board has undergone changes. Particularly, the decree of the RA Human Rights Defender has set up an Advisory Council for the Prevention of Torture adjunct to the Human Rights Defender and has approved the procedure for the formation and functioning of the Council. The members of the Council include representative from the non-governmental organizations specialized in the prevention of torture and ill-treatment and independent experts from the similar fields of activity.

During 2017, the Council has regularly called meeting, including expanded ones, with participation of the representatives of non-governmental organizations specializing in the prevention of torture and ill-treatment, field experts and competent public authorities. During the sessions many issues related to ensuring the rights of persons deprived of their liberty (including the system of early conditional release, the state of personal rights protection at the psychiatric organizations, etc.) were discussed.

In addition to these changes, principles and approaches of fundamental importance have been adopted that underlie the work performance.

First of all, this refers to the inculcation of presumption of confidence towards the persons deprived of their liberty. This implies that every single inmate in place of deprivation of liberty should be treated individually irrespective of the gravity or nature of the offense alleged or established by a court judgment. This approach should be based on the behavior risk assessment principle of the person deprived of his or her liberty. Moreover, in the case of the already sentenced persons, the baseline mechanism of gradual preparation of such person for his or her release should be activated since the first day of his or her admission to the penitentiary facility. One of the basic principles of National Preventive Mechanism is the involvement of persons deprived of their liberty in the decision-making process: any person, including a person deprived of liberty must not be left out of participating in the decisions making process relating to him/her.

The above-mentioned baseline approaches also arise from the fundamental idea that the requirements for fair trials and the complete prohibition of ill-treatment will never stop being effective when a person ends up in the places of deprivation of liberty.

One of the most important principles of the National Preventive Mechanism is the confidentiality of the information collected during the activities in the places of deprivation of liberty. This should also be considered in the context of another joint-work and no-damage principle for achieving results. In parallel, the representatives of the Preventive Mechanism have activated two internationally accepted types of recommendations for addressing the identified issues, i.e. immediate recommendations made strait at the point, and written claims or recommendation made to the competent authority as a result of the conducted observations.

Based on the above mentioned information, in 2017 the monitoring of places of deprivation have been conducted by a special methodology. For example, accommodation conditions are being examined, personal interviews during the visits are being conducted with persons deprived of their liberty as well as with the penitentiary officers. The issues identified are then discussed with representatives of penitentiary institution administrations or top executives, documentation relevant to persons deprived of their liberty are reviewed, the collected information is compared and analyzed, and the gaps and shortcomings of the regulatory provisions are identified.

In addition, prior to each visit, a special discussion is being held on the possible ways of handling the issues specific to the institution to be visited: the tasks of the group visiting said institution, the principles of work during the visit, personal interviews with persons deprived of their liberty and reviewing the documentation relating to the such persons. There is also a discussion held strait after such visits to summarize the findings. Besides, a representative of the respective subdivision commissioned to consider an individual complains filed from the places of deprivation of liberty also participated in such discussions for the information sharing purpose.

During the visits area, heat and humidity measuring devices are being used. These devices are used during monitoring visits in penitentiary institutions, detention facilities and other places of deprivation of liberty which enhance the effectiveness of torture prevention efforts.

The RA Human Rights Defender's Office has conducted discussions on the issues raised from the visits and as well as from consideration of individual complaints, and on the effective solutions of such issues; the competent authorities were required to provide clarifications with regard to the findings from the visits; decisions were made on recommendations for elimination of violations of human rights and freedoms by pointing out the existing challenges and offering legal and practical mechanisms for their solution. Recommendations were also made to for the necessary amendments in and additions to the legal instruments regulating the sector.

Individual complaints addressed to the Human Rights Defender, the visits to the places of deprivation of liberty, as well as materials and studies published by mass media, international organizations, NGOs and observer groups were the source of information for the National Preventive Mechanism.

A mechanism for publishing special or ad hoc reports was adopted in 2017 to present the issues relating to specific places of deprivation of liberty and issues of concern identified during the activities of the Human Rights Defender as National Preventive Mechanism. Such an approach has given the opportunity to present in the most comprehensive and detailed manner the challenges, the gaps and shortcomings of the regulatory provisions, the circumstances underlying them, and to make clear-cut proposals for the sector reforms.

Thus, in 2017, the RA Human Rights Defender published the special report on ensuring the right to health protection in the penitentiary institutions for persons deprived of their liberty [1].

At the same time, during the year 2017 the Human Rights Defender focused, on ensuring the rights of persons with mental problems in, among other places of deprivation of liberty, the psychiatric organization. In order to study the real circumstances several monitoring visits to psychiatric organizations were made by the representatives of the National Preventive Mechanism subdivision and experts.

The issues identified during the monitoring visits, the professional analyzes and the proposals for their solution were then presented in the coordinated manner in a special public report of the Human Rights Defender of the Republic of Armenia on "Ensuring the Rights of Persons with Mental Health Problems in Psychiatric Organization", published on March 21st, 2018 [2].

The new powers vested in the Human Rights Defender had significantly contributed to the implementation of the mandate and effective and efficient performance of the Human Rights Defender acting as the National Preventive Mechanism.

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[1] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/b8beba20cc5240c574dd202b118ce109.pdf site as of 31.03.2018.

[2] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/74369f4bd6584c4f665b712b164ce129.pdf site, as of 31.03.2018.

For example, it referred to the function for improving the normative legal acts relating to human rights and freedoms. Thus, in 2017, the package of draft amendments in national legislation was submitted to the Human Rights Defender for opinion. As regards said draft, the Defender's Office had made a number of practical recommendations expressed in their opinions and work-shop discussions were held on these issues, taking into account the challenges identify through the findings from of discussions of the monitoring visits and individual requests.

At the same time, the Defender acting as a National Preventive Mechanism had identified a number of issues related to human rights and freedoms in places of deprivation of liberty conditioned by the legislative gaps and shortcoming, and incompliances of national regulations with international standards and commitments undertaken by the State. In this regard, from the beginning of 2017, the Human Rights Defender's Office elaborated and circulated number of draft legislation packages aimed at addressing said issues and improving the conditions of persons deprived of their liberty.

These draft legislation packages, for example, recommend the following:

- ✓ In grating a short-term leave to a sentenced and detained person such decision should be made not on the gravity of the offence committed by the person but rather on the latter's personal behavior and risk level;
- ✓ The opportunity of providing long-term visits to detained persons;
- ✓ Provision of a short-term leave for a sentenced person who has a child in a difficult situation to accommodate the child in an orphanage or with relatives;
- ✓ Separate the family members or close relatives of a detained person from the other persons having the right of visits, and establish clear basis and procedures for the possibility of restricting the right of visits for such persons
- ✓ Establish a justification requirement for decisions restricting the rights to visits for family members and close relatives for ensuring full legal remedy to dispute such decision;
- ✓ Make the decisions on restricting the rights to visits for family members or close relatives a subject of periodical revision;
- ✓ In Criminal Code of RA, a subject of corpus delicti for restriction a lawyer in exercising his or her statutory power shall be considered not only the officials but also any other person without limitation who restricts the lawyer's activity, etc.

The abovementioned drafts and their justifications were duly put into circulation and shared with all interested public institutions and agencies for their feedback and opinion. The Human Rights Defender of RA submitted the drafts to several respective rights protection organizations for their consideration and opinion. At the moment these drafts are in the process of rewording and finalization.

2017 had become the year of good cooperation with the Constitutional Court of Armenia. The constitutional power of the Defender to go to the Constitutional Court is essential in terms of addressing the issues identified by the Human Rights Defender acting as a National Preventive Mechanism. In this regard we can single out, for example, the motion made to the Court that raised

the issues relating to the incompleteness of legal regulation of procedures assuming deprivation of liberty, i.e. the practical grantees of the minimum rights (to be keep silence, access to doctor, to have lawyer, and other rights) of persons deprived of their liberty. The ruling made by the Constitutional Court has approved the position of the Human Rights Defender as specified in the motion.

In promoting the solution of systemic issues in the field of human rights it is also essential to introduce the practices of presenting a special position by the Human Rights Defender in the cases examined by the Constitutional Court.

In collaboration with international organizations, partner government agencies and civil society organizations a great number of training and train- the-trainer courses have been organized with participation of GRDO staff members, representatives of the non-governmental organizations involved in the Torture Prevention Advisory Board adjunct to the Human Rights Defender, and independent experts, journalists, public sector officials. Topics of discussion of the training courses include, inter alia, the following: the principles of medical screening in penitentiary institutions; measures preventing self-injury and suicide; isolation in penitentiary institutions; peculiarities for treatment of vulnerable groups in places of deprivation of liberty, etc.

A joint experience sharing workshop with RA HRDO staff members and representatives of National Preventive Mechanisms from a number of foreign countries, and with participation of international experts was organized on introduction of international standards for the monitoring of psychiatric organization. Moreover, with the participation of international experts and representatives from other countries, the HRDO staff had developed a working manual for the National Preventive Mechanism for monitoring of psychiatric organization [3].

The Human Rights Defender acting as the National Preventive Mechanism, in 2017, also studied the curricula for torture prevention courses offered by the Academy of Justice of RA, Attorney's School, and the Police Educational Complex of RA for further recommendations for their improvement.

The activities of the National Preventive Mechanism also assumed regular active communication with international organizations and, first of all, with the UN Subcommittee on Torture Prevention, as well as with partners form other countries. In 2017 there were active relations with international non-governmental organizations working in the field of torture prevention (e.g. the Torture Prevention Association, etc.). Delegations from Morocco, Tunisia, Bosnia and Herzegovina and others visited Armenia to study Armenia's experience.

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[3] See: http://www.ombuds.am/images/Uxecuyc_hogebuzharanner_15.03.2018.pdf site, as of 31.03.2018.

CHAPTER 2 PENITENTIARY INSTITUTIONS OF THE MINISTRY OF JUSTICE

2.1. Ensuring the rights of persons deprived of their liberty to health protection

In the course of 2017, as a result of the monitoring conducted at the penitentiary institutions under the Ministry of Justice of the Republic of Armenia (hereinafter referred to as "Penitentiary Institutions"), as well as the consideration of individual complaints addressed to the Human Rights Defender the HRDO had revealed such specific issues relating to the protection of the right to health protection of persons deprived of their liberty that forced to accelerate the ongoing reformation of the sector. In particular, these issues include:

Adequate staffing of the health personnel, institutional independence, sufficient medical equipment

The performance of health-care staff in penitentiary institutions plays an important role for ensuring the proper health care and its organization. The staffing of the health personnel, and their professional skills are directly related to the provision and organization of health care in the penitentiary institutions.

Independence of health personnel is also important in the properly organizing and the efficiency of the health care.

The control over the adequacy and the quality of medical services is undertaken by the penitentiary service, thus not ensuring the independence of the health personnel. Meanwhile, it should be indicated that the challenges identified by the Defender with regard to ensuring health protection rights of persons deprived of their liberty are, inter alia, conditioned by insufficient independence for consistent adherence to the professional principles and ethics of the health personnel.

The findings from the study provide grounds for concluding that in the current institutional context there is a poor level of confidence to the health personnel. In most cases, the physician is perceived as a penitentiary servant while for health personnel the patients are just persons deprived of their liberty. As a result, the professional independence and social guarantees of the physicians are not sufficient for effective professional activity.

International legal standards also testify to the crucial role of the health personnel in full exercise of the right of persons deprived of their liberty in penitentiary institutions

For instance, The Directive R(98)7 of the Committee of Minsters of the Council of Europe states that *clinical decisions and other assessments relating to the health of a person deprived of his or her liberty should be based solely on medical standards. Health personnel should act fully independent within their qualifications and competence* [4].

[4] See: http://hrlibrary.umn.edu/instree/coerecr98-7.html as of 31.03.2018, paragraph 20.

According to the criteria of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the CPT), *for ensuring the independence of the personnel in health matters the Committee considers the link of the personnel with the basic public health system as crucial* [5].

Rule 25 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) of December 17, 2015, states that *health services should be provided under the full independent medical conditions by the interdisciplinary team with sufficient qualifications, including in psychology and psychiatry with sufficient practical experience: Qualified dentist's services should also be available to every prisoner.*

Examination of the medical confidentiality revealed that the non-health personnel of the Penitentiary Institution also had access to information on the health conditions of a person and to his or her the medical screening data. Under such conditions, the principles of institutional independence and confidentiality of health personnel are seriously disrupted.

This was highlighted in detail in the Special public report of the Human Rights Defender of the Republic of Armenia on "Ensuring the Rights of Persons Deprived of Liberty in Penitentiary Institutions", 2017 [6].

On December 4th, 2017, the Ministry of Justice of the RA submitted to the Human Rights Defender's consideration the Draft Decree of the Minister of Justice of RA on establishing the "Penitentiary Medical Center" SNCO and on approving its Charter.

This initiative of the Ministry of Justice of the Republic of Armenia was important in terms of improving the quality and effectiveness of health care in the penitentiary service and ensuring the independence of health personnel which requires consistent work on the establishment and capacity building of the Penitentiary Medical Center, SNCO.

Findings of the study on the manning of the health personnel allow stating that not only the adequate manning of the vacancies in penitentiary institutions but also their quantitative allocation is important in the protection of the health of persons deprived of their liberty.

Thus, almost all the penitentiary institutions have a head of the medical service, a chief specialist, First and Second or Third Rank specialists, but the staff allocation mechanisms sometimes do not meet the needs of the penitentiary institutions. It turns out that disregard the staff list of a penitentiary institution and the assessment of health problems of the inmates, the institutions have

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[5] See: The 3rd genereal Report on CPT activities for the period January 1- December 31, 1992; https://rm.coe.int/1680696a40 site as of 31.03.2018, bullet 71.

[6] See: http://pashtpan.am/resources/ombudsman/uploads/files/publications/b8beba20cc5240c574dd202b118ce109.pdf site, as of 31.03.2018, Pages 42-47.

the same number of health personnel which overloads the medical services and, as a result, brings to improper organization of such services.

For instance, according to the statistical data shared by the Ministry of Justice of RA, as of January 8th, 2018, “Hrazdan”, “Sevan’ and “Vardashen” penitentiary institutions were manned with the same number of health personnel, while the inmate capacities of these penitentiary institutions were incomparably different: 215, 518, and 339 persons deprived of their liberty respectively. The staff list of health personnel in "Goris" and "Yerevan-Kentron" penitentiary institutions was also the same while the inmate capacity is 182 and 60 persons deprived of their liberty respectively.

According to regulations envisaged in Paragraph 61 of the RA Government Decree No 825-N [7] of May 26th 2006, *the capacity of medical attention in urgent cases depends on the type of facility, the physicians and medical equipment under its jurisdiction, and the geographical location of the facility.*

However, this provision does not meet the minimum health care and service requirements. For this reason, the planned staff list of the health personnel should be determined by the penitentiary institution inmate capacity, and in accordance with the prevalence of diseases and the respective need for the health care and service.

The absence of a physician in a penitentiary institution is a matter of concern. For instance, there was a long time vacancy for the doctor at Health Care Department in “Vanadzor” penitentiary institution.

During the monitoring it was revealed that the procedure for recruitment of physicians with adequate medical qualifications is not regulated. The health personnel in a penitentiary institution were sometimes manned merely with such narrow health-care specialists as a dentist, a psychiatrist, etc.

For instance, the Health Care Department of "Abovyan" penitentiary institution employed a psychiatrist and a gynecologist, "Sevan" penitentiary institution - a dentist and a traumatologist. The Health Care Departments of said institutions did not have *qualified general doctors*, i.e. therapists or family doctors. As a result, a psychiatrist, a gynecologist, or a dentist had to provide non-professional advice or call for an urgent medical attention.

The requirement for a qualified general doctor in the Health care Department is provided for in the "European Prison Rules" (hereinafter European Prison Rules) [8] adopted by (2006)2 Committee of

[7] See: RA Government Decree No 825-N of May 26th 2006, on “Approval of the procedure for organizing medical and sanitary and medical- preventive assistance to detained and sentenced persons, for using medical facilities of health institutions, and for recruitment of health personnel for that purpose”.

[8] See: https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2006)+2+on+the+European+Prison+Rules.pdf/e0c900b9-92cd-4dbc-b23e-d662a94f3a96 site, as of 31.03.2018, Para. 41.1.

Ministers of the Council of Europe. According to the Rules, *each penitentiary institution should enjoy at least one qualified general doctor's services*.

In terms of employment of physicians with narrow specializations, it should be noted that not all the Health Care Departments of penitentiary institutions were staffed with physicians with specialization of dentists and psychiatrists. This fact was reflected in detail in the 2017 Special public report of the Human Rights Defender of RA on "Provision of the Rights to Health Protection for Persons Deprived of their Liberty in Penitentiary Institutions" [9].

In this regard, there was a positive of singing in January 2015 of a Memorandum of Cooperation between the Ministry of Justice of the Republic of Armenia, the Ministry of Health, and "Mkhitar Heratsi Yerevan State Medical University" Foundation.

According to the information provided by the Ministry of Justice of the Republic of Armenia, training courses were organized at the facilities of "Mkhitar Heratsi Yerevan State Medical University" Foundation for improving the professional knowledge and practical skills of senior doctors and mid-level medical workers from Penitentiary Service health care sector. For that purpose, in 2017, the Ministry Education and Science had provided funds for training of 15 doctors and 10 mid-level medical workers from penitentiary service.

It should be noted that albeit the Ministry of Justice of the Republic of Armenia's certain efforts in staffing the facilities with health personnel, there are still vacancies in the Penitentiary Health Care Departments. The same applied to proper and periodic training of the health personnel of the penitentiary institutions.

Most of the penitentiaries institutions provided 24-hour health care (24-hour duty is not available in Goris and Yerevan-Kentron penitentiary institutions) however, typically there was a nurse or medical assistant in the round-the-clock duty but no doctors, except for the "Sentenced person's hospital" penitentiary institution.

As regards medical instrumentation and equipment, the immediate monitoring revealed that the Health Care Departments of the penitentiary institutions are furnished with some new medical equipment in 2017. However, there were cases where such equipment was not used due to the lack of qualified specialists.

For example, there was a fully equipped dental surgery in "Goris" penitentiary institution, but the inmates were unable to use its services because of lack of a dentist and they had to pay from their pocket for dental service to other medical facilities or had to wait for a Medical Working Commission of the Ministry of Justice to send a dentist to "Goris" penitentiary institution for a planned visit.

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[9] See: http://pashtpan.am/resources/ombudsman/uploads/files/publications/b8beba20cc5240c574dd202b118ce109.pdf site, as of 31.03.2018, Pages 32-38.

Therefore, there is a need to:

- ✓ *Provide institutional independence of health personnel in penitentiary institutions.*
- ✓ *Clarify the scope of health care in each penitentiary institution, to bring it into line with the inmate capacity each penitentiary institution and in accordance with the prevalence of diseases and the need for the health care and service [10], including the provision of urgent and primary medical attention and access to dental and psychiatric services.*
- ✓ *Provide sufficient staffing with respectively qualified health personnel;*
- ✓ *Provide 24-hour urgent medical attention in each penitentiary institution;*
- ✓ *Establish continuous measures to increase the professional qualifications of health personnel taking into account the difficulties arising from the fact that the medical service is being provided in the place of deprivation of liberty.*
- ✓ *Take effective steps to occupy the medical vacancies, such as: pay from the state budget the tuition fees for clinical residents with narrow specialization and sing contracts committing them to work in penitentiary medical services.*

Availability of medicines

During visits to penitentiary establishments, the HRD Office examined the availability of medicines for their health care departments. The findings showed that in the visited institutions there were cases of insufficient supply of medicines and limited variety of medicines in the Health Care Departments. Examination of documents also showed that the requests made to the Penitentiary Authority for medicines supply was not fully satisfied (e.g. in "Goris" penitentiary institution). The inmates stated, that in such cases they obtained the necessary medication through their relatives while the Penitentiary institution only provided them with the first aid medication.

During the monitoring visits it was revealed that there was insufficient supply of medicines and limited variety of medicines. The medical service was basically stocked with medicines for the first medical aid while they were lack of antibacterial creams, analgesic, anti-inflammatory, hypertensive, shock-relief and other drugs.

For instance, during a visit to the “Goris” Penitentiary, it turned out that persons deprived of their liberty in Open Type Correctional Institution (Meghri Sector) had to pay for all medicines they needed at their own expense.

Clarifications in response to the letter on the results from the visit to “Kosh” penitentiary institution stated that all necessary procurements of the penitentiary service, including medicines, were made at the expense of the state budget according to the Law of RA “On Procurements”. Since 2014, the

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[10] The regulations in Annex 1, paragraph 61 of the RA Government Decree No 825-N of May 26th 2006, state just the contrary. According to this provision the scope of urgent medical attention depends on the type of institution, the specialization of the physicians and medical equipment, and the geographical location of the institution.

Penitentiary Service of the Ministry of Justice of the Republic of Armenia had been planning its annual demand of for medicines and for other medical supplies for about AMD 60 million and filing a funding request to the Ministry of Finance of RA; nevertheless, the government always allocates only AMD 43 million per year. The request for the purchase of medical equipment worth AMD 33 million was always denied.

According to the information provided by the Ministry of Justice of RA in response to the inquiry on the list of medicines delivered in 2017 to the penitentiary institutions by the Health Care Department of the Penitentiary Authority, the list included 389 types of drugs and medical supplies, and additional 27 types were acquired in the framework of humanitarian assistance.

It should be noted that the Annex to the Order 06-N of the Minister of Heal of Ra of February 17th, 2017 "On Approving the State Register of Medicines Registered in the Republic of Armenia and on the Revocation of the Order of the Minister of Health of the Republic of Armenia No. 25-N of July 12th, 2016" has approved 4583 types of medicines. Consequently, it could be stated that the Penitentiary Service was supplied with about 8% of the drug types registered in the Republic of Armenia.

Obviously, this problem should be addressed in a fundamental manner. It was revealed that there were challenges with regard to the provision of medicines indicated to persons deprived of their liberty in the monitored penitentiary institutions. There was also an evidence of quantitative and qualitative shortage of drugs as the persons deprived of their liberty had to ask their close relatives to deliver the medicines they needed.

There were cases where medical records of persons deprived of their liberty did not contain prescriptions for the drugs actually delivered by their close relatives, while an officer of the Health Care Department of the penitentiary institution had allowed such drugs to be passed to the addressee. Moreover, in some cases such drugs delivered by the close relative were available in the penitentiary institution, but often there were no sufficient quantities.

This comes to prove that the penitentiary institutions are not sufficiently supplied with the necessary quantity of medicines which may result in the failure of the State in providing health care to persons under its control, in particular, failure in the fulfilling its obligations of providing medical supervision and medication based on prescription.

In response to the HRD's statements regarding the visits to "Artik' and "Goris" penitentiary institutions, the Ministry of Justice of RA had informed that during the budgetary discussions for the Penitentiary System under the MoJ of RA it was proposed to allocate AMD 150 million (instead the current AMD 43 million) in 2018 from the state budget for provision of medicines and other medical supplies to detained and sentenced persons in penitentiary institutions. As a result of the discussions, it was decided to allocate AMD 109 million 827 thousand for provision of medicines and other medical supplies for detained and sentenced persons held in penitentiary institutions. This will have a positive impact on the quality of medical services provided to inmates of penitentiary institutions.

There are also challenges in timely procurement of medicines upon necessity since it is a long and time consuming process. For example, if a medicine prescribed to a person deprived of liberty is not available in stock of the penitentiary institution's drugstore, then the penitentiary institution has to ask the Penitentiary Authority to purchase said medicine. In all cases of unavailability of any of such medicine, the Penitentiary Service shall launch the procurement process pursuant to the requirements of the Law of RA "On Procurements", which may take months. Under such procedures, the provision of necessary medicine to persons deprived of their liberty can be undermined, which in its turn will result in improper performance of the State's obligations to protect the health of persons deprived of their liberty.

The issue of insufficient quantity of medicines and their limited variety in the penitentiary institutions was also raised in complaints addressed to the Human Rights Defender. Specifically, it was noted that the penitentiary institutions were not supplied with sufficient quantities of necessary medicines. Because of the lack of essential medicines, sometimes they are replaced by other medications that often do not result in adequate treatment.

For example, a person deprived of his or her liberty in the "Vardashen" penitentiary institution was diagnosed with cardiac ischemia, instable angina (pectoris), pulmonary hypertension after the aortic valve and aorta prosthetics, and was prescribed "Corrosive", "Cardiovagnile", "Pruducal MR", "Amlodipine", "Atorstatin", "Monosorb" and "Physiotens", "Captopril" and "Varfarin" for treatment. However, of all the prescribed medicines the penitentiary institution had provided only "Captopril" and "Varfarin.

According to the Penitentiary Authority's clarification, the prescribed "Monosorb" and "Physiotens" were no included in the Procurement Uniform List approved by the RA Ministry of Finance, therefore the Penitentiary Service could not purchase said medicines.

In another instance, the Medical Working Commission of the Penitentiary Authority has prescribed a "Diclofenac" and "Midocalm for an inmate, but because of the absence of these medicines in the penitentiary institution, he was proposed to purchase the medicines at his or her own expense. The Penitentiary Authority clarified that the prescribed medicines were not available and the patient was given "Finalgon" cream which, according to the patient, did not bring to any positive relief.

It should be noted that the main directions and principles of the state policy for provision of medicines should also be applicable to the process of organizing the health care system in penitentiary institutions.

Therefore, there is a need to:

- ✓ ***Improve the process of provision of necessary medicines to persons deprived of their liberty through increasing the variety and the quantity of medicines required for the penitentiary service;***

- ✓ ***Develop clear mechanisms for delivering medicines to the penitentiary institutions obtained at the expense of persons deprived of their liberty or by their close relatives based on the respective medical indication and "do not harm" principle;***
- ✓ ***Develop a flexible alternative mechanism for procurement of medicines that will provide the inmates with the necessary medicines as needed without delay.***

Organization of medical examination

Challenges identified through monitoring process and as a result of consideration of individual complaints addressed to the Defender it was found out that there is limited capacity of conducting medical examinations/screening in penitentiary institutions. In order to make narrow professional consultation or laboratory-instrumental analysis one had to use medical services of the facilities in medical institutions and, in some cases, to stand a long queue for such service.

Thus, an inmate in "Vardashen" penitentiary institution was prescribed to have monthly blood coagulation test. In response to the HRD's letter the Medical Service of the Penitentiary Institution has informed that they were lack of appropriate equipment for said test.

The Ministry of Justice of RA also clarified that said blood tests are not implemented in the penitentiary system and it should be made at the expense of the patient according to the established procedure. Such cased may bring to aggravation of the patient's health.

With regard to the aforementioned issue, it should be emphasized that in accordance with Article 3 of the Law of RA "on Population Medical Assistance and Medical Service" - *medical assistance and service shall be organized as an in-patient assistance in hospitals when there is a need of complex medical procedures, e.g. diagnosis, treatment, continuous supervision and special care* (...). According to Article 12 of the same Law - *arrestees, detainees and persons in places of deprivation of liberty have the right to receive medical assistance and services in the manner prescribed by the legislation of the Republic of Armenia.*

According to Paragraph 11 (g) of the Charter of the Penitentiary Authority of the RA Ministry of Justice, approved by the Government Decree No 1256-N of August 24th, 2006, *one of the tasks of the Authority shall be to provide proper living and health conditions for the detainees and sentenced persons (...).*

According to Rule 40.3 of the European Prison Rules – *Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.*

The European Court of Human Rights in its rulings on the Republic of Armenia, referring to the State's positive duty to provide adequate medical assistance to everyone who is deprived of his or her liberty by arrest or detention, have noted that Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the *European Convention*) implies guarantee of the State to grant physical immunity to everyone who is deprived

of his or her liberty by arrest or detention, including the obligation to protect them through the provision of necessary medical assistance [11].

According to the legal position of the European Court, *implementation of this or her obligation of the State is more important, since persons deprived of their liberty are dependent on the authorities, conditioned by grounds of their legal situation. Any action or lack of action of the latter will most likely have a major impact on the physical well-being of persons deprived of their liberty [12].*

The CPT has also referred to the importance of the right to medical assistance for persons deprived of their liberty.

According to the CPT, *persons deprived of their liberty shall have access to medical assistance in a well-equipped civil hospital or medical facility/hospital of the place of detention. At the same time, the medical service should be able to organize the provision of medical assistance and health care, as well as provision of special diet for persons deprived of their liberty in conditions similar to that of civil medical institutions [13].*

Thus, the above-mentioned rulings assume the State's obligation to take necessary measures to ensure the protection of the health of a person deprived of liberty, including the provision of adequate medical assistance and services in the place of detention.

This implies that, if there is insufficient scope of medical assistance and service in the place of detention a person with health problems must be transferred to a medical facility of the healthcare system.

In view of the right to health protection of persons deprived of their liberty, it is also important to enable them to be examined or treated at their own expense by their preferred physicians.

When a person deprived of his or her liberty prefers to use at his or her expense the service of doctors, sometimes this may require to take him or her to a medical facility of the healthcare system and doing this will require technical and human resources. Complaints addressed to the Human Rights Defender and private interviews indicate that there were cases where the request addressed to the competent authorities for the use of the services at their own expense of the physician they prefer were denied, or the persons deprived of their liberty had to wait long before they were taken to a medical facility of the healthcare system for examination and consultation due to lack of officers to organize the protection of their safety and security.

For example, an inmate informed the Human Rights Defender that he or she had pain in the knee joint restricting his or her mobility: since the treatment provided by the relevant specialists of the

[11] See: Ruling made on January 15, 2010 on Ashot Harutyunyan vs. Armenia, Claim #34334/04-103; Judgment made on March 31, 2015 on Davtyan vs. Armenia, Claim # 29736/06 -80.

[12] See: Judgment made on October 26, 200 on Cudlan vs. Poland, Claim #30210/96-94.

[13] See: Third General Report on CTP activities for the period of January 1 to December 31, 1992; https://rm.coe.int/1680696a40 site, as of 31.03.2018, paragraph 36, 38.

Penitentiary Institution's Health Care Department had proved to be ineffective, he or she asked for permission to be examined and treated by his or her preferred physician. However, the Penitentiary Authority, in its written clarification, did not consider it appropriate to transfer a person to a civil medical facility indicating that he or she was duly examined at the "Sentenced persons Hospital" Penitentiary Institution. The Penitentiary Authority had expressed readiness to provide the invited to the Penitentiary Institution physician with all necessary medical records of said prisoner.

Is should be also noted, that physicians working in civil medical institutions are typically reluctant to perform medical examinations and consultation in penitentiary institutions.

In another instance, the Penitentiary Authority had permitted an inmate to visit his or her doctor for examination at his or her own expense (for Chronographic scan and Computerized Tomography) to be made in one of the medical facilities of the healthcare system. Nevertheless, the prescribed examination was postponed due to insufficient number of security staff for an additional base station.

The Government Decree No. 825-N of May 8th, 2006, provides for the right of a persons deprived of their liberty to specialized medical service at their own expense and at their choice, which does not imply any limitation. The interpretation of Articles 77 and 78 of the RA Constitution stipulates that, in restricting fundamental rights and freedoms the laws should define the grounds and the extent of such restrictions, while the measures selected for such restriction should be adequate to the meaning of the restricted basic rights and freedoms.

Consequently, the described above restrictions imposed by the Penitentiary Authority on the possibility of using by the persons deprived of their liberty the services of other physicians at their own expense and at their choice are unacceptable.

All necessary medical examinations of persons deprived of their liberty must be organized in timely manner and without undue delays.

Transfer of persons deprived of their liberty to Medical Correctional Institution or medical facility of the healthcare system

One of the concerns during the monitoring process expressed by persons deprived of their liberty was related to problems of transfer of persons deprived of their liberty to Medical Correctional Institution or medical facility of the healthcare system as prescribed by the doctor. This concern was voiced during 2017in individual complaints addressed to the Defender.

In the event where a person deprived his or her liberty needs an in-patient treatment he/she is allowed to be taken to Health care Department of the penitentiary institution for in-patient treatment, but since the in-patient departments of the penitentiary institutions are unable to provide full-time in-patient care (due to the lack of specialized doctors, the necessary medical

equipment and the absence of relevant licenses) so it is necessary to take persons deprived of their liberty to a Medical Correctional Institution or medical facility of the healthcare system.

It is proven by practice a penitentiary institution has to organize this process often forced by a form of protest (e.g. hunger strike, appealing to different instances, self-injury, etc.), and occasionally persons deprived of their liberty are transferred to health care facilities only in cases of severe aggravation of health.

In order to transfer a prisoner to a medical facility of the healthcare system, the penitentiary institution shall submit a request to the Penitentiary Authority, which, in its turn, shall ask the Ministry of Health of the Republic of Armenia for such transfer. As it has already been mentioned, the Ministry of Health of the Republic of Armenia has informed that according to the Order of the Minister of Health of the Republic of Armenia No. 1664-A of June 14, 2013, the requests from citizens for medical treatment shall be considered within five working days, nevertheless, persons deprived of their liberty are transferred to medical facility of the healthcare system after quite a long time since the instance of such necessity, except for urgent cases. There are a number of cases when the person was transferred to medical facility of the healthcare system for treatment or examination after up to four months following the date of such recommendation made by a doctor.

For example, as a result of regular examinations of a person deprived of his or her liberty the doctor had diagnosed a urological problem that needed surgical intervention. 15 days later, the Penitentiary Authority sent a relevant request to the Ministry of Health of the Republic of Armenia for the treatment of this patient under the state-guaranteed free medical assistance programme. According to the provided information, the medical referral for the treatment of this inmate under the state-guaranteed free medical assistance programme was received from the Ministry of Health after 20 days only, and the person deprived of his or her liberty was transferred to a medical institution after a month and a half following the date of the recommendation for surgical intervention.

In cases where the treatment or prescribed examination of a person deprived of his or her liberty can be organized in the Medical Correctional Institution, usually the transfer of such patient to said institution is delayed. Moreover, in cases where there are no narrow medical specialists such as, for example, a psychiatrist, epidemiologist in the Health care Department of the penitentiary institution, nevertheless it takes quite a long to time to make a decision and organize the transfer of a person deprived of his or her liberty to the "Sentenced persons Hospital" Penitentiary Institution for proper medical examination and treatment which may have irreversible effects not only on the health of the person deprived of his or her liberty but also on others and on the environment.

For example, a person deprived of liberty had reported that he had tuberculosis in the past and had received adequate treatment. He also noted that currently he shared the cell with another inmate who also had tuberculosis. In the written response to the Defender’s letter of concern the Ministry of Justice informed that complainant prisoner had been to the "Sentenced persons Hospital" Penitentiary Institution since it was supposed that he or she might have "pulmonary tuberculosis".

This inmate was examined only after 20 days from the date of his or her complaint addressed to the HRD and the examination did not diagnose any infection with tuberculosis.

There are poor psychiatric services in penitentiary institutions because there are no psychiatrists among their health-care staff; therefore, the in-patient treatment of inmates diagnosed with mental problems can be organized only in the "Sentenced persons Hospital" Penitentiary Institution.

For instance, in the complaint of a person deprived of his or her liberty addressed to Human Rights Defender there was a concern that he had mental health problems and he was not pleased with the effectiveness of the treatment since it was poorly organized. He also mentioned that he had spent a long time in the "Sentenced persons Hospital" Penitentiary Institution for treatment followed by outpatient medication prescribed by a psychiatrist, but day by day his or her health conditions becomes worse and worse, he was having obsessional ideas, loss of appetite, insomnia, and had unconsciously committed self-injury. In among the health-care staff of this penitentiary institution there was no psychiatrist. This person deprived of his or her liberty was transferred to the Medical Correctional Institution only after about 15 days of the date of filing the request.

In another instance, because of the failure to provide the necessary psychiatric assistance to a person deprived of his or her liberty, he was diagnosed with mental instability as a result of which the latter had committed an act prohibited by the internal regulations. The administration of the penitentiary institution inflicted a disciplinary penalty upon this person regardless of the latter's mental health problems and refused to consider the act of violation might had have been driven by aggravated health. Moreover, said person deprived of his or her liberty was put in long isolation in the penitentiary institution regardless the fact that being held in the isolation cell might lead to further aggravation of his or her health. As a result, the Human Rights Defender issued a decision recommending elimination of violations against human rights and freedoms.

The right to necessary medical assistance to persons deprived of their liberty was also reflected in "Standard Minimum Rules for the Treatment of Prisoners" adopted by the First UN Congress on the 30th of August, 1955, where Paragraph 22.2 states: *all sick prisoners who need the care of qualified health-care specialist shall be transferred to specialized medical institutions or civil hospitals.*

For instance, the European Court of Human Rights in its ruling on the case Akhmetov vs. Russia has indicated that: *although the jail authorities have taken measure for the prisoner's radical treatment outside of the penitentiary system, but given the circumstances of the case, such measures are not provided in sufficient haste.* Moreover, the European Court has added that*, taking into account the serious and complicated health conditions of the person, the authorities were supposed to anticipate the irreversibility of the danger caused by such a long health care delay. Consequently, the latters were obliged to initiate discussion of a person's health care at a civil hospital after*

receiving such a recommendation and not wait for the final diagnoses made by Special Medical Commission for more than one year [14]*.*

Therefore, it is necessary to organize the treatment of persons deprived of their liberty in a Medical Correctional Institution or civil hospital in timely manner and without undue delays.

Provision of state-guaranteed free health care

The complaints addressed to the Human Rights Defender and the monitoring findings indicated that in most cases the state-financed medical interventions cause problems that are mainly due to insufficient funding from the budget. In fact, there were cases, where provision of state-financed medical assistance lasted unacceptably long to happen.

From June 1st, 2017, the Order No 18-N of the Minister of Health or RA made on April 20th, 2017 "on Making amendments in the Order of the Minister of Health of the Republic of Armenia No. 57-N of September 28, 2013" was entered into effect. This Amendment has revoked the provision for compensation from state budget for heart surgery as a result of which the persons deprived of their liberty with heart surgery needs cannot enjoy adequate health care.

Complaints addressed to the HRD indicate the facts that organization of medical examinations or other medical interventions to be funded from the state budget for persons deprived of their liberty takes quite a long time to happen.

The issued raised in individual complaints was communicated in writing with the Ministry of Health of the Republic of Armenia and a response was received saying that according to the Order of the Minister of Health of RA No 1664-A of 14 June 2013, the "requests for organizing citizens' health care is subject to consideration within five working days".

A kidney percutaneous lithotomy was recommended to a person deprived of his or her liberty however, the operation was performed much longer that three months after the physician's prescription while the request for surgery to be organized at the expense of the state was approved by the Ministry of Health in timely manner.

While ensuring full-fledged health care is directly dependent on the state's financial capacities, the lack of allocations does not waive relieve responsible authorities of the sector from the obligation to take actual measures in providing the state-guaranteed free health care without paying due regard to the priorities conditioned by the person's health condition and at the earliest opportunity.

Moreover, taking into account the state's obligation in ensuring the right to health protection, it is necessary to perform medical interventions without undue delays.

Access of the preferred by rersons deprived of their liberty physicians to penitetiary institution

[14] See: April 1, 2010 verdict on Akhmetov vs. Russia case, Claim # 37463/04 -83.

Taking into account that the Penitentiary Service is not staffed with sufficient number of qualified health-care professionals, the persons deprived of their liberty wish to receive advice and treatment from their preferred physicians as well as be examined by them.

This opportunity in line with international requirements is envisaged by the Government Decree No 825-N of 26 May 2006. However, there were cases where the administration of the penitentiary institution had denied access to the physician invited by the prisoner to the penitentiary institution for medical examination purposes. In should be noted that there was a case when a physician was denied access on the grounds of failure to show appropriate documents, where the person had shown the letter addressed by medical institution to the lawyer confirming the fact that said person is a physician from a specific health care organization, along with his or her ID card.

In this particular case, the administration of the penitentiary institution denied the physicians access, reasoning that he did not have the appropriate "license" issued by the Ministry of Health of RA, and the submitted document (the response to the lawyer's request) were just photocopies of the originals and not addressed to the Head of the Penitentiary Institution. The penitentiary administration had also noted that from the context of the letter it was impossible to identify the person therein and the physician actually visited the penitentiary institution. In addition, it was reported that there was no such permission from the body conducting the proceedings where there was a decision by the criminal proceedings body restricting visits to the said detained person.

Meanwhile, pursuant to Clause 9 in Annex 1 to the RA Government Decree 825-N of 26 May 2006, *a detained and a sentenced person shall have the right to access to services by other qualified health-care professional at their own expense and by their choice*, i.e. the only precondition for arranging access to the services of other qualified health-care professional is the consent of the person deprive of his or her liberty.

According to their position, the physician shall have access to a penitentiary institution either as a visitor that would not be legally grated where visits are restricted, or as a person providing health-care services. However, based on the requirements of the RA Government Decree No 825-N of 26 May 2006, access to the person providing health-care services was denied on the ground of absence of the persons ID and the documents certifying the latter’s qualification as well as the absence the documents proving the detained person’s consent to be examined by an external physician.

The Ministry of Justice agreed with the Defender's position that regulatory provisions (applicable to visits to detained person) shall not apply to the physician attending the penitentiary institution for provision of health-care services to persons deprived of their liberty, and noted that entry of the physician to the penitentiary institution for provision of health-care services to persons deprived of their liberty should not be qualified and treated as a visit. It was also mentioned that the given case was considered and denied not from the point of view of the granting a visit permission, but was denied on the grounds of absence of the physician’s documents certifying the latter’s

qualification as a specialized heal-care professional as well as for the absence the documents showing the detained person's consent for using the health-care services by an external physician.

Within the scope of this complaint, the penitentiary institution clarified that after submitting the necessary documents the physician was permitted to enter the penitentiary institution and provide medical assistance to said patient.

The opportunity for detained persons to enjoy services of qualified health-care professionals at their own expense and at their choice is set out in paragraph 9 of Appendix 1 to RA Government Decree 825-N of 26 May 2006. This provision, however, neither specifies respective processes and procedures to exercise this right, nor provides for the list of required documents, which creates additional difficulties for proper organization of this process.

In another instance, access to penitentiary institution was denied to the physiotherapist. Regardless the availability of professional qualification documents, the physiotherapist was not allowed to enter the Penitentiary institution.

According to the clarifications made by the Ministry of Justice, this person did not bear a doctor's qualification and was a physiotherapist which is not considered as a qualified health-care professional with higher medical education or a qualified physician in the Republic of Armenia.

In summary of the above cases, it should be noted that the legal provisions for ensuring the right of detained and sentenced persons to access to services by other qualified health-care professional at their own expense and by their choice is not sufficient for proper organization of this process. Therefore, this should be well regulated by specifying the list of all necessary documents to be required from the physicians and persons deprived of their liberty or their legal representatives, and by setting up procedures and deadlines for exercising this right.

Release of a detained and sentenced person from detention and serving the punishment on the grounds of a serious illness

A clear and complete legal regulation for releasing persons deprived of their liberty from serving the sentence (from detention if the person is in detention) is of crucial importance.

Special attention was paid to this issue in the 2016 Annual Report of the Human Rights Defender as a National Preventive Mechanism [15].

Based on findings from monitoring and consideration of individual cases in 2017, it can be fixed that there are specific issues that still remain unsolved while under the current regulations the

[15]See:
http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf site, as of 31.03.2018; Pages 90-93.

process of releasing persons deprived of their liberty from serving the sentence (from detention if the person in detention) on the grounds of a serious illness has proven to be a challenging effort.

First of all, the decisions of the competent Medical Commission should be made on the sound grounds and reasonableness. The aforementioned decisions merely indicate that the said disease is not included in the list of serious illnesses impeding the punishment approved by the Annex 2 to Government Decree # 825-N of 26 May 2006.

There are also shortcomings in the legal procedure for addressing this issue, which leads to problems and, as a result, to violation of the rights of persons deprived of their liberty.

The RA Government Decree No 800-N of July 6, 2017 "On Making Amendment to the Government Decree No. 825 of 26 May 2006" has made legislative changes in the procedures for releasing persons deprive of their liberty from serving the sentence (from detention if the person in detention) on the grounds of a serious illness. Pursuant to said amendments, the diagnosis of diseases included in the list of serious illnesses impeding punishment is brought into compliance with Disease Classifier as set out in Annex to the Order No 871-N of the Minister of Economy of 19 September 2013 [16].

However, such mechanical matching of diseases is insufficient to effectively organize the process of releasing sentenced persons diagnosed with serious illnesses impeding the further punishment (releasing from detention if the person is in detention).

The list of diseases classified as incompatible with imprisonment should include basic principles and criteria for inclusion of specific diseases. It is not acceptable to mechanically match them to the aforementioned Statistical Classifier.

On December 20th, 2017, the Draft Decree of the Governmental of RA “On the Approval of the procedure for the activities of the Interdisciplinary Medical Commission on releasing persons in the Penitentiary Institutions of Ministry of Justice of the Republic of Armenia diagnosed with serious illnesses impeding imprisonment” was submitted to the RA Human Rights Defender’s Office for consideration.

The abovementioned Draft offers regulations for the interaction between medical examinations and the respective decision making based on such examinations performed for releasing persons held in the penitentiary institutions from punishment on the grounds of serious illnesses other than mental health problems.

Definitely, these regulations are a positive step but they cannot be considered as a complete solution of the problems of the sector.

[16] Order No 871-N of the Minister of Economy of 19 September 2013 , “On approval of ‘the Statistical Classifier in terms of Diseases and Health Issues’ of RA technical and social information, and on revoking the Order No 67-N of the Minister of Trade and Economic Development, of 31 March, 2005”.

In particular, based on the RA Government Decree No 1636-N of December 4, 2003 [17], there are two more Commissions. For instance, the new Draft submitted to HRD's consideration will regulate the activities of one of the three similar-in-character commissions established by the RA Government Decree N1636-N of December 4, 2003. Additionally, the interaction of the commissions, and the common standards for their activities should be subject to fundamental regulation.

Yet, there is a need to regulate the procedure for reporting by the penitentiary institution of the case of the inmate with health problems to the Medical Working Commission. For instance, there is no legal act to define the responsible person submitting said report, the deadlines, or whether the person deprived of his or her liberty or his or her legal representative or his or her doctor may request the Medical Working Commission to initiate a consideration of the matter, nor there are deadlines for decisions to be made by the Medical Working Commission or scope of issues that should be decided on by the Medical Working Commission. There should also be clear requirements for justifying the decisions made by Medical Working Commission.

There is a need to regulate the subject matter and the scope of beneficiaries of the Medical Working Commission's decisions. For instance, in accordance with paragraph 18 of Appendix 1 to RA Government Decree 825-N of 26 May 2006, *decisions of the Medical Working Commission are subject to mandatory enforcement.* However, there is a need to clarify for whom are these decisions mandatory and who will be obliged to enforce them? Should it be mandatory for the Interdisciplinary Medical Commission then the latter cannot make a conflicting decision.

In the case of three commissions envisaged by the Annex to the RA Government Decree No 1636-N of December 4th, 2003, the document specifies neither the maximum or minimum number of the member of the commission, nor the requirements for their professional qualification.

This Decree defines that each Medical Commission shall be composed of, other than members representing the authorized public administrative bodies, one member from other public agencies. However, there is no clear definition on the number of the representatives from the authorized public administrative bodies to ensure the proportion of votes guaranteeing comprehensive, objective and professional discussion on the case.

Taking into account the highly professional-medical nature of the Interdisciplinary Medical Commission's activities, it is also necessary to define the criteria for the selection of Interdisciplinary Medical Commission members. The Medical Commission should be a specialized collegial body to produce well-grounded and justified professional medical opinion based on the conclusions generated by discussions.

[17] RA Government Decree No 1636-N of December 4, 2003, "On approval of the procedure for establishing Interdisciplinary Medical Commissions".

Some individual cases examined by the Human Rights Defender revealed several facts where in determining the grounds for changing the restraint measure of the detained person the Interdisciplinary Medical Commission under the Ministry of Health had come up with the conclusion that the person deprived of his or her liberty by detention was diagnosed with the illness included in the approved by RA Government Decree No 825-N of 26 May 2006 List of Serious Illnesses impeding the punishment. In the meanwhile, however, said person's legal situation was changed from the detained to sentenced person and the confirmed by the diagnosis conclusion made by the Interdisciplinary Medical Commission under the Ministry of Health did not serve as a basis for considering the opportunity of releasing him from serving the sentence.

In response to HRD's letter with regard to the case described above the Ministry of Justice of RA has claimed that there was a different procedure for considering the case of releasing a sentenced person from serving the sentence where, regardless the legal situation of persons deprived of their liberty, the same list of illnesses shall practical apply as a ground for releasing persons deprived of their liberty from serving the sentence (from detention if the person is detained).

The legislation regulating the sector does not include any legal provisions that would allow one of the Interdisciplinary Medical Commissions to recognize the conclusion made by the other Interdisciplinary Medical Commission and solve in a reasonable time period the question of releasing a sentenced person from punishment on the grounds of serious illness.

In another instance, in accordance with the Civil Code, the sentenced person was recognized as incapable on the grounds of a mental disorder which deprived the person of the ability of perceiving his actions and the degree of his public danger. The court had appointed his wife as his guardian. In response to the Defender's letter the RA Ministry of Justice provided information that the Medical Working Commission of the Penitentiary Service had studied the sentenced person's medical records only after 2 months following the date of said incapacity diagnosis and concluded that the prisoner's diagnosis was in line with the list approved by Annex 2 to the RA Government Decree 825-N of 26 May 2006 of illnesses (in this case: somatic (non-psychiatric) illnesses) impeding the punishment.

It turns out that the mental health problems of the person deprived of his liberty was not made a matter of consideration and the person recognized as incapable had to serve the sentence for 4 months.

The above issues are not exhaustive and require both legislative and practical solutions.

Therefore, there is a need to:

- ✓ ***Review the list of serious illnesses impeding punishment and define the basic principles and criteria for selecting such illnesses;***
- ✓ ***Elaborate a procedure regulating the Medical Working Commission for releasing from punishment (from detention if the person is in detention) on the grounds of serious illnesses, as well as a clear procedure for making such request by fixing subject matter and the scope of***

beneficiaries of the Medical Working Commission's decisions, the deadlines for such decisions, etc.;

- ✓ *Clarify the procedure for Interdisciplinary Medical Commissions' activities and their interactions.*

Methadone substitution therapy

As a result of the monitoring conducted in 2017, specific challenges related to the inclusion of persons deprived of their liberty in the "Methadone substitution therapy" programme and proper arrangements for methadone therapy had been revealed.

It is still a concern that persons deprived of their liberty with opioid dependence are unable to join the "Methadone Substitution Therapy" programme which is mainly conditioned by the limited capacity of the Programme to include all persons in need of such therapy. According to the official report made by the RA Ministry of Health, under the financial support of "Global" Foundation, in 2016-2018 the number of beneficiaries was limited by 500 persons and the persons deprived of their liberty could join the Programme upon the availability of vacancies.

According to the written report made by the " Republican Center of Narcology " CJSC of the Ministry of Health of the Republic of Armenia, the information on penitentiary institution inmates requesting methadone substitution therapy was forwarded to the Medical Care Department of Penitentiary Authority for provision of specialized health care, while for inclusion in "Methadone substitution therapy" Programme the preference was given to people living with HIV if there were vacancies.

Thus, the findings of a study on methadone substitution therapy programme showed that active measures should be taken to ensure the continuity and scaling up of this Programme to the extent as possible by including all inmates in need of methadone substitution therapy, where possible.

During the monitoring, cases had been reported where the drugs prescribed for persons taking methadone therapy were administered in the presence of representatives of the penitentiary staff, and almost all the supervisors and other non-health personnel were aware of the names of methadone therapy patients and sometimes even of the doses and changes in doses.

Moreover, patients with methadone therapy, sometimes in groups, were taken to a special for that purpose room which was not furnished for provision of medical services. For instance, in "Armavir" penitentiary institution this process was arranged in an ordinary room of the separated Investigation Sector where persons, e.g. investigators and visitors, not even being penitentiary system servants could be present.

In this regard, it should be noted that according to Article 7 of Annex 1 to RA Government Decree 825-N of 26 May 2006 *the medical confidentiality should be guaranteed and maintained by health personnel.*

Therefore, the treatment of Methadone Substitution Therapy Programme beneficiaries should be undertaken in appropriate conditions due respect being paid to their medical confidentiality.

Provision of care in Penitentiary Institutions

As a result of the visits and consideration of complaints addressed to the HRD it was found that the scope of care provided to persons deprived of their liberty was insufficient. The issues of care provision are thoroughly analyzed in the 2017 Special Public Report of the Human Rights Defender of the Republic of Armenia on "Right to Health Protection of Persons Deprived of Liberty Kept in Penitentiary Institutions" [18].

The findings of a study conducted at penitentiaries institutions showed that where it was impossible to provide proper care, such care of persons was not undertaken in the medical facilities of the healthcare system.

In terms of care related challenges, the issue of organizing care by persons with no specialized training was also examined. In 2016 as well as in 2017 there were cases where the care of prisoners was provided by other persons deprived of their liberty (cellmates). In this regard, it should be noted that in accordance with international requirements the State is obliged to ensure the regular care of persons deprived of their liberty with special needs by specially trained professionals. Consequently, organizing the care of a person deprived of his or her liberty by a cellmate may not be problematic if such care is provided by a person deprived of his or her liberty with relevant profession qualification or has undergone a special training for that purpose.

A complaint addressed to the Human Rights Defender described a case where a sentenced person had brain stroke and was unable to move and eat by himself. In such conditions the latter was discharged from the medical center and transferred to the penitentiary institution. No adequate care was taken of this person in the penitentiary institution which brought to the aggravation of his or her health condition.

The representatives of the Human Rights Defender stated that this person had taken care of by another inmate with no proper training to do so; moreover, the prisoner's bath was administered only once in two months with the help of other inmates. The person was provided with only 1 diaper per day and he was short of sufficient bedding, in particular – bed-sheets.

Based on the consideration of complaints on the lack of proper care, the Human Rights Defender had passed a number of decisions on making recommendations aiming at abolishing violations of human rights and freedoms. These decisions of the Human Rights Defender were bases on the facts of violations as follows: discharge of the person with special care needs from in-patient facility without adequate justification; failure to provide with essential living conditions (bathing, outdoor

[18] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/b8beba20cc5240c574dd202b118ce109.pdf site, as of 31.03.2018; Pages 12-19.

exercises etc.); care of the person taken by inmate without special training, and; continuously keeping the person in jail without provision of proper care.

Therefore, the Penitentiary Institution must be obliged to provide proper care, as necessary, to persons deprived of their liberty, while in the event of insufficient scope of care in the Medical Correctional Institution persons deprived of their liberty should be transferred to specialized medical institutions.

Organization of medical and social examination

In considering complaints addressed to the Human Rights Defender and as a result challenges identified during the monitoring activities the HRDO has singled out specific issues related to determining the disability categories of persons deprived of their liberty.

Firstly, persons deprived of their liberty were unaware of the mechanisms and documents necessary for determining their disability categories.

There were cases where a person requested a disability category, but as this person did not hold RA citizen's passport, no petition was sent to the Territorial Medical-Social Expert Commission.

Although the legislative amendments made according to RA Government Decree No. 1328-N of October 19, 2017 "On Making Amendments to the Government Decree No 665-N of May 5, 2011" facilitate the procedure of Medical and Social Examination, there are still problems in terms of organizing respective examinations and medical professional advice to ensure proper implementation of Medical-Social Examination and Medical Examination processes.

Based on the consideration of complaints addressed the Defender, it was revealed that there were cases such as: a person deprived of his or her liberty had a disability category in the past and had to be re-examined for it due to expiration the validity terms. In order to undergo a new medical-social examination he had be examined by a medical facility of the healthcare system.

HRD has assisted the person deprived of his or her liberty in organizing his or her examination by a medical facility of the healthcare system and his or her documents were sent to the Medical-Social Expert Commission. Based on the findings from medical and social examination his 3-rd disability category was re-established.

In another instance: as claimed by a person deprived of his or her liberty, the physicians of the health care organization refused to send him or her to a medical and social examination for defining his or her disability category due to the absence of appropriate medical documentation.

Thus, based on the findings of the study, it can be concluded that in order to properly organize the process of determining /granting the disability category of persons deprived of their liberty held in the penitentiary institutions it is necessary to organize, without delay, the provision of all the necessary medical professional advice and examination within the framework of state- guaranteed free medical assistance, as well as to raise the awareness of persons deprived of their liberty.

Medical supervision over persons refusing food or water

Where there is information collected through monitoring visits, or consideration of complaints, as well as from mass media on persons deprived of their liberty gone on huger-strike, the HRD representatives visit such prisoners, have face-to-face interviews with them and keep them in constant focus to ensure their right to health protection. The purpose of activities is to guarantee under the Defender's statuary rights that such persons are treated exclusively in accordance with medical principles.

According to the feedback made by the Ministry of Justice of the Republic of Armenia on February 14th, 2018, the hunger strikes are mainly reasoned by criminal cases, decisions of the Allocation Board under the Central body of the Penitentiary Service of the Ministry of Justice, personal problems, unbalanced psychic conditions and other circumstances.

Based on analysis of the result from monitoring activities and consideration of individual cases, it was revealed that the reasons of going on hunger strikes also included the following: discharge of a prisoners from Medical Correctional Institution or from an in-patient Medical Care Departments or; in some cases, the insufficient accommodation conditions in cells or barracks; lack of proper health care, including denial to organize medical screening; and transfer to medical facility of the healthcare system.

There was one positive change where the RA Government Decree No. 782-N of July 7, 2017 "On Amendments in the RA Government Decree No 1543-N on August 3th, 2006," regulates the peculiarities of accommodation conditions for and supervision over the detained and sentenced persons refusing food (hereinafter referred to as the *persons on hunger strike*).

The examination of medical records of persons deprived of their liberty identified cases where due to the lack of the physician's grounded conclusion the person deprived of his or her liberty was denied regular medication for his or her chronic disease on the grounds that he or she was on hunger strike. For example, he or she was not given psychotherapeutic, anti-hypertensive (anti-arterial pressure) or anti-diabetic (reducing blood sugar) drugs. In such a case there is a need to decide through specific medical supervision (for example: by measuring the sugar content in blood) on the possibility of reducing the dosage of medication in order to protect the patient's health.

People with mental health problems sometimes refuse food that can merely be a symptom of the disease. In such a case, it is advisable to immediately consult with psychiatrist and undertake consistent medical supervision over the timely administration of medicines for such patients.

The scope of day-to-day health supervision over persons deprived of their liberty on hunger strike was also poor. As a result of the monitoring it was reported that only blood pressure and pulse count were taken from such prisoners. Weight control of the hunger strikers (According to the report from the Ministry of Justice on 14 February 2018, no Medical Service in any Penitentiary Institution is equipped with scales) or other medical examinations recommended by doctors are not undertaken (e.g. blood sugar test).

Therefore, any person deprived of his or her liberty being on hunger strike shall be subject to individual medical treatment and observation while such persons should be regularly given a full explanation of the possible harmful effects of their action on their long-term well-being.

Maintaining medical records

There were reports on several cases of poor and improper maintenance of medical documentation of persons deprived of their liberty. For instance, at the time of the visit there were neither records on external screening findings nor records on the recommended therapy or treatment process (e.g. "Goris" and "Kosh" Penitentiary Institutions). In addition, there was a case of lack of a personal medical record. (e.g. in "Artik" Penitentiary Institution).

According to Paragraph 47 of Annex 1 to the RA Government Decision No 825-N of 26 May 2006, *following the examination of the sick detained or sentenced person the medical practitioner or doctor's assistant shall make respective entry in the medical record and in the out-patient assistance medical logbook of the detained or sentenced person and in the dental assistance book of the detained or sentenced person.*

Therefore, it is necessary to ensure the proper maintenance of medical records of persons deprived of their liberty in accordance with the procedure prescribed by the RA Government Decree.

Organization of psychological work/care for persons deprived of their liberty

Deprivation of liberty may cause negative psychological impact to a person while ineffective professional assistance may lead to harmful for the person consequences.

According to the Ministry of Justice, as of January 8th, 2018, there is only one psychologist in each penitentiary institution for performing social, psychological and legal work, with the exertion of "Goris" penitentiary institution where a psychologist is not involved in the organization of said work. There are tree psychologists each in "Nubarashen" and "Armavir" penitentiary penitentiaries.

Thus, persons deprived of their liberty in the "Goris" penitentiary institution do not receive professional psychological assistance at all. It should be noted that in the penitentiary institutions each having one psychologist involved in the organization of social, psychological and legal work the number of persons deprived of their liberty is quite different (the least number is in "Yerevan-Kentron" penitentiary institution – 60 inmates, and the maximum in "Kosh" penitentiary institution -640 inmates). Therefore, there is a need to maintain a fair correlation between the number of psychologists and the number of inmates held in penitentiary institution otherwise it will make the psychologists' work ineffective.

Recurrent professional trainings for psychologist are also important in terms of ensuring the effectiveness of the psychological aid.

There should be clear procedure for organized psychological work with persons deprived of their liberty in penitentiary institutions. Reception of patients should be undertaken regularly, both in

the cells and in the psychologist's room. At the end of each reception respective records should be made in the prisoner's personal file. In practice, sometimes there are no professional records ("Artik" penitentiary institution) which prevents from following on the dynamics of the psychological condition of persons deprived of their liberty and regulate the work with them.

Psychological work with persons deprived of liberty should be organized in three phases: 1) preliminary, 2) current, 3) final. At each phase there should be psycho-diagnostic, adaptive and preventive, and in some cases – advice and psychotherapeutic work.

Yet, as a result of the monitoring it was stated that no such phased work was undertaken in "Artik" penitentiary institution. The administered psychological assistance is not adequate: the work style was situation based, the diagnosis was made "by sight", medical recommendations were made in "friendly" or "parent-like" manner.

There are no targeted psychological programs for person deprived of their liberty with high-risk level or with symptoms of mental illness not excluding sanity, or persons with disposition to self-injury or suicide (e.g. "Artik" Penitentiary Institution).

There should be Methodological Guidelines for proper organization of the psychological services in the Penitentiary Institution.

Depending on the type of personality, the allocation of persons deprived of their liberty in cells or barracks of the penitentiary institutions should be based on clear standards of grouping.

Therefore, there is a need to:

- ✓ ***Revise the staff of psychologists in penitentiary institutions making their number adequate to the scope of the necessary psychological services to persons deprived of their liberty and to the inmate capacity of the institution by preliminarily assessing the needs in such services;***
- ✓ ***Develop methodological guidelines for improving the effectiveness of psychological service in penitentiary institutions;***
- ✓ ***Periodically organize professional training courses for psychologists focusing on the peculiarities of the penitentiary service.***

2.2. Overcrowding and uneven allocation of inmates to cells

For addressing the jail overcrowding issues, in 2016, after commissioning by the Ministry of Justice of RA the six Blocks of "Armavir" penitentiary institution (with inmate capacity of 1240), 715 persons have been transferred to "Armavir" penitentiary institution as of January 8th, 2018.

Nevertheless, during 2017 there had been issues with regard to overcrowding and uneven allocation of prisoners to cells of the penitentiary institutions of the Ministry of Justice of the Republic of Armenia.

According to the official data of the Ministry of Justice of RA, as of January 8th, 2018, the number of persons deprived of their liberty held in the penitentiary institutions and the inmate capacity of institutions is described in the table below (***overcrowded penitentiary institutions are marked in bold***):

Penitentiary institution (PI)	Medical Correctional Institution (by inmate capacity)	Open CF (by inmate capacity)	Open CF as of 08.01.18	Semi-Open CF (by inmate capacity)	Semi-Open CF as of 08.01.18	Semi-Open CF (by inmate capacity)	Semi-Open CF as of 08.01.18	Closed CF (by inmate capacity)	Closed CF as of 08.01.18	Custodial places (by inmate capacity)	Custodial places as of 08.01.18	TOTAL (by inmate capacity)	TOTAL as of 08.01.18
«Nubarashen» PI	-	10	2	40	28	40	20	100	66	**590**	**681**	780	797
«Goris» PI	-	50	3	7	2	**15**	**18**	60	42	**50**	**29**	182	94
«Artik» PI	-	25	3	141	113	**54**	**67**	103	69	**50**	**55**	373	307
«Sevan» PI	-	15	9	483	354	50	2	-	-	-	-	548	365
«Kosh» PI	-	25	-	**50**	**239**	465	82	100	1	-	-	640	322
«Abovyan» PI	-	29	3	**81**	**58**	40	26	15	1	100	42	265	130
«Vardashen» PI	-	200	38	**70**	**85**	25	19	10	3	**34**	**69**	339	214
«Vanadzor» PI	-	10	0	15	7	**75**	**83**	65	51	80	69	245	210
«Sentenced persons hospital» PI [19]	424	10	2	**14**	**24**	**5**	**42**	**5**	**29**	**6**	**52**	464	149
«Hrazdan» PI	-	-	-	4	-	**24**	**52**	107	73	80	79	215	204
«Yerevan-Kentron» PI	-	-	-	5	1	3	1	7	5	45	35	60	42
«Armavir» PI	-	5	-	83	2	550	335	402	163	200	215	1240	715
TOTAL	424	379	60	993	913	1346	747	974	503	1235	1326	5351	3549

For instance, at the time of the to "Nubarashen" penitentiary institution there were several overcrowded cells: e.g. in one of the cells with 30m^2 of room space there were 14 persons deprived

[19] The number of persons deprived of their liberty placed in thee Correctional Facilities (open, semi-open, semi-closed, and closed) of "Convicts Hospital" Penitentiary Institution is provided according to the allocation in the Correctional Facilities made by the Allocation Board under the Central Body of Penitentiary Authority of the Ministry of Justice of RA, the latters, however, are accommodated in Medical Correctional Institution under the regime foreseen for semi-open institution.

of their liberty and only 11 sleeping accommodations. In this regard, the decision of the Human Rights Defender on making recommendations for abolishing the violations of human rights and freedoms stated that there was also a violation of the prisoners' right to rest, including the right to night sleep prescribed under Article 13, paragraph 1.10 of the Law of RA "On Keeping of Arrestees and Detained Persons".

There was also a problem of overcrowding of some cells in "Goris" penitentiary institution: for example, in the cell of 22.5m^2 floor space 6 persons deprived of their liberty are placed.

The analysis of the findings from the visits to penitentiary institutions revealed that the uneven allocation of persons deprived of their liberty to cells was not always conditioned by the requirements set out in the legislation or for security and coexistence objectives. The problem of uneven allocation to cells was also recorded in the under-populated penitentiary institutions where there was again incompliance to the RA legislation on providing minimum floor space per person deprived of his or her liberty [20].

According to Article 20 of the Law of RA "On Keeping of Arrestees and Detained Persons", as well as the requirements of Article 73 of the RA "Penitentiary Code", *the minimum floor space of accommodation for arrestees, detained or sentenced persons* ***shall not be less than four square meters per person***.

2nd General Report on the CPT's Activities states that: *All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint [21].*

In the 2016 report to Armenian Government, the CPT referred to the issues on the lack of sufficient number of beds in the Penitentiary Institutions of the Ministry of Justice of RA and the issue of inmates sleeping in shift, and that the State should take continuous steps to reduce the occupancy levels in cells and ensure that prisoners are provided with a minimum 4 m^2 of living space in multi-occupancy cells [22].

The Case Law of the European Court of Human Rights consistently expresses its principal legal position that keeping persons deprived of their liberty in overcrowded conditions may itself be

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[20] See: Annual Report On the 2017 Activities of Human Rights Defender Of The Republic Of Armenia As National Preventive Mechanism http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf , as of 31.03.2018. Page 13.

[21] See: https://rm.coe.int/1680696a3f , as of 03.2018, Paragraph 46.

[22] See: https://rm.coe.int/16806bf46f, as of 31.03.2018, Paragraph 63, 65.

considered as inhuman or degrading treatment, even if the competent authorities have not pursued such a purpose [23].

It should be noted that from the standpoint of the absence of a minimum personal space, the European Court of Human Rights has revealed violations of the provisions under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the European Convention on Human Rights) in a number of rulings on Armenia [24].

As a result of visits and survey undertaken by representatives of the National Preventive Mechanism, it was also found that the reason for overcrowding in different correctional institutions is the unreasonable refusal to transfer the prisoners to open-regime correctional facilities (e.g. "Kosh" Penitentiary Institution). Particularly, complaints had been filed that the transfer to an open-regime correctional facility was denied on the grounds that the prisoner had previously been sentenced and had an outstanding civil suit. Some of the persons deprived of their liberty noted that being sentenced on certain articles of the Criminal Code of RA deprived them from the right to be transferred to an open-regime correctional facility. According to the head of the Penitentiary Institution, the number of inmates subject to transfer to an open correctional facility was about 100 persons.

As regard said issues, it should be noted that according to Paragraph 1, Part 1 of Article 102 of the RA Penitentiary Code*, the sentenced persons shall be subject to transferring to an open-regime correctional institution if they comply with the requirements set out in Paragraph 1 under Article 102 (1) points (a), (b), (c), or (d) of the Code,* ***based on their positive behavior records****.* According to Article 101 of the Penitentiary Code of the Republic of Armenia, *the type of correctional institution for serving the sentence shall be changed by the Allocation Board under the Penitentiary Service of the Ministry of Justice taking into consideration the* ***behavior of the person*** *sentenced to term or life imprisonment,* ***the reasonability of the level of isolation, and pursuant to rules for holding prisoners separately in the correctional institution specified by the Penitentiary Code of the Republic of Armenia.***

From formulation of these provisions it is understood that for changing the type the correctional institution, neither the category of the criminal offence committed by a person deprived of his or her liberty, nor the fact of outstanding civil suit shall be taken into account other than behavior of a person, the reasonability of the level of isolation, and the rules for holding prisoners separately in the correctional institution and other legal requirements.

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[23] See: Ruling made on June 16, 2005 on Labzov vs. Russia Case, claim # 62208/00, Par. 44; Novoselov vs. Russia Ruling made on June 2, 2005, claim # 66460/01, Par.41 ; Mayzit vs.Russia, Ruling made on January 20, 2005, claim # 63378/00, par.39 ; Novoselov vs. Russia Ruling made on June 2, 2005, claim # 66460/01, Par. 41; Kalashnikov vs. Russia, Ruling made on June 15, 2002, claim # 47095/99, Par.97 ; Pirs vs. Greece, Ruling made on April 19, 2001, Claim # 28524/95, Par. 69, etc.

[24] See: Kirakosyan vs. Armenia, Ruling made on December 2, 2008, claim # 31237/03, Par. 40-59; Karapetyan vs. Armenia, Ruling made on October 27, 2009, claim # 22387/05, Par.33-47.

The Concept of the New Penitentiary Code refers to the so-called "progressive system" formerly practiced in many countries worldwide and undergone some developments. The "Progressive System" is part of the legal structure of the punishment as it promotes the prisoners law-abiding behavior, mitigates their conditions in the places of deprivation of liberty, and in contrary, envisages more severe conditions for those with illegal behavior. Modification of the conditions for serving the sentence within one correctional institution will certainly have a positive impact on the effectiveness of the execution of punishments and on the realization of its purpose.
With regard to these issues, it is also necessary to introduce a flexible mechanism of gradually changing the correctional regimes, i.e. from strict to soft.

The overcrowding may be also due the fact where transfer of persons depriving of their liberty to a lower level semi-closed correctional facility is conditioned by their mandatory involvement in the housekeeping tasks (for example, in "Goris" penitentiary institution).

Particularly, the semi-open correctional facility in "Goris" penitentiary institution is located outside the main building of the institution and has a separate entrance to ensure the free traffic of persons. During the monitoring visit, however, it turned out that all persons deprived of their liberty kept in the semi-open correctional facility were involved in housekeeping tasks.

As a result of the above, three inmates allocated to a semi-open correctional facility were in fact placed in a semi-closed correctional facility based on their own request.

To sum up, it should be stressed-out that the State should take continuous steps to provide persons deprived of their liberty with adequate personal space in line with national and international standards. This issue should be considered from the viewpoint of the provision of both minimum living space for each person deprived of his or her liberty (four square meters) and the personal space compatible with conditions for human dignity.

In addition, measures should be taken to organize the transfer of prisoners to the open correctional facilities in accordance with the requirements of Articles 101 and 102 of the RA Penitentiary Code.

2.3. Issues related to keeping non-smoker persons deprived of their liberty in the same cell or barrack with smokers

Complaints lodged in 2017 reported that a non-smoker detained or sentenced person was placed in the same cell or barrack with smokers. According to the inmates, the administration of the correctional institution never took into account such facts when allocating inmates to cells.

As a result, the tobacco smoke [25] (or otherwise, passive smoking) causes negative secondary impact on the health of the non-smoker persons deprived of their liberty or creates conditions violating the rules of coexistence. Such conditions also create conflicting situations between persons deprived of their liberty.

The need to addressing this challenge as well as the necessity of taking respective steps was recognized in the complaints considered by the Defender. For instance, in one of the complaints it was noted that a person deprived of his or her liberty had cardiovascular problem. It was also noted that he/she was accommodated in a cell with a bad ventilation with three others inmates who, unlike him/her, were smokers. In this regard, the complainant stated that passive smoking had a negative impact on his or her health and requested the Defender's assistance in ensuring adequate conditions for serving the sentence or transfer to another penitentiary institution.

Another complaint addressed to the Defender again stated that the spouse of the complainant had problems with the cardiovascular system. The latter, according to the complainant, was sharing the same cell with other 13 smoking inmates.

As a result of intervention, in the first case, the complainant was transferred to another penitentiary institution with cell windows large enough for natural ventilation of air, and in the second case, the person was transferred to a cell occupied by non-smoker inmates.

Despite the positive results achieved at the individual level, the problem yet needs both systemic and legislative solutions.

It is noteworthy that this issues was covered by the Order of the Head of the Penitentiary Authority dating April 8, 2015 "On providing additional safeguards for the protection of the rights of non-smoker detained or sentenced persons " which states that: *in the absence of legal restrictions imposed by Penal Legislation , the accommodation of the detained or sentenced persons in cells (barracks) should be organized in a manner to minimize as much as possible the accommodation of non-smokers in cells (barracks) shared with smokers [26].*

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[25] According to Paragraph 12, Part on of Article 1 on the Draft Law of RA "On reduction and prevention of the negative impact of tobacco products use", the secondary smoke is defined as smoke available in the air where somebody smokes or has smoked before, including the smoke exhaled by person using tobacco.

[26] See: http://ced.am/government-instructions.html , as of 31.03.2018.

According to Paragraph 15 of the Annex to the RA Government Decree 1543-N [27] of August 3, 2006, *According to the Law of RA "On Keeping of Arrestees and Detained Persons" (...) detained persons shall be separately accommodated in cells and in the places of deprivation of liberty, while the sentenced person shall be accommodated in cells or barracks in accordance with the RA Penitentiary Code, due regard also being paid to ensuring the compatibility, health and safety of persons.*

Observations made during the visits show that these requirements are just discretional and ineffective despite these legislative regulations.

The European Court of Human Rights has also expressed its legal position on this issue. For instance, according to the ruling on the Eleftheriadis vs. Romania, the plaintiff with chronic lung disease had been held in the same cell with two other persons deprived of their liberty for 10 months, who, unlike him, were smokers. At the same time, the plaintiff had been tried by court several times and was held in the same court cell with smokers. In addition, the plaintiff claimed that he had been exposed to the negative impact of tobacco smoke on the way from the penitentiary institution to the court.

In this case, the European Court has found violation of Article 3 of the European Convention indicating that, - *States are required to take measures to protect persons deprived of their liberty from the harmful effects of secondary smoke where the doctor's recommendation and the medical records evidence that (as in this case) such requirement is necessary due to health considerations.*

As regards the non-smoker being held in the same cell with smokers, the European Court stated that *even if the non-smoker has been held with smokers for a short period of time, it was still in contrast with the doctor's instructions recommending the plaintiff to avoid the harmful effects of tobacco smoke [28].*

Another ruling on the case of *Florian vs. Romania*, the European Court has found a violation of Article 3 of the European Convention on the grounds that the plaintiff with chronic hepatitis and arterial hypertension had been held for nine months with other from 110 to 120 inmates of which 90% were smokers. The plaintiff's complaint was also related to sharing with smokers the same ward in the Medical Facility of the Penitentiary Institution even where there was the doctor's warning of the harm of cigarette smoke to the plaintiff's health [29].

With regard to this problem, the CPT in its 2007 report to German government suggested revising the policy and practices for accommodating persons deprived of their liberty in cells (barracks) due regards also being paid to passive smoking issues [30].

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[27] RA Government Decree 1543-N of August 3, 2006, "On the approval of the internal regulations in the places of keeping the detained persons under the Penitentiary Service of Ministry of Justice of RA.

[28] See: Eleftheriadis vs. Romania, Ruling made on January 25, 2011, claim 38427/05, Par-s 49, 50.

[29] See: Florian vs. Romania, ruling made on September 14, 2010, claim # 37186/03.

[30] See: https://rm.coe.int/1680696304 as of 31.03.2018, Par. 117.

In view of the above, for addressing such challenges it will be necessary to:

- ✓ ***Organize training courses for the penitentiary officers on the topic of Restrictions on "Keeping Non-smoker persons deprived of their liberty in the Same Cells (barracks) with Smokers", for ensuring more effective enforcement of the Order of the Head of the Penitentiary Authority of the RA Ministry of Justice on April 8, 2015 "On the additional guarantees for the protection of rights of non-smoker sentenced and detained persons".***
- ✓ ***Apart from the general rule of keeping non-smoker persons deprived of their liberty separately from smokers, initiate legislative changes envisaging not a discretionary but a compulsory requirement for keeping non-smoker persons separately from smokers, basis of a medical recommendation.***
- ✓ ***Approve and implement a program, including an annual one, aiming at raising awareness of persons deprived of their liberty on the harm of secondary smoking.***

2.4. Accommodation conditions in disciplinary cells ("Kartzer")

Insufficient living conditions of disciplinary cells in several penitentiary institutions remained unchanged in 2016 [31], as well as in 2017.

For instance, there are 9 disciplinary cells in "Artik" penitentiary institution. At the moment of visit the windows in the majority of cells were broken or there were no window glazing at all. The sanitary conditions of the cells were insufficient and there was a need of refurbishment. There were no sanitary annexes in 7 of the cells while persons deprived of their liberty in the disciplinary cells had to use the block's communal bathroom.

"Goris" penitentiary institution has 3 accommodation areas dedicated for disciplinary cells. At the moment of the visit the cells were unoccupied. There were no sanitary annexes in those cells and the persons deprived of their liberty had to use the block's communal toilets. The cells were in clear need of refurbishment; there was a high level of humidity.

Disciplinary cells in "Abovyan" and "Nubarashen" penitentiary institutions were also in poor conditions.

It should be noted that the poor conditions of the disciplinary cells in "Nubarashen" penitentiary institution was also reflected in 2016 CPT report to Armenian Govenment noting that: *the cells continued to be dark, humid, dilapidated, filthy and infested by vermin*. The CPT *calls upon the Armenian authorities to stop using "Nubarashen" disciplinary cell immediately*, *and*

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[31] See: Annual report on the 2016activities of the Human Rights Defender of the Republic of Armenia as the National Preventive Mechanism.
http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf , as of 31.03.2018, Pages 25-26.

ensure adequate living conditions in disciplinary cells of other penitentiary institutions special regard being paid to access to natural light as well as to partitioned toilets[32].

The disciplinary cells of "Goris" penitentiary institution had only semi-partitioned sanitary annexes.

To sum up, it is necessary to ensure adequate conditions in disciplinary cell of the penitentiary institutions, including access to adequate natural light as well as to partitioned sanitary annexes.

As a result of the monitoring undertaken in penitentiary institutions, cases of improper maintenance of medical records and registers have been found.

Examination of the registers of the sentenced (detained) persons kept in the disciplinary cells revealed that said registers are poorly maintained, in particular: at the moment of visit there were no records on the dates and hours of early conditional release from the disciplinary cells, the register had some erased entries and omissions. The register on transferring the sentenced and detained persons to Medical Correctional Institution or to medical facility of the healthcare system was not properly maintained. It also contained some shortcomings, for instance: the dates of readmission of persons deprived of their liberty to the penitentiary institution were missing (e.g. "Artik" Penitentiary Institution).

At the time of the visit, the officers of the Penitentiary Institution stated that poor maintenance of the register was mainly due to the lack of sufficient of shift personnel as a result of which they did not have enough time to properly maintain the registers.

The examination of the register for violation by sentenced or detained persons of the internal regulations revealed that said register was poorly maintained, specifically, the entries were made with delay. Checking of said register also revealed cases where a person deprived of his or her liberty was subjected to "verbal reprimand" sanction (for example, "Goris" penitentiary institution).

As regards the above-mentioned facts, it should be noted that according to Article 97 (2) of the RA Penitentiary Code, *all sanctions shall be applied in writing by the decision of the head of the correctional facility or by the person who performs his/her duties.*

Therefore, it is necessary to ensure proper maintenance of registers in penitentiary establishments; to consider the opportunity of increasing the number of staff on shift in order to exclude the above mentioned issues with regard to registers.

At the same time, the practices of verbal sanctions is unacceptable for which strict supervision should necessarily be undertake.

2.5. Accommodation conditions in "quarantine" cells

[32] See: https://rm.coe.int/16806bf46f as of 31.03.2018 ; Paragraph 63, 65.

Through 2017, issues with regard to the conditions of quarantine cells, including issues related to sanitary and hygienic conditions are revealed (for example in “Artik”, “Nubarashen”, “Kosh” and “Yerevan-Kentron” penitentiary institutions). Particularly, there was poor natural light in the Quarantine Unit of “Artik” Prison. The sanitary conditions were also poor, for instance, cleaning works were not properly organized.

In accordance with paragraph 12 of the Annex to the RA Government Decree No 1543-N of August 3, 2006, a detained or sentenced *person shall be placed in the quarantine units at least under the same conditions as a detained or sentenced person is placed in the cells for detained persons or in the cells or barracks of other correctional institutions.*

It should be noted that there is no separate unit dedicated for quarantine in “Kosh” penitentiary institution, while the only dedicated quarantine cell in “Yerevan-Kentron” penitentiary institution is used for the permanent accommodation of persons deprived of their liberty. For this reason, the detained or sentenced persons are immediately transferred to the accommodation areas, in fact without undergoing proper medical screening, as well as being deprived of the opportunity of getting acquainted with the conditions of the correctional facility, as prescribed in the respective legislation. However, pursuant to Part 2 of Article 65 of the RA Penitentiary Code, *a sentenced person conveyed to a correctional facility shall be placed for up to seven days in the quarantine unit for medical screening and adaptation to the conditions of the correctional facility.*

According to the written clarification from the Ministry of Justice of the Republic of Armenia on the aforementioned issue, there are quarantine units (or cells) in all penitentiary institutions, except for the “Kosh” penitentiary institution, where the quarantine block is out of service: it needs capital refurbishment and furnishing.

In this regard, it is necessary to establish quarantine units in all penitentiary institutions with all necessary conditions for human activities with due regard being paid to the importance of adaptation, especially for the first-timers, to the conditions of the correctional institution

2.6. Access to shower and sanitary annexeses

As a result of the studies carried out in penitentiary institutions in 2017, issues related to the access of persons deprived of their liberty to bathrooms/showers were revealed.

Bath/shower rooms in the semi-open "Artik" correctional institution were in very poor conditions.

It was revealed that shower rooms and sanitary annexes in each floor of the semi-open institution were in an unacceptable sanitary condition, the shower heads were broken.

According to the clarification made by the Ministry of Justice of RA, in the period covering 2016-2017, routine maintenance works were carried out in the accommodation zone cells, sanitary units and corridors, as well as the kitchen was completely renovated in "Artik" penitentiary institution. The renovation and finishing works were carried out in 5 blocks of the accommodation zone, the open-regime block, the isolator, the dining hall, as well as in the boiler house. The admission room was also renovated.

At the time of the visit it was revealed that only some of the wards with partitioned sanitary annexes and showers of the in-patient medical facility in "Artik" penitentiary institution had water supply.

The communal sanitary facility in the Medical Care Unit was in anti-sanitary conditions, the air pollution level was high. The bathroom was also dirty.

With regard to aforementioned, the Ministry of Justice of the Republic of Armenia informed that all necessary building materials and accessories had already been provided for the internal furnish and furnishing of the shower rooms and toilets towards elimination of the revealed defects in the in-patient medical facility.

As a result of the monitoring undertaken in Medical Care Unit of “Kosh” penitentiary institution it was found that the Intervention Room of the Medical Care Unit still had problems with regular water supply and wastewater disposal, as well as with insufficient sanitary and hygienic conditions.

The shower room in disciplinary cells unit of "Artik" penitentiary institution was out of operation and the persons deprived of their liberty kept in those cells could not us it. Some of the inmates claim that they could use the communal shower in the main block while, for example, persons deprived of their liberty with possible tuberculosis are placed (upon their own request) in one of the disciplinary cells but did not use the communal shower room.

Moreover, the examination of the register for access to shower for disciplinary cell inmates revealed that the latest entry made in it was three months before the monitoring visit.

As a result of the examination carried out in "Goris" penitentiary institution, it was stated that the shower rooms on the 2nd floor of the penitentiary building were very dirty and were in need of refurbishment and cleaning works. In addition, the window glass of one of the bathrooms was broken at the time of the visit, which was explained by the need for ventilation.

The shower room next to the laundry on the ground level floor was also in a very poor shape, i.e. dirty. For instance, apart from the aforementioned refurbishment and disinfection issues, there was a lack of artificial lighting as well.

According to Paragraph 36 of the Appendix to RA Government Decree No 1543-N of August 3, 2006, *any detained or sentenced person shall have access to shower or bath at a temperature suitable to the climate, at least once a week and, if possible, more frequently if it is necessary to maintain general hygiene.*

In this regard, 2nd General Report on the CPT's Activities states that, *prisoners should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation* [33].

In addition, during the visits to Armenia and a number of other counties the CPT has repeatedly called on the national authorities to increase the frequency of access to shower or bathing facilities based on the Rule 19.4 of the European Prison Rules. According to this 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 recommendations made in CPT Report 2016 to Armenian Government, *Prisoners were allowed to take a shower once a week;* ***this entitlement should be increased to at least twice a week*** [34]**.**

Based on the aforementioned, it is necessary to undertake measures for the proper organization of access to shower or bath facilities for persons deprived of their liberty by refurbishing such facilities and toilets available in the penitentiary institutions.

At the same time, driven by the necessity to maintain general hygiene of the persons deprived of their liberty, the Government Decree No 1543-N of 3 August 2006 should be amended as follows: the prisoners should be entitled to take shower at least twice a week.

As far back as in 2016, the HRDO had reflected on the challenges with regard to the access of prisoners with mobility problems to shower and bath facilities and sanitary annexes in cells. [35] Said problem persisted throughout 2017 as well (for example, in "Nubarashen" Penitentiary Institution).

Along with aforementioned, following the examination of the living conditions for detained or sentenced persons with disability, all penitentiary institutions started installing toilet bowls, while "Hrazdan" penitentiary institution was creating special conditions in shower rooms with adequate conveniences set up for this purpose.

Therefore, it is necessary to ensure access to shower/bath facilities and sanitary annexes for persons deprived of their liberty with disability.

2.7. Sanitary and hygiene and general accommodation conditions

[33] See: https://rm.coe.int/1680696a3f , as of 3.2018 ; Paragraph 49.

[34] See:https://rm.coe.int/16806bf46f , as of 31.03.201 ; Paragraph 73.

[35] See: Annual report on 2016 activities of the Human Rights Defender of the Republic of Armenia as the National Preventive Mechanism http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf as of 31.03.2018, Page 22.

In 2016, a number of shortcomings related to insufficient hygiene and living conveniences have been revealed during the visits to penitentiary institutions.

In particular, as far back as in 2016, all cells on the ground floor level as well as corridors of “Nubarashen” penitentiary institution were in extremely insufficient sanitary conditions [36].

The Ministry of Justice of the Republic of Armenia clarified that persons deprived of their liberty accommodated in cells on the ground floor level of “Nubarashen” penitentiary institution were transferred to cells on other floors. At the same time, it was noted that the issues of relocation of quarantine sells No. 7, 8, 9 and disciplinary cells was in the process of consideration.

As regards the aforementioned problems, the examination undertaken on ground floor of “Nubarashen” penitentiary institution reveled the fact that several of the cells were still in use (quarantine unit, disciplinary sells, cells for prisoners on hunger strike).

It is worth to state, that there is an urgent necessary to take consistent steps to completely stop the operation of the ground floor.

During the monitoring it was revealed that Bloch 4 of “Goris” penitentiary institution was in the 4th degree of emergency mainly due to poor maintenance and sanitation conditions.

"Goris" penitentiary institution was also facing the problems of waste collection. According to the clarifications, the waste was being disposed of 3-4 times a month, but at the moment of the visit there was a huge pile of waste in the area dedicated for waste collection.

The problem with waste collection and disposal also existed in "Kosh" penitentiary institution. According to the collected information, the entire waste collection and disposal service of this institution was carried out on a contractual basis. Nevertheless, at the time of the visit, there were large garbage dump near the sanitation facility of the penitentiary institution. Anti-sanitary conditions of toilets were found also in "Artik" penitentiary institution. Similar conditions were revealed in the dental surgery in "Kosh" penitentiary institution.

According to Article 73 of the RA Penitentiary Code, *the accommodation areas for prisoners in correctional institutions must comply with construction and sanitary requirements effective to general residential areas and they must ensure the prisoners’ health protection.*

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

[36] See: Annual report on t2016 activities of the Human Rights Defender of the Republic of Armenia as the National Preventive Mechanism.
http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf , as of 31.03.2018, Pages 19-20.

It should also be noted that pursuant to Paragraph 4 of the Directive 1 of the Head of the Penitentiary Authority, the heads of penitentiary institutions are instructed *to institute proper supervision over the sanitation measures in penitentiary institutions, (...) to carry out disinfecting activities to exclude the dirt and stench.*

Thus, penitentiary institutions should strengthen the control over the compliance of sanitary rules and hygienic standards.

Measures for collection and destruction of medical waste laid down by the Order of the Minister of Health of the Republic of Armenia No. 03-N of March 4, 2008, "On approval of Sanitary Rules 2.1.3-3 of Sanitary and Anti-epidemic Requirements for Handling Medical Wastes" must be properly observed (e.g. in "Kosh" penitentiary institution).

It should also be noted that in the framework of the Council of Europe's "Strengthening Health Care and Human Rights Protection in the Prisons of Armenia" program, renovation works have been carried out in all Penitentiary Institutions for improvement of general conditions of the primary health care rooms, except for the "Sentenced persons Hospital" penitentiary institution.

For addressing this problem, it is necessary to ensure the compliance to the construction and sanitation requirements in Medical Care Departments as prescribed in the respective legal acts.

In 2017, The Human Rights Defender's Office also received a complaint that the interrogation procedure rooms in the “Nubarashen” penitentiary were not heated, the chairs were broken, and the sanitary and hygiene conditions were poor.

At the time of the visits to "Nubarashen" penitentiary institution the representatives of the Human Rights Defender's Office examined and made records on the conditions of these rooms and launched a discussion procedure into this issue.

According to the Ministry of Justice, all rooms dedicated for visits in “Nubarashen” penitentiary institution were provided with a new space heating system operating since December 15, 2016. The rooms for the interrogation procedure were partly furnished while the broken electric heaters in the left wing rooms were replaced by new appliances, and additional cleaning works were carried out.

In 2017, during their visits for monitoring as well as in response to the lodged complaints the HRDO representatives had regularly focused on conditions in the interrogation rooms in “Nubarashen” penitentiary institution, including their cleanliness and furnishing.

In the course of the other visit to the “Nubarashen” penitentiary institution in 2017, the HRDO representatives had again examined the winter-season heating and other general condition of the rooms for interrogation procedures in “Nubarashen”. At the time of the visit all rooms were heated.

It should be noted that the conditions of the rooms for interrogation procedures in penitentiary institutions are under the regular attention of the Human Rights Defender's Office.

The lack of adequate heating, adequate furniture, and lighting in rooms for interrogation procedures in the penitentiary institutions, as well as inadequate sanitary and hygiene conditions prevent from exercising the right to legal aid.

2.8. Provision of persons deprived of their liberty with necessary supplies

Throughout 2017, there were a number of complaints from persons deprived of their liberty in penitentiary institutions about not providing them with the necessary items and supplies.

The study of the quarantine unit in "Artik" penitentiary institution revealed that persons deprived of their liberty had to use their own bedding as no bedding was provided by the penitentiary institution.

Investigation into the personal case of one of the prisoners placed in the quarantine cell revealed that according to the entries made in the inventory book for goods (bedding, tableware, etc.) owned by the institution and given to the inmates the latest date of provision of bedding was January 4, 2012.

While, according to Annex 3 to the RA Government Decree No 1182-N of 15 October 2015, on the ration and useful life of bedding and hygiene items to be provided to persons in the penitentiary institution, i.e. blankets, matrasses, and pillows shall be provided once in two years. According to the same Decree, bed-sheets shall be provided 4 pieces a year, and pillowcases – 3 pieces a year.

As a result, the requirements of Annex 3 to the RA Government Decree No 1182-N of 15 October 2015, namely – the useful time of bedding and hygiene items, were neglected,

According to Rule 21 of the European Prison Rules, *every prisoner 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.*

To sum up, it should be noted that the State should take steps to ensure that persons deprived of their liberty have adequate bedding suitable to the climate.

2.9. Provision of proper nutrition

Proper nutrition provided by penitentiary institutions is of utmost importance for the protection of health of persons deprived of their liberty. The inmates have limited opportunity to manage their diet since their meals are provided according to the menu of the institution.

As a result of the survey made in 2017, specific legal as well as practical issued were identified with respect to the quality and quantity of meals served to the inmates by penitentiary institutions.

Complaints in respect to the quality and quantity of meals were received from the inmates of "Armavir" penitentiary institution. In this regard, as a result of the survey undertaken in "Armavir" it was revealed that in the months of January and February, 2017, persons deprived of liberty were not provided with cheese, fruits, fish, and juice.

There was also an issue with regard to provision of diet food to persons deprived of their liberty. For example, people with specific diseases (such as diabetes, ulcers, etc.) need special diet. The former regulations on the meals served in penitentiary institutions did not provide for any requirement for dietary or specially prepared food for inmates.

The portion of food to be served to persons deprived of their liberty in penitentiary institutions is defined by the Government Decree No 1182-N of 15 October 2015 [37], which was amended on May 18, 2017.

With respect to the special diet, Paragraph 1.4 of the aforementioned Decree already requires that, *based on the physician's diagnosis or advice, pregnant, nursing mother and (or) sick detained and sentenced persons accommodated in penitentiary institutions of the Ministry of Justice of RA shall be provided with the respective dishes made of the same foodstuffs as specified in Annex 1 to the same Decree.*

In the previous version of the Decree, pregnant, nursing mothers, juvenile or sick detained or sentenced persons were entitled to only some additional ration of food which did not meet the needs of persons with special dietary requirements. The new edition of the Decree also provides for the provision of additional food.

Another important amendment made to the RA Government Decree No 1182-N of 15 October 2015 is the provision set forth in Paragraph 1.6, according to which, *when purchasing foodstuffs as prescribed in Appendix 1 of the Decree and cooking food, due regard should be paid to the religion as well as to cultural peculiarities (denial of food of animal origin) of detained or sentenced persons kept in penitentiary institutions of the Ministry of Justice of the Republic of Armenia.*

However, there are still issues related to the provision of special diet conditioned by the religion, which was highlighted in the Special public report of the Human Rights Defender on "Ensuring the Rights of Refugees and Asylum Seekers in the Republic of Armenia" 2017 [38].

Pursuant to changes made in Government Decree No. 1182-N of 15 October 2015, the daily ration of some food for persons deprived of their liberty was reduced. In this regard, the Human Rights

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[37] RA Government Decree No 1182-N of 15 October 2015, "On establishing the daily minimum ration of food, clothing and goods and their useful life, bedding and hygiene items and their useful life to be provided to persons in the penitentiary institution, and on revoking the RA Government Decree 413-N of April 10, 20013".

[38] See: http://pashtpan.am/resources/ombudsman/uploads/files/publications/20f0503aafb55a1154e9ddd605d71bca.pdf as of 31.03.2017, Page 51.

Defender had criticized the Government of Armenia stating that such changes should be based on reasonable calculations while solutions should be based on such calculations.

It is of utmost importance that meals for persons deprived of their liberty be prepared in proper conditions. In this regard, in the course of the 2017 monitoring visits it was stated that the kitchen of “Kosh” penitentiary institution was in a very poor sanitary condition, was moldy and needs refurbishment. The dishwashing room was also dirty. A similar situation was found in the kitchen of "Goris" penitentiary institution.

For instance, in "Artik" penitentiary institution the kitchen food storage room was refurbished. The dining hall and corridor of the regime zone in "Sevan" penitentiary institution was reconstructed and painted.

The importance of provision of nutrition in proper quality and quantity to persons deprived of their liberty is enshrined in international standards. Thus, in accordance with Rule 20.1 of the UN Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations First Congress on 30 August 1955, -*Every prisoner shall be provided by the prison administration at the usual hours with food nutritional value adequate for health and strength, of wholesome quality and well prepared and served.*

According to Rule 22.3 of the European Prison Rules - *food shall be prepared and served hygienically.*

Poor hygiene conditions of the penitentiary institutions' kitchens directly affect the quality of food prepared and served to persons deprived of their liberty which can make harmful effect to their health.

Preparation of food in anti-hygienic kitchens is not unacceptable. Therefore, it is necessary to maintain adequate hygiene conditions in the kitchens of the penitentiary institutions.

In addition to qualitative criteria, quantitative standards of food served to persons deprived of their liberty must also be safeguarded by ensuring the food assortment and rations provided for by the legal act regulating the sector.

It is also important to provide, if necessary, a special diet, which is of crucial importance for protection of health of persons deprived of their liberty.

2.10. Ensuring the right to leisure, including outdoor exercise and sports

During 2017, monitoring visits to penitentiary institutions revealed issues with regard to the right of persons deprived of their liberty to leisure, including outdoor exercise or sports.

For instance, there are 3 outdoor exercise yards for persons deprived of their liberty in "Goris" penitentiary institution. One of the outdoor exercise yards was furnished with various sports equipment, but there was no protection against inclement weather. The shelter was too narrow and does not cover the sports equipment. The other 2 yards were equipped only with benches. There was a problem of shelter large enough to protect from inclement weather; moreover, the benches in the yard were fixed on the ground in the central part of the yard. There were no garbage bins in the yard.

With regard to the aforementioned problems, the Ministry of Justice of the Republic of Armenia clarified that for protection of the outdoor exercise yards from inclement weather in "Goris" penitentiary institution the yards had already been equipped with large-size shelters and new benches. Shelters were also built in all outdoor exercise yards of "Yerevan-Kentron" penitentiary institution.

This issue still remains unaddressed in "Abovyan" penitentiary institution. There are no adequate conditions in outdoor exercise yards for sports activities for juvenile inmates. At the same time, sports activities for juvenile inmates are poorly organized.

The private interviews with juveniles deprived of their liberty also raised deep concern as they could not implement their legal right to access to at least two hours of their daily outdoor exercise. They claim that the duration of the daily outdoor exercises was determined by the administration and, as a rule, does not exceed one hour.

Visits to "Nubarashen" penitentiary institution in 2017 revealed numerous cases regarding the right of persons deprived of their liberty to daily outdoor exercises. For instance: in contrast to legal entitlement, the outdoor exercise was shorter that 1 hour, on non-working days and on weekends no outdoor exercises were organized for the persons deprived of their liberty, etc. The above-mentioned problems are mainly related to the insufficient staff.

The right to leisure, including outdoor exercises is guaranteed both by national documents and international instruments. The importance of the opportunity of sport activities during the period of outdoor exercise for persons deprived of liberty is also highlighted in the European Prison Rules. The provisions of Rule 27.3 and 27.4 state that: *Properly organized activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.* And: *Prison authorities shall facilitate such activities by providing appropriate installations and equipment.* Thus, according to the Rule 23 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) of December 17, 2015, - *Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.*

Paragraph 2 of the same Rule states that, - *Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.*

This right is clearly stipulated in national legislation. According to Article 12 (1) (10) of the RA Penitentiary Code, - *the sentenced persons have the right to: (...) leisure, including outdoor exercise or sport activities and nighttime sleep.*

There is a similar provision in Article 13 of the Law of RA "On Keeping of Arrestees and Detained Persons".

According to Paragraph 87 of the Annex to RA Government # 1543-N of August 3, 2006, - *in places of deprivation of liberty or correctional institution the outdoor exercise yards dedicated to juvenile detained or sentenced persons shall be adapted for doing physical exercises, various games and sports.*

Article 56.4 of the RA Penitentiary Code states that: (...) *sentenced juveniles shall be entitled to daily outdoor exercise for at least two hours.* As it was already mentioned, arrested or detained juveniles shall also be entitled to daily outdoor exercise for two hours.

According to Article 27 (2) of the Law of RA "On Keeping of Arrestees and Detained Persons", - *women and juvenile persons deprived of their liberty by arrest or detention are entitled to daily outdoor exercise for at least two hours where being allowed to make physical exercises*.

It should be noted that there is also a problem of differentiation in the duration of the outdoor exercises for women under arrest of detention or for sentenced women. For instance, while women deprived of their liberty by arrest or detention are entitled to daily outdoor exercise for at least two hours a day, there is no such right for sentenced women. This issue was also highlighted in the Annual Report on the 2016 Activities of Human Rights Defender of The Republic of Armenia as National Preventive Mechanism [39].

Nevertheless, the competent authorities have not taken any steps to correct the deviation from the above general logic in the law.

Thus, the daily leisure of persons deprived of their liberty should include exercises, sports, and entertainment programs. In this regard, the State should take steps to ensure that the above measures are implemented.

***In view of the above, it is necessary to*:**

- ✓ ***Ensure proper enforcement of the right to outdoor exercise or sports activities in penitentiary institutions by providing adequate yard size, benches, appropriate installations and equipment, as well shelter of adequate size for protection from inclement weather;***
- ✓ ***Equip outdoor exercise yards in "Abovian" penitentiary institution dedicated to juveniles deprived of their liberty with appropriate installations and equipment for organizing physical exercises, various games and sports.***

[39] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf , as of 31.03.2018, Pages 35-37.

- ✓ ***Ensure a unified legislative approach to the duration of outdoor exercises for women deprived of their liberty enabling them to enjoy a daily outdoor exercise for at least two hours regardless of their legal situation.***
- ✓ ***Ensure that persons deprived of their liberty held in penitentiary institutions have a daily outdoor exercise for at least one hour.***

2.11. Contact with the outside world

Persons deprived of their liberty being isolation from society are essentially limited in access to the outside world. The opportunity to communicate with family and relatives, and the outside world is crucial for both mental state and the law-abiding behavior of persons deprived of their and their reintegration into the society.

The current issues from the viewpoint of the contacts of persons deprived of liberty in the penitentiary institutions are mainly related to receiving visits and making telephone calls.

For instance, there were technical problems (for example in "Goris" penitentiary institution) to call the Human Rights Defender's *116 Hot Line* from the penitentiary institution's pay-phone.

Problems with visits to persons deprived of their liberty are related to the procedures for permitting visits as well as to the rooms set up for that purpose and their conditions.

In 2017, a number of complaints had been received from both by persons deprived of their liberty and by their close relatives on poor organization of visits. The issues were related to, for example, the occupancy of the visitor's room, delay in granting permits for visits, etc.

For instance, in "Nubarashen" penitentiary institution, a relative of the inmate had filed a request to the administration for a visit but the request was declined on the grounds that the representatives of the prison administration could not find the inmate's written consent to such visit.

In "Nubarashen" penitentiary institution there was also a problem as follows: a detained person was denied of receiving a visit as he/she had been under restriction in the past and the decision of cancelling said restriction did not reach to administration of the penitentiary institution. Restriction of the right of the person deprived of his or her liberty to contact with the outside world persisted due to the technical and organizational shortcomings, i.e. the absence of appropriate grounds.

With the support of the Defender's representatives the said problem was resolved: the penitentiary institution received a court ruling on lifting the restriction on this right, and a visit was provided to the person deprived of his or her liberty.

There are also problems with the rooms for visits. For example, short-term visits in "Goris" penitentiary institution are organized in the room for delivery of parcels and packages, which was

almost lack of natural light and there are cracks on the walls. During the monitoring visit the room was dirty.

As in the past year, there are still no long-term visit rooms in "Yerevan-Kentron" penitentiary institution. Due to absence of appropriate rooms, persons deprived of their liberty are transferred to “Nubarashen” penitentiary institution for long-term visits.

It should also be noted that “Armavir”, “Sevan” and “Kosh” penitentiary institutions are furnished with special waiting rooms for the family or relatives waiting to the visits to be arranged.

Taking into account the duration of the visit, as well as the right to live together with close relatives, long-term visits must be arranged with all necessary conditions suitable for that purpose. There must also be a partitioned toilet in these rooms. For instance, in "Sevan" penitentiary institution only 4 new rooms for long-term visits have partitioned sanitary annexes while the other 5 rooms have no partitioned sanitary annexes. In this block there are two communal toilets for that purpose. There are no partitioned sanitary annexes in the long-term visit rooms in “Kosh” penitentiary institution either.

It is also important to have the opportunity of outdoor exercise during the long-term visit. Except for "Armavir" and "Kosh" penitentiary institutions, the other institutions do not have outdoor exercise yards for long-term visitors.

There were also issues related to the organization of visits of two close relatives deprived of their liberty.

The complaint addressed to the HRD informed that the request for a short-term visit filed by persons deprived of their liberty being close relatives was denied by the administration of the penitentiary institution. Such denial was explained by the lack of legislative regulations governing the arrangement of visits between persons deprived of their liberty.

With regard to this issues, Part 1.9 of Article 12 of the Penitentiary Code states that - *a sentenced person shall have the right to contact with the outside world, including: send and receive correspondence, receive visits, make phone call, have access to books and media.*

According to Article 92 (1) of the Code, *the administration of the correctional institution shall create appropriate conditions to ensure the sentenced person’s contact with outside world and with family. For this purpose, the correctional institution shall set up rooms for short-term and long-term visits, provide means of communication and access to media.* A similar provision is also provided for in Article 17 of the Law of RA “On Keeping of Arrestees and Detained Persons”.

The Penitentiary Code and the Law “On Keeping of Arrestees and Detained Persons” of the Republic of Armenia provide for exhaustive grounds for restricting visits to and receiving visits by persons deprived of their liberty. Therefore, in the absence of such grounds, restriction of the visit to person deprived of liberty is illegal and violates his or her right to contact with the outside world.

According to Article 8 (1) of the European Convention, - *everyone has the right to respect for his private and family life (...).*

According to Rule 24.1 of the 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 organizations and to receive visits from these persons.* While paragraph 24.2 states that, -*Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.*

International and national standards indicate that restrictions on the right to liberty should not result in a loss of freedom of contact with the outside world. Moreover, the administration of the penitentiary institution must take steps to help maintain contacts with family and the outside world. Any restriction shall be imposed to the extent prescribed by law and be made on clear grounds. Nevertheless, imposing such restrictions must not completely prevent the persons deprived of their liberty from contacting with the outside world.

Thus, from the standpoint of the right of persons deprived of their liberty to contact with the outside world, it is necessary to:

- ✓ ***Ensure access to the Human Rights Defender's 116 "Hotline" telephone number;***
- ✓ ***Ensure, in all penitentiary institutions, proper implementation of the right of persons deprived of their liberty to receiving visits, excluding groundless and frivolous restrictions;***
- ✓ ***Establish appropriate facilities for long-term visit to "Yerevan-Kentron" penitentiary institution;***
- ✓ ***Establish, in all penitentiary institutions, special waiting rooms for family and relatives;***
- ✓ ***Ensure adequate lighting, temperature, furnishings, and sanitation and hygiene conditions in short-term and long-term visit rooms;***
- ✓ ***Ensure the right of outdoor exercises during long-term visits by setting up specific for that purpose outdoor exercise yards;***
- ✓ ***Furnish the long-term visit rooms with partitioned sanitary annexes.***

As a result of studies on exercising the right of persons deprived of their liberty to contact with the outside world, some legal gaps for entitling such contacts have also been identified. Discussions were launched focusing on issues related to the provision of short-term leaves to persons deprived of their liberty and the lack of opportunity for long-term visits to detained persons. The problems are conditioned by the current regulation ignoring the person's risk levels, where permission to short-term leaves are granted only based on the gravity of offence; and other circumstances.

According to Article 80 (1) of the Penitentiary Code, - *the sentenced person, **other than persons sentenced for dangerous recidivism or a serious crime**, may be granted a short-term leave in exceptional circumstances (death or serious illness of a close relative, a natural disaster inflicting*

serous material damage to the sentenced person or his or her family), as well as for social rehabilitation.

As regards this issue, it should be noted that the CPT 2016 Report to Armenian Government states that, - *The CPT has stressed many times in the past 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 or her sentence) is fundamentally flawed* [40].

There are no legislative provisions entitling detained persons to long-term visits: Paragraph 12 of Article 15 of the Law of RA "On Keeping of Arrestees and Detained Persons", - *a detained person shall be entitled to receive visits from his/her close relatives, media representatives, or from other persons at least twice a month for up to three hours.*

In order to provide a legislative solution to these and other revealed issues, the Human Rights Defender's Office has elaborated and submitted to the competent state bodies a proposal for making amendments in the "Penitentiary Code" and the Law "On Keeping of Arrestees and Detained Persons", as follows:

- In grating a short-term leave to sentenced to deprivation of liberty or detained persons, such decision should be made not on the grounds of the gravity of the offence committed by the person but rather on the latter's personal behavior and risk level;
- Entitle the detained persons to long-term visits;
- Provide a short-term leave for a sentenced person with a child in a difficult life situation to accommodate the child in an orphanage or with a relative, etc.

It should also be noted that from the point of view of exercising the right of persons deprived of their liberty to contact the outside world, there are important changes made in the RA Government Decree No 1543-N of August 3, 2006, that provides for the possibility of having video calls with family and close relatives. The draft amendment to the Government Decree was also submitted to the Human Rights Defender's Office for consideration. The revised draft Amendment was adopted by the Government of Armenia on December 14, 2017.

Said changes are crucial both for the foreigners as well as for other persons deprive of their liberty to communicate with their close relatives who are unable to visit them due to the certain circumstances. For such persons there is an opportunity of making video calls to their families and close relatives.

Thus, in accordance with Paragraph 185.1 of the Annex to the RA Government Decree No1543-N of August 3, 2006, *foreign detainees or sentenced persons whose close relatives are unable to visit them, as well as the detained or sentenced persons whose close relatives are unable to make short-term visits, shall be entitled to two video calls a month for twenty minutes each*. In accordance

[40] See:https://rm.coe.int/16806bf46f ; as of 31.03.2018, Paragraph 107.

with Paragraph 185.5 of the same decision, *the video calls shall be arranged in technically equipped rooms to be set up in the places for keeping the detained persons or in correctional institution.*

Said amendment will become effective from November 1, 2018.

2.12 Access to the means of legal protection at penitentiary institutions

Monitoring visits, as well as consideration of complaints addressed to the RA Human Rights Defender indicate that in several cases obstacles have been posed in the penitentiary institutions with regard to complaints and requests to be addressed by persons deprived of their liberty to the competent bodies, including to the Human Rights Defender. For instance, in a number of cases the administration of the penitentiary institution had either delayed or refused to accept at all such requests or complaints.

The information available at the Human Rights Defender's Office is not sufficient to conclude that this problem has a systemic nature. However, even a few incidents like this should be excluded.

Persons deprived of their liberty shall have a full opportunity to lodge complaints and requests to the head of the penitentiary institution or to any other competent body.

In this regard, it is important to follow the instructions of the Minister of Justice on 29 August 2016, in response to HRFO's letter, where the head of the Penitentiary Authority of the RA Ministry of Justice orders to launch strong control over the penitentiary institutions' officers to exclude cases of reprisals or threats imposed on persons that have addressed complaints to the Human Rights Defender or have shared information with the RA Human Rights Defender's representatives. As a result, the incidence of such cases dropped in 2017.

Effective compliant procedures are important safeguards for preventing the incidence of ill-treatment and violation of rights of persons deprived of their liberty. In its 1990 Report to the United Kingdom Government - *The CPT wishes to suggest (i) that the complaint forms and confidential access envelopes be generally available to prisoners at some place (e.g. the library), thereby avoiding that a prisoner has to ask for them specifically, and (ii) that a system of transmission be devised which avoids prisoners having to hand the confidential access envelope to prison staff*[41]*.*

In its 2016 Report to Armenia Government CPT emphasized that, - (...) *to ensure that inmates are able, at any time, to place written complaints in locked complaints boxes (located in each accommodation unit)* [42]*.*

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[41] See: https://rm.coe.int/1680698624 , as of 31.03.2018; Paragraph 184.
[42] See: https://rm.coe.int/16806bf46f, as of 31.03.2018; Paragraph 110.

The right to lodge requests and complaints is directly proportional to the right of the inmates to be duly informed of their rights. According to international standards, *upon admission to the penitentiary institutions persons deprived of their liberty should be informed in their understandable language about their rights and responsibilities, including the complaints procedure*.

Meanwhile, the requirement to be properly informed about the right to appeal is not always consistently exercised. For instance, the number of complaints against the sanctions imposed on persons deprived of their liberty (placed in the disciplinary cells) in penitentiary institutions during the year 2017 as a measure of punishment testifies on this fact. For instance, according to the information provided by the RA Ministry of Justice, in 2017only 2 complaints had been lodged against the decisions on placing detained and sentenced persons into the disciplinary cell.

In the 2016 Report to the Armenian Government, the CPT noted that, - *Prisoners were, in principle, entitled to submit complaints to a number of bodies (...). However, there was a general lack of information on complaints procedures. Therefore, it is necessary to review the internal complaints procedures in prisons, so as to ensure that inmates are able, at any time, to place written complaints (...) which will be ensured by the provision of accurate written information on the complaints procedure* [43].

An important safeguard for exercising the right to lodge complaints and requests by the inmates is to ensure their confidentiality and the exclusion of any censorship, which, however, is not always observed. For instance, during the monitoring visit of the HRDO representatives, an inmate placed in the disciplinary cell expressed his or her complaint on the fact that the administration of the Penitentiary Institution ("Artik"') had refused to take his or her request. Through the mediation of the HRDO representatives, the Social, Psychological and Legal Affairs Department of the Penitentiary Institution agreed to take the request addressed to the Human Rights Defender. At the moment of visit the above-mentioned request was censored by another officer of the Penitentiary Institution on the ground that it could possibly contain obscene expressions.

Such practice is unacceptable. Thus, according to Article 9 (5) of the RA Constitution Law "On Human Rights Defender" - *Complaints and other documents addressed to the Defender as well as requests or other documents sent by the Defender shall not be subject to verification or censorship. They must be sent to the Defender without delay upon receipt by competent bodies or organisations, but no later than within 24 hours thereafter.*

According to Article 92, Part 5 of the Penitentiary Code, the *correspondence shall be delivered through the administration of the correctional institution and shall be* ***subject to external examination, without the knowledge of the contents of the correspondence****, to the extent that the envelope does not contain any prohibited objects or materials.*

Thus, in order to ensure the effective exercise of the right of persons deprived of their liberty to lodge complaints and requests, it is necessary to establish a proper complaints procedure at the penitentiary

[43] See: https://rm.coe.int/16806bf46f, as of 31.03.2018; Paragraph 110

institutions. Particularly, due regard should be paid to ensuring that persons deprived of their liberty are duly informed of their right to submit complaints and requests, to ensure that the complaints procedure is confidential and free from any external pressures, as well as to exclude any mean-practices of censorship of the requests submitted by inmates.

2.13. Transport communication

In 2017, verbal and written complaints were addressed to the Defender stating that there was no public transport from Vagharshapat (Echmiadzin) - Margarar highway to Chobankara village of Armavir region, i.e. to "Armavir" penitentiary institution.

According to the complaints, they had to walk some 3.5 km to reach "Armavir" penitentiary institution or had to take a taxi. The situation was more complicated in the summer and in the winter months. This issue was also highlighted in the Report on 2016 activities of the RA Human Rights Defender as the National Preventive Mechanism [44].

In relation to this problem the 2008 CPT reported to the Danish Government indicated that, - *where the places of detention is far from the transport stop, the penitentiary service should take steps to ensure regular and accessible transport communications to the place of deprivation of liberty* [45].

With regard to this problem, the Ministry of Transport, Communication and Information Technologies of RA had clarified that there was a need to open a new intra-regional transport route for "Armavir" penitentiary institution. According to Article 10 (2) of the Law of RA on Road Transport, *the intra-regional regular bus routes shall be organized by the relevant territorial administration body.*

According to the Ministry, the issue was discussed with the Armavir regional administration to provide transport communication to citizens visiting "Armavir" penitentiary institution. However, according to the said administration's position, it is not possible to organize this route because of the low passenger load and lack of profitability.

In response to the inquiry of the Ministry of Transport, Communication and Information Technologies, the Ministry of Justice informed that at least 30 people per day visit the "Armavir" penitentiary institution.

Taking into consideration that regular bus routes cannot be organized without having clear information on the actual passenger traffic, the Ministry of Transport, Communication and

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[44] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf, as of 31.03.2018; Pages 49-50.

[45] See: https://rm.coe.int/168069570a, as of 31.03.2018, Paragraph 63.

Information Technologies implemented a pilot project on this route to the Penitentiary Institution through an interregional carrier serving the region.

Thus, the Ministry of Transport, Communication and Information Technologies reported that they had arranged 4 pilot round trips a day to "Armavir" penitentiary institution. However, only 1-2 people had used the bus to said point of destination. Therefore, the carrier had refused to organize regular bus trips to "Armavir" penitentiary institution due to the lack of passengers and profit.

This is an unacceptable excuse: the right of persons deprived of their liberty to contact with the outside world shall not be limited on the grounds of unprofitability of a bus route.

Therefore, considering the need for proper exercise of the right of persons deprived of their liberty to the contact with the outside world and the positive duty of the State thereof, it is necessary to organize access to transport communication from Vagharshapat (Echmiadzin) to Margara highway - "Armavir" penitentiary institution.

2.14. Ensuring the right of persons deprived of their liberty to education

The importance of the right to education for persons deprived of their liberty is highlighted both in the national legislation and in the international instruments, as well as in the positions expressed by international organizations.

Thus, according to Article 38 of the RA Constitution, - *every person has the right to education*.

According to Article 4, Part 4 of the RA Law "on General Education", - *secondary education is mandatory.*

According to Paragraph 1.14 of Article 12 of the Penitentiary Code of the Republic of Armenia, - *the sentenced person has the right of access to the education as prescribed by Law*. There is a similar provision also in the Article 13 of the Law of RA "On Keeping of Arrestees and Detained Persons".

2nd General Report on the CPT's Activities states 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."* [46].

The European Prison Rules also contain detailed criteria for ensuring that persons deprived of their liberty have adequate access to work and have access to entertainment (sports, games, cultural activities and other forms of leisure) and access to educational programmes [47].

According to Rule 28.7 of the European Prison Rules, - *As far as practicable, the education of prisoners shall: a) be integrated with the educational and vocational training system of the country*

[46] See: https://rm.coe.int/1680696a3f , as of 31.03.2018 ; Paragraph 47.

[47] See: https://rm.coe.int/16806f5b92 , as of 31.03.2018 ; Rules 26.1-26.3, 26.6, 26.9, 26.10, 27.3, 27.6, 28.1-28.5 etc.

so that after their release they may continue their education and vocational training without difficulty.

In 2016 and 2017, representatives of the National Preventive Mechanism visited "Artik" Penitentiary Institution to study the situation of ensuring the right to education for persons deprived of their liberty. They examined the conditions in "Artik Evening School" State Non-Commercial Organization (hereinafter referred to as Evening School, SNCO) of Shirak region, operating in the penitentiary institution.

At the time of the the visit, private interviews were taken from persons deprived of their liberty attending the Evening School as well as from the teachers. It turned out that in this educational institution there are almost no textbooks for 9th-12th grades. According to the teachers, the lack of books makes the teaching process ineffective. At the same time, the school was also short of Russian and English teachers.

In addition, according to the teachers, the laws regulating the operation of the Evening School needed amendments and improvement. The point is that said regulations do not consider the peculiarities of the operation of such schools, particularly the number of academic hours to be taught [48].

In reply to the Defender's 2017 inquiry on the provision of textbooks to the Evening School, the Ministry of Education and Science had clarified that the number of students attending the Evening School is 37, and all of them are provided with free textbooks from the Regional General Education Fund and the receipts are available.

Meanwhile, the Ministry of Education and Science clarified that in 2017 the Ministry of Education and Science did not support this SNCO.

Additionally, in 2018, the Ministry of Education and Science asked the RA Ministry of Justice and the regional administrations to support, to the possible extent, the libraries of the penitentiary institutions with books.

At the time of the visit to "Artik" penitentiary institution in 2017, the teachers once again voiced the problem of textbook shortage. They also complained on the difficulties of allocating the persons deprived of their liberty to appropriate classes. Particularly, in the past such allocation was based on the knowledge level of the inmates assessed by the Evening School Teachers' Board. As a result of the changes, at present the teachers have to make inquiries to the schools for official information on the inmates' education levels. They argue that such requirements create difficulties with obtaining information about the classes the inmate had graduated from: for example, in the case of persons deprived of liberty formerly residing in Gyumri no information can be made available as there was a devastating earthquake in 1988 and almost all archive are lost. In such cases, the

[48] See: Annual Report on 2016 Activities of the Human Rights Defender as a National Preventive Mechanism http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf , as of 31.03.2018; Pages 39-40.

Department of Public Education recommends using the information on the person's education level available in the respective judicial act, however, such information is not always included in verdicts.

As regards the adequate staffing of teachers the Ministry of Education and Science informed that it should be done in compliance with the RA Law "on General Education", according to which teachers shall be recruited on the competitive basis.

The RA Ministry of Education and Science also expressed readiness to assist the SNGO of "Artik" Penitentiary Institution in redrafting the legal acts regulating its operation. However, no further information has been provided by the Ministry of Education and Science on the progress of redrafting the regulation for the Evening Schools.

The discussion on the issue of ensuring the right to education for juveniles deprived of their liberty also covered "Abovyan" penitentiary institution (according to the information shared by Ministry of Justice of RA, as of 14 February 2018, there are 5 such inmates in "Abovian" PI). During said discussion the representatives of the Ministry of Education and Science also expressed similar concerns.

According to the written clarification from the Ministry of Education and Science of Armenia the discussion with the Ministry of Justice on ensuring the right to education for juveniles deprived of their liberty and its effective enforcement, and on reopening the school formerly operation in "Abovyan" Penitentiary Institution is in progress. The solution to this issue will be in the focus of the HRDO.

It is also worth paying regular attention to the vocational education, as these skills will give persons with disabilities the opportunity to become more integrated into the society and will contribute to their social rehabilitation.

As regards vocational education, the Ministry of Justice of the Republic of Armenia provided information that with the support of the "Civil Society Institute" NGO and the OSCE Yerevan Office hairdressing courses were developed and organized in the "Abovyan" penitentiary institution, involving 11 inmates who received respective graduation Certificates. This was also observed during the survey undertaken by Human Rights Defender's Office.

According to the RA Ministry of Justice, "Rehabilitation Center for Offenders" SNGO jointly with the Department of Social, Psychological and Legal Affairs of "Armavir" Penitentiary Institution offered training courses on "Ceramics and Ceramic Kilning, Painting Techniques", "Contemporary Applied Art", "Woodworking and wood artistic engraving "," Computer skills", and "Basic knowledge of the Russian language " with participation of 32 persons deprived of their liberty.

It is therefore necessary to ensure the proper exercise of the right of persons deprived of their liberty, including juveniles, to education specific measures being taken for addressing organizational and legal issues relating to education of persons deprived of their liberty.

2.15. Work and employment

Work and employment of persons held in penitentiary institutions are of utmost importance in term of ensuring their reintegration into the society and social rehabilitation, and eventually, for their full preparation for release.

In 2017, issues related to provision of adequate employment at the penitentiary institutions were revealed.

Thus, in 2017, only 201 sentenced prisoners were offered paid work for housekeeping and technical tasks, while 238 - work without payment (upon their own consent), while there are 3549 inmates held in penitentiary institutions [49]. It turns out that only 12% of persons deprived of their liberty are offered employment and this fact cannot be considered as satisfactory.

Article 17 of the RA Penitentiary Code lists *work, educational, cultural activities, sport and other similar opportunities* as basic means of the correction of the sentenced persons. Paragraph 1 of Article 85 of the Penitentiary Code states that *the sentenced person shall be provided with work, if possible, or he / she is entitled to find a work by him- or herself* (...). According to Paragraph 2 of Article 13 of the RA Law "On Keeping of Arrestees and Detained Persons", *a detained person shall have the right to work.*

Being held in the penitentiary institutions does not assume a waste of time. In work activities the persons deprived of their liberty obtain necessary skills that will further contribute to their reintegration into society. It is also of great importance in terms of their social rehabilitation, as during the work the prisoners cultivate respectful attitude towards work, co-existence norms and the society. The work is also ultimately important in terms of cultivating law-abiding behavior.

The penitentiary institutions should also find other means for keeping inmates busy. In this regard, the penitentiary institutions should make various forms of engagement available to inmates, as well as organize various events for them.

According to official information, in 2017 various events were organized in penitentiaries institutions, mainly competitions and concerts. For instance: in February 2017, the Federation of Chess of Armenia jointly with the Penitentiary Service held a fast chess tournament in "Armavir" penitentiary institution; in March - a charity concert was organized in "Abovian Penitentiary by "Akunk" ethnographic ensemble on the International Women's Day; in May – a festive event dedicated to the May holidays were organized in "Kosh" PI, etc.

However, the survey has shown that not all of the penitentiary institutions are organizing similar events. Persons deprived of their liberty face objective challenging in organizing their engagement in such events of their own.

[49] According to information from the Ministry of Justice of RA.

There was a complaint addressed to the Human Rights Defender on the fact of hindering the sentenced person’s creative work. Particularly, according to the complaint, the administration of the penitentiary institution denied the parcel with color pastel pencils and colored papers to be delivered to inmate and therefore he was deprived of the opportunity to be engaged in the creative work. This act of denial was justified by the exhaustive list of items and foodstuffs set by the Government Decree No. 1543-N of August 3, 2006, which prohibits detained and sentenced persons from holding, receiving or acquiring specific item in parcels and packages.

The problem is that the aforementioned list has exceptions that include literature, newspapers, magazines (except pornography), textbooks, notebooks, pouches, postcards, stamps, plain pencils, pens, while colored papers, watercolors, pastel pencil and other artistic items are not among such exceptions.

It turns out that one can get a parcel with pens and plain pencils, while it is forbidden to get other items for art. This approach does not stem from both international and domestic standards regarding the freedom of creative work and engagement of persons deprived of their liberty.

According to Article 43 of the Armenia Constitution, everyone has the freedom of creative work in literature, art, science, and technology.

According to Article 91 (4) of the Penitentiary Code, -*conditions shall be created in correctional institutions to effectively administer the prisoner's free time, and for this purpose, a library, reading room, gym or other recreational facilities shall be established in a correctional institution*. There is similar regulation fixed in Article 25 of the RA Law “On Keeping of Arrestees and Detained Persons”, as follows, - *conditions shall be established in the places of detention for the detained persons to dispose of their free time in a proper manner.*

Therefore, it is necessary to:

- ✓ ***Increase the involvement of persons deprived of their liberty in the housekeeping tasks of the penitentiary institutions as well as other possible activities due regard being paid to their capacities, profession, gender, age and other relevant circumstances.***
- ✓ ***Periodically organize both training courses and cultural, sports, informational and other activities, develop activity programs for persons deprived of their liberty and encourage their participation in such programs;***
- ✓ ***Encourage the aspiration of persons deprived of their liberty to engage in creative work, provide a support to the possible extent, and create all the necessary preconditions for such engagement;***
- ✓ ***Revise the List of Prohibited Items and Foodstuff as set out in Government Decree No. 1543-N of August 3, 2006.***

2.16. Working conditions of penitentiary institution staff

Defending human rights is a process that requires a comprehensive approach. It involves specific work with and attention to all participants. In this regard, working conditions and exercising the right of those who work in places of deprivation of liberty is of special importance.

The ability of penitentiary servants to work in a favorable environment is in the focus of constant attention of the Human Rights Defender given that human rights protection requires a systemic approach and includes the protection the penitentiary employees.

Improvement of working conditions of the penitentiary staff is one of the crucial elements for the normal functioning of the penitentiary institutions. One of the key preconditions for improving working conditions is the staffing of vacant positions in penitentiary institutions, which will lead to the reduction of the work load of the staff and will contribute to the efficient and effective execution of their duties.

The working conditions of the penitentiary institution staff was highlighted in the Annual Report on 2017 Activities of the Human Rights Defender as the National Preventive Mechanism [50].

In the course of the survey conducted in 2017, some issues related to overtime and night-time work of health personnel were revealed (for example in "Artik" Penitentiary Institution).

It was found that the nursing staff worked extra duty for 3 months a year to replace their colleagues on vacation while not being paid for such extra work.

According to Article 184 of the Labor Code of the Republic of Armenia, *every hour of overtime work and every hour of night work shall be paid additionally at the rate of not less than 50% of the hourly rate and not less than 30% of the hourly rate respectively.*

According to Article 139 (3) above, *the maximum duration of working day, including overtime shall not exceed 12 hours a day (including the break for lunch and rest) and 48 hours per week.*

According to Paragraph 4 of the same Article, *the duration of the working hours for specific category of workers may be up to 24 hours a day. The average working hour of these workers shall not exceed 48 hours a week while the interval between the working days shall not be less than 24 hours. The list of such professions shall be defined by the Government of the Republic of Armenia.*

It is important to ensure proper social safeguards and adequate working conditions for the penitentiary servants. This is what the penitentiary servants always lawfully complain of in their letters addressed to the Human Rights Defender and his or her representatives.

***Therefore, extra duties should be assigned in accordance with the provisions of the Labor Code of the Republic of Armenia*.**

[50] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf ; as of 31.03.2018; Pages 50-51.

There is a need of consistent work aiming at ensuring proper social guarantees and adequate working conditions for all penitentiary servants.

2.17. Prevention of suicide and self-injury at penitentiary institutions

From January 1 to December 31, 2017 there were 17 mortality cases in penitentiary institutions of which 2 were reported as suicide [51].

Suicide cases were reduced by 5 in 2017 compared to the same period of 2016 [52].

Despite the reduction in the suicide incidence, the work of the competent state bodies towards identifying the reasons and conditions driving inmates to suicide and preventing suicides is insufficient from the systemic approach viewpoint.

In this regard there is a need of sustainable programs and a complex measure with the involvement of various competent bodies where each such body must act within its mandated duties and functions.

According to Paragraph 9 of the Appendix to the RA Government Decree 1543 - of dated 3 August 2006, on admission to the quarantine block of the penitentiary institution all persons deprived of their liberty must undergo preliminary medical screening which is an important procedure for suicide prevention. Regular medical screening may reveal persons with a potential risk of suicide and partially relieve their anxiety specific to all persons newly entering the places of deprivation of liberty.

From the moment of admission to the penitentiary institution all persons deprived of their liberty must receive social, psychological and legal assistance. Despite the availability of relevant legislative bases for such activities (e.g. Paragraph 7. 22, and Paragraph 26.1 of Annex 1 to the Order 279-N of the RA Minister of Justice of July 13, 2016 [53]) there are no operable mechanisms for their practical implementation.

For example, there should be special rooms in all penitentiary institutions to ensure safety and security of inmates in marginal condition or exposed to self-injury or suicide.

[51] According to information from the Ministry of Justice of RA.

[52] See: Annual Report On the 2017 Activities of Human Rights Defender of The Republic Of Armenia As National Preventive Mechanism http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf ; as of 31.03.2018; Page 52.

[53] The Order 279-N of the RA Minister of Justice of July 13, 2016 “on Approval of procedures for works to be undertaken with detained and sentenced persons by social, psychological and legal structural divisions, and on revoking the Order 44-N of the RA Minister of Justice of May 30, 2008”.

Observation made during the visits to the penitentiary institutions showed that no measures were taken to address the CPT's concerns that, - *A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme. Further, such persons should not have easy access to means of killing themselves (window bars, broken glass, belts, tie covers, etc.)* [54]. The same position was expressed in the Annual Report On the 2017 Activities of Human Rights Defender of the Republic of Armenia as National Preventive Mechanism [55].

For instance, by examining the circumstances of suicides (site of incidence, the manner, etc.) committed in penitentiary institutions in the period from January 1, 2011 to December 31, 2011, it can be conclude that officers of the social, psychological and legal services at correctional institutions had either failed to identify persons deprived of their liberty being in marginal conditions (persons classified as *at suicide risk group*) or they did identify but took no measures to restrict access of such persons to means of killing themselves.

The statistical data provided by the Ministry of Justice also testifies to this [56]. For instance, in the period from January 1, 2011 to December 31, 2011, 26 out of 27 suicide cases were committed by hanging (by self-made rope, shoelaces, bed-sheets, belts) and there was only 1 suicide committed by electric shock.

The role of security and medical staff, and especially the cell-mates is also important in preventing suicides in the penitentiary institutions.

Thus, according to the Order of the Minister of Justice No.194-N of November 21, 2011 [57], - *in the incidence of suicide or attempted suicide by a detained or sentenced person, the third lever alert shall be declared by the duty officer of the block or of unit of the block, and where such incidence occurs in a common cell, in a barrack or in a ward, the other persons present shall be instructed to take measures to prevent such suicide and if necessary to assist the victim and pass them any appropriate mean/item available at the duty-post.*

With regard to practical implementation such legal regulation arises a number of questions, such as:

1. What specific measures can be taken by persons deprived of their liberty to prevent the suicide of their cell-mate?
2. What kind of assistance should be provided to the victim?

[54] See: 3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992 https://rm.coe.int/1680696a40 as of 31.03.2018; Paragraph 59.

[55] See: http://pashtpan.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf as of 31.03.2018; Pages 52-59.

[56] According to information from the Ministry of Justice of RA.

[57] See: The Order 194-N of the RA Minister of Justice of November 21, 2011 "on Approval of the functions to be undertaken by Structural devisions in charg of security in the Penitentiary Service under the Ministry of Justice of RA".

3. What measures should be taken when the person deprived of liberty is held in a solitary confinement?
4. What shall be considered as "appropriate mean"?

Awareness-raising activities should be organized in any place of deprivation of liberty, including in penitentiary institutions. For example, there should be training courses elaborated for persons deprived of their liberty where such courses would include various activities including tips and instructions for first medical aid to victims. There should also be some incentives for persons deprived of their liberty to participate in such courses or for those preventing the suicide attempt or otherwise inhibiting such attempts.

Since the probability of committing suicide by inmates held in isolation is much higher, the administration of the penitentiary institution must undertake permanent observation over their conduct paying special attention to their suspicious behavior (especially in marginal situations).

There are also challenges with regard to the preventing self-injuries in penitentiary institutions. According to the Ministry of Justice the incidence of self-injuries in penitentiary institutions tends to decline. For instance, in 2016 there were 879 incidence of self-injury in penitentiary institutions of total number of 3831 inmates, while in 2017 there were 607 cases of total number of 3549 inmates.

According to the clarifications, the reasons for self-injury can be different. They are mainly driven by criminal cases, allocation, personal problems, and, in some cases, mental disorder, etc.

Despite a previous year's certain decline in self-injury incidence, the total incidence rate still remains high in penitentiary institutions [58].

Within the framework of co-operation between the Council of Europe, the European Union and the Ministry of Justice of the Republic of Armenia, the representatives of the RA Human Rights Defender's Office conduct training courses for Penitentiary Authority staff on prison medicine; the rights of persons deprived of their liberty; including measures for preventing self-injuries and suicides.

Within the framework of cooperation between the Defender's Office and International Organizations, trainings on prevention of self-injuries and suicides in penitentiary institutions were offered in 2017. In addition to representatives of the Defender's Office the training courses were also attended by officers of social and psychological service of the penitentiary system, representatives of NGO, and independent experts [59].

Therefore, it is necessary to:

- ✓ ***Provide individual psychological assistance to all persons deprived of their liberty at the moment of their admission to a penitentiary institution. This will help to identify persons***

[58] See: https://www.panorama.am/am/news/2013/02/12/prisoners/586693, as of 31.03.2018.

[59] See: http://www.ombuds.am/media/inqnavnasumner-inqnaspanutyunner.html, as of 31.03.2018.

with suicide risk and accommodate them in cells or other facilities suitable for their psychological conditions and undertake appropriate preventive measures;

- ✓ *Provide access to psychological assistance to persons deprived of their liberty during their stay in the penitentiary institutions;*
- ✓ *Guarantee privacy of all data and information collected by psychologists in penitentiary institutions;*
- ✓ *Provide a legislative opportunity to restrict, for as long as necessary, access for persons identified as a suicide or self-injury risk group to means of killing themselves (e.g. rope, shoelaces, bed-sheets, belt, etc.);*
- ✓ *Implement the incentives provided for in the Penitentiary Code for help offered by persons deprived of their liberty in preventing suicide;*
- ✓ *Offer training courses on the awareness of the probable suicide symptoms to representatives of Penitentiary Authority.*

CHAPTER 3. CONDITIONS OF TEMPORARY CELLS IN THE COURTS FOR KEEPING PERSONS DEPRIVED OF THEIR LIBERTY

Complaints lodged and monitoring visits during 2017 revealed issues, including those of legislative nature, with regard to the conditions of cells in Courts dedicated for keeping persons derived of their liberty.

During the visits to the Courts of Yerevan the HRDO representative reviewed the conditions of temporary detention cells, and took private interviews from persons deprived of their liberty and their convoy officers. These issues were also discussed with both the Court Chairperson and the head of the court staff, and with court bailiffs. Based on the results of the visits and analysis of the collected information specific legislative gaps and shortcomings were also identified [60].

In one of the complaints addressed to the Defender during the year 2017, the complainant referred to the problems with regard to the conditions of the cells in the Court of General Jurisdiction of the Kentron and Nork-Marash administrative districts of Yerevan. The latter, in particular, stated that the cells were cold having neither heating nor ventilation systems.

The HRDO's representative visited the Court of General Jurisdiction of the Kentron and Nork-Marash administrative districts of Yerevan to investigate the conditions of the temporary detention cells and the food provided to persons deprived of their liberty in the courts.

At the time of the visit, it was reported that the 3 cells in the basement of the building were heated by factory-made electric heaters. According to the thermometer used by the Prevention Mechanism Division the air temperature in the cell was 20° C.

During the visit it was also noted that the sanitary annexes in the cells are not entirely separated from the accommodation area. At the same time, due to poor ventilation, the cells were full of tobacco smoke.

As regards the issue of non-provision of food, at the time of the visit the interviewed persons kept in such cells said that they were held for six or more hours in court cells and no food was provided.

In accordance with Paragraph 247 of the Annex to the RA Government Decree 1543-N of August 3, 2006, *the arrestee or detainee shall be provided with food if moved for four or more hours*.

According to Paragraph 15 of the Annex to the RA Government Decree No 351-N of April 2, 2009, *during convoying the arrestee or detainee for four or more hours (long-term) including the*

[60] RA Government Decree No 351-N of April 2, 2009 "on Approval of the procedure for convoying and protection of arrestees and detained persons by the Police of the Republic of Armenia" includes a number of regulations on holding persons deprived of their liberty in the cells of courts, however there is no coordinated and comprehensive separate Legal Act regulating the specific conditions for holding persons deprived of their liberty in the cells of courts.

convoying hours or the hours of legal proceedings the arrestee or detainee shall be provided with food which shall be made available by the respective detention facility or the penitentiary institution.

Consideration of another complaint from an inmate showed that this person deprived of his or her liberty was placed in a temporary cell of the Court of General Jurisdiction of the Shengavit administrative districts of Yerevan with five other persons while there was only one person in each of the other cells and there were even unoccupied cells at that time.

The HRDO representatives visited the Court of General Jurisdiction of the Shengavit administrative districts of Yerevan to examine the issue in question,

During the visit it was found that there were 5 temporary cells of 7-8 m^2 of floor area for keeping persons deprived of their liberty. One of the five cells was used as a storage room (cardboard boxes were stored) while two of the other four were not furnished with benches. The sanitary annexes in cells, like in the Courts of Kentron and Nork-Marash administrative districts, were separated from the living area by semi-partitioned wall.

As regards the aforementioned, the CPT Report 2016 to Malta Government had noted that *persons deprived of their liberty should be held in these cells safe and in proper condition* [61].

Therefore, there is a need to:

- ✓ ***Properly renovate the cells for temporary detention of persons deprived of their liberty in courts;***
- ✓ ***Fully separate by partition walls the sanitary annexes from the living space, repair the drinking water taps and then ensure their uninterrupted operation;***
- ✓ ***Equip the cells with ventilation systems;***
- ✓ ***Properly arrange the provision of food for persons deprived of their liberty kept in court cells for four hours and more;***
- ✓ ***Develop comprehensive regulations defining the specific living condition for persons deprived of their liberty in court cells.***

[61] See: https://rm.coe.int/16806b26e8 , as of 31.03.2018; Paragraph 28.

CHAPTER 4. SPECIAL VEHICLES FOR TRANSPORTATION OF PERSONS DEPRIVED OF THEIR LIBERTY

Throughout the year of 2017, representatives of the Human Rights Defender's Office had been examining the conditions of special vehicles for transportation [62] of persons deprived of their liberty. The Human Rights Defender's Office also received complaints regarding said special vehicles.

Particularly, the conditions of the vehicles of the RA Police designed for the transportation of persons deprived of their liberty were examined. According to the on-site information provided by the police officers the respective battalion was provided with 10 such vehicles, 6 of which are "UAZ -4741", 2 "UAZ -3151", one "GAZ SADKO" and "GAZ -66".

As a result of the discussion of individual complaints, as well as the study conducted within the framework of such visits, a number of problems were identified and important discussions were launched between the representatives of the RA Police and the Human Rights Defender.

The problems as found are described below:

4.1. Transportation of persons deprived of their liberty in handcuffs, and security measures in transit

Issues related to the transportation of persons deprived of their liberty are crucial in terms of the treatment of such persons.

The HRDO examined the conditions for ensuring the safety of persons deprived of their liberty being convoyed in the special vehicles in handcuffs. Monitoring activities as well as private interviews with persons deprived of liberty proved that persons deprived of their liberty are, as a rule, transported in handcuffs. The prisoner compartments of special vehicle under observation are not equipped with seat belts or any other safety devices.

For security-related reasons, of course, transportation of persons deprived of their liberty might require using handcuffs. But such treatment should not be a matter of common practice and should be avoided.

International requirements indicate that applying handcuffs should be well grounded and never used as a routine practice. For instance, the 2016 CPT Report to the Government of Serbia stated that, - *the use of handcuffs and transportation belts during prisoners' transportation outside and within prisons is resorted to only when the risk assessment in an individual case clearly warrants*

[62] The Penitentiary Code uses the term "*transportation*", while the RA Government Decree 1128-N of 2016 uses "conveying" .

it; and the application of any means of restraint should not pose additional risks of injury to the prisoners during their transfers.

As regards in particular the handcuffing of prisoners behind the back during transportation, given the potential for discomfort to the prisoner concerned and the risk of injury in the case of accident, this practice should be avoided [63].

In accordance with Paragraph Article 246 of the Annex to RA Government Decree No. 1543-N of August 3, 2006, "on Accommodation of detained persons in places of deprivation of liberty and correctional institutions under the Ministry of Justice of the Republic of Armenia", - *transportation of a detained or sentenced person in handcuffs or foot-chains shall be allowed only in cases where there is a good reason to suspect that the person may escape, injure him/herself or the convoying officers or other detained or sentenced persons.*

If necessary, the detained or sentenced person may be transferred from the vehicle to the point of destination in handcuffs or foot-chains or be chained to the convoy officer.

Additionally, the CPT 2011 Report to the Government of Poland stated, - (...)*, it is regrettable that neither vehicle was equipped with any safety devices (such as safety belts or a rigid protection system) to protect detainees in the case of an accident or abrupt braking. Steps should be taken to ensure that all vehicles of law enforcement agencies which are used for the transportation of detained persons are equipped with appropriate safety devices [64].*

Findings from observations were sent to the RA Police. After that, a joint discussion between the representatives of HRDO and the Police was launched. The Police provided explanations that the discussion on the possibility of installing extra safety devices in vehicles was already in progress.

It should also be noted that there is a lack of special vehicles adapted for transportation of persons with health problems. In particular, the monitoring and the complaints addressed to the HRD proved that there is an urgent need of such vehicle in cases where a person deprived of his or her liberty should not be transported in sitting position or there is a doctor's instruction not to do so.

According to the Police, the vehicles intended for the transportation of arrestees and detainees are not equipped with special conveniences for transportation of persons with special needs. The issue of procurement of said vehicles is in the process of discussion.

Monitoring activities in 2017 and individual letters addressed to the Defender revealed complaints on the non-compliance with the rules for keeping the persons deprived of their liberty separate from each other during transportation. For example, according to a former law enforcement official held in "Vardashen" Penitentiary Institution, he was transferred in the same vehicle with another person deprived of his or her liberty held in "Nubarashen" Penitentiary Institution.

[63]See: https://rm.coe.int/1680697c94 as of 30.03.2018; Paragraph 53.
[64] See: https://rm.coe.int/168069791c , as of 30.03.2018, Paragraph 80.

As clarified by the RA Police: in accordance with Paragraph 58 of the Annex to RA Government Decree 1128-N of 3 November 2016 [65], the arrestees or detainees shall be placed in the compartment of the special vehicle by ensuring, as deemed necessary, the rule of separate transportation.

Meanwhile, according to Article 64 (3) of the Penitentiary Code of Armenia, *the sentenced person shall be transported separately to comply with the requirements set out in Article 68 of the Penitentiary Code.* According to Paragraph 4.1 of Article 68 of the same Code*, a sentenced person as being a court, law enforcement, customs or tax employee or former employee, or serviceman or former serviceman of compulsory or contractual military service, or police officer or former police officer shall be accommodated in the correctional institution separately from other sentenced persons.*

According to Paragraph 2.5 of Article 31 of the Law of RA "On Keeping of Arrestees and Detained Persons", - *a detainee as being a court, law enforcement, customs or tax employed or former employee, or serviceman or former serviceman of compulsory or contractual military service, or police officer or former police officer shall be accommodated separately from other detainees.* According to Paragraph 3 of the same Article, *principal requirements for isolation set forth in Part 2 of Article 31 of the aforementioned Law shall also be observed in transportation of arrestees and detainees.*

It follows from the aforementioned that the RA legislation, in particular - the Law of RA "On Keeping of Arrestees and Detained Persons" contain exhaustive provisions where persons deprived of their liberty shall be placed/held separately, while in the Annex to RA Government Decree No 1128-N of November 3, 2016, the above mentioned compulsory requirements for holding separately are conditioned by "'*as deemed necessary*". It turns out that Article 58 of the RA Government Decree No 1128-N of November 3, 2016 is clearly in conflict with the provisions of the RA Penitentiary Code and the Law of RA "On Keeping of Arrestees and Detained Persons".

According to Article 24 (2) of the RA Law "on Legal Acts", in case of contradictions between legal acts, the Constitution of the Republic of Armenia and the legal acts of higher legal power shall apply. Under such circumstances the Police reasoning is unacceptable.

Therefore, based on the above, it is necessary to:

- ✓ ***Avoid application of handcuffs when transporting persons unless there are reasonable grounds;***
- ✓ ***Equip vehicles with the necessary safety devices;***
- ✓ ***Purchase special vehicles suitable for transportation of persons deprived of their liberty with special needs;***
- ✓ ***Undertake strict control over the proper application of rules of holding persons deprived of their liberty separately in transportation;***

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[65] RA Government Decree No 1128-N of November 3, 2016 "on Amendments in "RA Government Decree No 351-N of April 2, 2009 "on Approval of the procedure for convoying and protection of arrestees and detainees by the Police of the Republic of Armenia".

- ✓ ***Make amendments in Paragraph 58 of the Annex to the RA Government Decree No 351-N of April 2, 2009, to ensure the requirement of RA Penitentiary Code and the Law of RA "On Keeping of Arrestees and Detained Persons" for holding persons deprived of their liberty separately.***

4.2. Vehicle conditions

During the survey, a comparative analysis was made on the compartments and seating areas in special vehicle for transportation of persons deprived of their liberty. For instance, there was a compartment measured 1.4m^2 (i.e. in "UAZ -3151" van) with seats for at least two persons. There were also vehicles with compartment measured 0.5m^2 of space per person (e.g. "GAZ SADKO").

There are no standards defined by Armenia's National Legislation on vehicle conditions for transportation of persons deprived of their liberty. There is an interesting remark by CTP on the standards of compartment sizes in said vehicles. For instance, in CTP Reports to Lithuania2001 [66], to Ukraine 2002 [67], and to Poland 1998 [68], - *transportation of persons in vehicle compartments measuring 0.4, 0.5, and even 0.8 square meters per person is not acceptable disregarding the trip duration*.

Consequently, it can be stated that the surface area of compartments in vehicles intended for transportation of persons deprived of their liberty shall exceed 0.8 m^2 per person.

The analysis of the Case law of the European Court of Human Rights drives to the conclusion that the European Court considers transportation of persons deprived of their liberty under overcrowded conditions as a violation of Article 3 of the European Convention on Human Rights [69].

According to the written clarification on the aforementioned issues made by Police of Armenia, it is impossible to comply with the requirement for the provision of a more than 0.8 m^2 space per person in the existing vehicles at the disposal of special convoy battalion. At the same time, the officers of the convoy battalion were instructed to avoid transportation of persons in compartments measuring 0.5 and 0.4-0.5 m ^{2} per person.

Based on the above, it is essential to take continuous measures to comply with requirement of providing a per person space of 0.8 m^2 in the compartments of special vehicles, as well as consistently observe the instruction of avoiding transportation of persons in compartments measuring 0.5 m ^{2} and 0.4-0.5 m^2 per person.

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[66] See: https://rm.coe.int/1680697331 as of 31.03.2018; Paragraph 117.
[67] See: https://rm.coe.int/1680698401 as of 31.03.2018; Paragraph 129.
[68] See: https://rm.coe.int/1680697913 as of 31.03.2018; Paragraph 68.
[69] See: May 22, 2012 verdict on Idalov vs. Russia, Claim # 5826/03, Par. 54, 61 and 103; November 8, 2005 verdict on Khudoyorov vs. Russia, Claim # 6847/02, Par. 117.

The result of the examination of ventilation and lighting conditions in vehicles intended for the transportation of persons deprived of their liberty revealed that the air in said vehicles was ventilated trough the opening in door or door bars, or through the opening in the roof of the vehicle (outside the compartment) (UAZ 4741 "," GAZ-66 "). The ventilation also came from the windows of common passenger compartment ("UAZ -3151"), as well as through air conditioners (e.g. "GAZ SADKO").

Prisoner compartments of some vehicles are lack of no natural lighting. Therefore, they are lit by electric light fixtures while some of them (for example in "UAZ -4741", "GAZ SADKO") were broken at the time of observation. The others had natural light coming from the prisoner compartment windows looking outside (e.g. in "UAZ -3151").

Rule 32.2 of the European Prison Rules on proper ventilation and light in vehicles states that, - *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 a similar regulation in Clause 2, Paragraph 45 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations First Congress on 30 August 1955.

According to the written explanations of the RA Police, the problems of light and ventilation were eliminated.

It is necessary to keep constant focus on issues of adequate ventilation and light in vehicles.

CHAPTER 5. PLACES FOR KEEPING ARRESTEES OF RA POLICE

In implementation of the commitments for preventing degrading treatment in places of deprivation of liberty under the “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” the representatives of the National Preventive Mechanism monitored the PA Police places for keeping arrestees (hereinafter referred to as the PKA). In 2017 the HRDO had made 21 such visits [70].

The PKA administrations had effectively cooperated with the Human Rights Defender's representatives while exercising their powers. There were no obstacles to the work. Important discussions were held between the RA Police Headquarters and the Human Rights Defender's representatives on the possible ways of addressing said problems.

During the above mentioned activities, the reported problems included as follows:

5.1. Living conditions

The observed PKAs had specific problems with living conditions that can be classified by the following groups:

1. Cell conditions;
2. Washing, bathing and sanitation conditions;
3. Food;
4. Outdoor exercises;
5. Proper lighting, including adequate translucence in daylight hours is one of the key elements of ensuring the well-being of people deprived of their liberty and of ensuring their natural functioning.

1) Natural lighting in a number of PKA cells (Noyemberyan, Ijevan, Chambarak, Vardenis, Dilijan, Martuni, Ashtarak, Talin, Yeghegnadzor, Vayk, Sisian, Goris and Kapan PKA) is insufficient. In contrast, PKA cells in Meghri had windows large enough to allow the natural light in.

According to the written clarification made by the Police of Armenia, the degree of natural light is conditioned by the orientation of the administrative buildings and the size of the windows. However, according to the Police, the cells will be equipped with additional artificial lighting.

During the survey it was also reported that the electrical lighting in the PKAs is on all night long. Representatives of the PKA administration explained that the electrical lighting is on in the cells

[70] RA Police Aragatsotn District Headquarters, Ashtarak and Talin, Tavush, Gegharcunik an Lori District Headquarters, Noyemberian, Tumanyan, dilijan, Tavush, Chambarak, Vardenis, Sevan, Gavar and Martuni, Vayots Dzor and Syunik District Headquarters, Yergwernadzor, Vayk, Goris, Sisian, Meghri and Kapan, Shirak District Headquarters, Artik, Mush and Kumayri police division in Gyumri, and PKA.

for the supervision reasons. As a result, there are no proper sleeping conditions for persons deprived of liberty.

In this regard, it should be noted that Paragraph 84 of the Annex to the Government Decree 574-N of 5 June 2008 [71] contravenes the CPT criteria.

According to Paragraph 26 of the CPT 2017 Report to the Government of the Netherlands, -*The CPT considers that lights in a cell should be switched on at night only if there is a clear need to do so* [72]*.* Such a need may arise, for example, in the case of security-related reasons for persons deprived of their liberty as well as for the staff of the PKA administration. For example, such a situation may exist when there is a need for special control over the behavior of a person deprived of his or her liberty, which cannot be carried out when the light in the cell is off at nights.

According to the written clarification made by the Police of Armenia, the RA Police Headquarters were elaborating draft amendments in and additions to the RA Government Decree No. 574-N of 5 June 2008, which will also include proposals made by the Human Rights Defender's Office, including the issue on the light in PKA cells to be turned off during the night hours.

During the monitoring of the PKAs, the availability of radio intercommunication in the cells was studied. For instance, at the time of the visit to the "Vayk" PKA cells there was no radio receiver; it was installed in the PKA corridor. As regards this facts, it should be noted that in accordance with Paragraph 27. 5 of the Annex approved by Government Decision 574-N of June 5, 2008, *the* PKA *cells shall be equipped with radio receivers.*

According to the written clarification made by the Police of RA, the radio receiver was installed in the corridor of PKA of "Vayk" Police division for security concerns as a number of self-injuries were committed by means of metal antenna, battery metal parts or other parts of the radio receivers. Eventually, these PKA cells were provided with radio receivers.

Therefore, there is a need to:

- ✓ ***Ensure adequate translucence in daylight hours in the detention cells for apprehended persons;***
- ✓ ***Undertake consist supervision over the process of installation of radio receivers in*** PKA ***cells.***

2) Periodic bath/shower is a prerequisite for good hygiene, for which appropriate conditions are required. From the hygienic point of view, it is especially important to provide properly laundered bedding to persons deprived of their liberty.

Kapan PKA needed renovation. At the time of visit the shower-room was not heated.

[71] Government Decision 574-N of June 5, 2008, "On Approval of the internal rules and regulations of detention facilities operating under the Police System of the Republic of Armenia"
[72] See: https://rm.coe.int/16806ebb7c as of 31.03.2018.

In this regard, the police explained in writing that the Kapan PKA was in need for general renovation, which was already planned to be implemented during the year. The existing problems, including the heating of the shower-room, will be address after renovation.

At the time of visit there were some problems such as poor bedding conditions (e.g. in Ijevan, and Artik PKA.

Aforementioned poor laundering process may cause problems of disinfection from the viewpoint of preventing infectious diseases, while the absence of written contracts (for laundry) could mean lack of disinfection requirements and standards.

It should also be noted that there were no documents confirming the fact of sanitary cleaning made in PKAs, nor there were records indicating the day, month and year of such activities. At the time of the visit there were no records on the sanitary activities posted on the wall while the representatives of the PKA administration were not aware of date of the last general cleaning made in PKA.

It should be noted that in accordance with Paragraph 183 of the Annex to RA Government Decree No 574-N of 5 June 2008, *all cells and other premises in PKA shall be wet cleaned by using detergents, while* ***general cleanings in*** *all cells and other premises in PKAs shall be arranged no later than once in a month.* However, the aforementioned Decree does not specify the specific disinfection processes to be used in general cleaning works.

Taking into account that the PKAs admit and hold many persons deprived of their liberty that could be carriers and transmitters of infectious diseases, it is necessary to develop a uniform disinfection procedure for PKAs, envisaging also disinfection criteria for bedding, which will prevent the probability of spreading infectious diseases.

In this regard, the Police of the Republic of Armenia explained that as a result of joint discussions between Duty Service under the Police Headquarters and the representatives of the Human Rights Defender's Office, it was instructed to undertake appropriate measures for performing general cleaning works.

Taking into account the abovementioned issues, it is necessary to:

- ✓ ***Properly organize the laundering process in PKAs;***
- ✓ ***Develop and circulate a clear schedule and mechanism for undertaking sanitary measures.***

3) The provision of sufficient, diverse and nutritious foods is one of the most important safeguards for the natural functioning of persons deprived of their liberty.

It was found during the survey that there were concluded contracts for food delivery services to be provided to PKA, however, such contracts signed by, for example, “Sisian” and “Talin” PKA contained only the price payable for delivery of daily meals but there were no main dish lists and main requirements for food.

As regard to that fact, the RA Police informed in writing that the list of the main dishes and basic requirements for food had already been attached to the food delivery contracts.

At the same time, there were also example of duly signed contracts for food delivery services (e.g. by "Mush" PKA) including terms and conditions on the rights and obligations of the contracting parties, the order of delivery and acceptance of the service, the contract price, the liabilities of the parties and other conditions. Said contract also included a list of main dishes, weekly menu, and more.

While positively assessing the organization of food delivery services in the PKAs, it is necessary to ensure periodic and strict supervision over this process.

4) The monitoring conducted in the PKAs revealed some issues related to organization of outdoor exercises for persons deprived of their liberty.

Some outdoor exercise yards in PKAs were not furnished with benches or seats (for example in Tavush, Tumanyan, Talin, Mush, Vayk, Yeghegnadzor, Sisian and Kapan PKA), garbage bins (Vardenis, Ashtarak, Sevan, Yeghegnadzor, Sisian and Goris PDFs) or sports equipment (Yeghegnadzor and Kapan PKA). In some cases, the size and position of shelters were not sufficient to protect from the inclement weather conditions (Tavush, Chambarak PKAs).

It should also be noted that the shelter over the outdoor exercise yards in Yeghegnadzor PDF was too small in size to protect from the inclement weather during exercise.

While the Government Decree No 574-N of June 5, 2008 does not require installation of benches and shelters in outdoor exercise yards of the PKAs, however such requirements are envisaged by international standards. Thus, in the CPT 2014 report to the Government of Hungary, - *The CPT recommends that (...) outdoor exercise yards be equipped with a means of rest and effective shelter against inclement weather* [73].

The police clarified that the Government Decree 574-N of June 5, 2008, does not provide for any requirements for furnishing the PKA outdoor exercise yards with benches and garbage bins, or building shelters on the barred cover of the yards, but based on the recommendations emanated from the status of Human Rights Defender as National Preventive Mechanism and also based on the international standards, they have made such installation works. They were also instructed to furnish the PKA outdoor exercise yards with all necessary facilities.

HRDO welcomes the readiness to furnish the PKAs in line with the international standards as well as the instruction made with this regard; the Human Rights Defender's Office will be consistently following on the implementation of said activities.

[73]See: https://rm.coe.int/1680696b7f , as of 31.03.2018, Paragraph 31.

5.2. Medical assistance and record keeping

In providing medical assistance to arrested persons a special attention should be paid to the mandatory medical screening and properly recording the findings in a designated register.

At the time of the visits it was found that the arrestees kept in the PKAs were subjected to medical screening only in cases where they had **complaints or had visible physical injuries**.

At the same time, in the Yeghegnadzor PKA the external screening was being performed by the PKA officers when there was such complain. In Noyemberyan, Ijevan, Dilijan, Tavush, Chambarak, Vardenis, Sevan, Gavar, Martuni, Kapan and Goris PKAs the PKA officers also participated in the medical screening of persons deprived of their liberty performed by the invited medical practitioner for, as they said, security-related reasons. In PKA of Goris the medical screening was always performed in the presence of PKA officer unless the invited medical practitioner demands on performing the external screening without the PKA officer's participation.

At the time of the visit there was a case where the record on the external examination was made by the duty police officer and by the PKA staff (in "Vayk" PKA). The review of the respective register/logbook revealed that said physical examination was performed by the said officers without participation of the health personnel.

This practice is unacceptable. - *All medical examinations (on admission or later) of persons deprived of their liberty should be conducted out of the hearing and - unless the health-care professional concerned expressly requests otherwise in a particular case - out of the sight of non-medical staff. Additionally, the medical examination of persons deprived of their liberty must be performed individually, not by groups.*

The CPT 2016 Report to the Government of Armenia also referred to medical examination in the placed of deprivation of liberty. In particular: *The CPT reiterates its recommendations that further steps be taken to improve the primary medical screening for injuries at police detention facilities on admission of persons deprive of their liberty (...) especially the recording and reporting of injuries. The CPT also expressed concerns that such examinations continue to routinely take place in the presence of police officers who had brought in the person (...) and the representatives the penitentiary institution administration (...) it was still part of the initial handover procedure and both police convoy officers and custodial prison staff were routinely present during such screening, in violation of the principle of medical confidentiality [74].*

Moreover, any person admitted to PKA should undergo external examination regardless whether there is such request made by a medical practitioner or the fact of any visible injuries or complains.

According to Part C, Paragraph 10 (e) of Concluding Observations of the Fourth Periodic Report of Armenia (UN Committee Against Torture): - *The State party should take effective measures to*

[74] See: https://rm.coe.int/16806bf46f , as of 31.03.2018; Paragraph 17.

guarantee that all detained persons are afforded in practice all the fundamental legal safeguards against torture from the outset of their detention, in accordance with international standards. Such rights include:

- *The right to access to a medical examination by an independent doctor that should be conducted out of the hearing and, unless explicitly requested by the doctor, out of sight of police staff. The State party should guarantee in practice the independence of doctors and other medical staff dealing with persons deprived of liberty, ensure that they duly document all signs and allegations of torture or ill- treatment (...).*

In this respect it should be noted that medical examination should be performed exclusively by a doctor and out of the hearing and out of sight of the detention facility staff.

According to the written clarifications, the Police of the Republic of Armenia agreed that any person admitted to PKA should undergo external medical screening regardless of any circumstances; however, this process requires substantial technical and financial means and should be agreed upon by the dedicated state body, i.e. the Ministry of Health. The Police also informed that on the initiative of the General Prosecutor's Office a working group was established (composed of representatives from Police, Ministries of Health and Justice) to discuss and address the issue in question.

The RA Police has also informed that the doors of the PKA medical examination rooms are equipped with one-sided visibility organic glass openings so that the PKA officer making visual observation for ensuring the safety of the doctor will not be seen from inside of the room.

It is noteworthy that the external healthcare providers did not produce individual record on the medical assistance or medical screening performed in the PKAs (for example, in Goris and Meghri PKAs). It was also revealed that the medical record produced by the doctor was also co-signed by the representatives of the PKA administration.

According to the CPT recommendation, - *As regards the medical examination of persons in police custody, all such examinations should be conducted out of the hearing, and preferably out of the sight, of police officers. Further, the results of every examination as well as relevant statements by the arrestee and the doctor's conclusions should be formally recorded by the doctor and made available to the arrestee and his or her lawyer* [75].

According to the written clarification of the RA Police, there was no respective procedure that the doctor's findings should also be co-signed by representatives of the PKA administration, and that all officers in charge would be notified of it once again.

[75] See: https://rm.coe.int/1680696a3f , as of 31.03.2018; Paragraph 38.

At the same time, there were cased where no entry were made in the medical registry on the performed medical examination or provided medical assistance, for instance: the records on the use of pills from the facility drug store were missing while the PKA administration insisted that the medicine was given on the doctor's verbal instruction (Artik and Yeghegnadzor PKAs).

The examination of the conditions in one of the PKA medical units revealed that there was a medical iron baby-couch in the medical unit of Yeghegnadzor PKA, which could not be used for adults.

Expired "Iodine" was also found in said PKAs. Additionally, according to the clarifications, the disposal of expired medicines was carried out by the PKA staff (e.g. "Iodine" is diluted with water and drained into the sewage, while non-fluid medicines are destroyed by incineration) which is unacceptable.

In this respect, the Police of Armenia informed that Yeghegnadzor Police Division was instructed to take measures to replace the medical couch by a new one; and in the case of providing medicines to the arrestee - to make respective records in the "Medical screening or Medical Assistance Registry". They also noted that there was an Instruction issued (in 2013) by the RA Police Headquarters on the following, - a commission shall be instituted on site for disposal of expired medicine and a list of expired medicines available at the PKA shall be made in their presence and said medicines shall be sent to the Drugstore under the Police Medical Clinic for further destruction.

It should also be noted that at the time of visit to Meghri PKA, humidity level of the medical unit was high.

According to the written clarification of the RA Police, the Meghri PKA administration was instructed to periodically ventilate the medical unit to avoid high humidity.

Therefore, legislative and practical steps should be taken for the mandatory external examination of any person entering the PKA to prevent torture and ill-treatment.

At the same time, the PKA administrations should consistently follow the instructions made by the Police of Armenia.

External examination of persons deprived of their liberty should be performed out of hearing and out of sight of the detention facility staff. The PKA staff must be well aware of inadmissibility of signing medical records by themselves.

5.3. The right of access to lawyer

Monitoring visits showed that the representatives of the PKA administration were not always aware of the amendments made in Article 15 of the Law of RA "On Keeping of Arrestees and

Detained Persons" that entered into effect on January 9, 2016: according to said amendments ***any arrestee or detained person shall have the right to lawyer or advocate visiting him or her to defend his or her rights and have a private meeting without any restriction and limitation of the number and duration of such visits, disregarding working days or hours.***

It should be noted that in accordance with Article 15. 3 of said Law, *an arrestee or detainee shall be entitled to visits by a layer or advocate provided that the lawyer or advocate presents an identity document and a lawyer's license or advocate's certificate, and* ***basis on the appropriate certificate issued by the body conducting the criminal proceedings and addressed to the detention facility administration holding said arrestee or detainee.*** *The certificate referred to in this section shall be promptly forwarded by the body conducting the criminal proceeding to the detention facility administration holding said arrestee or detainee.*

This provision, however, is problematic from the standpoint of arranging a visit of the lawyer to meet the client, since the lawyer does not have procedural status therefore no relevant certificate issued by the body conducting the criminal proceeding to the detention facility administration could be made available to him/her. As a result, the lawyer visiting the arrestee or detained person to advocate his or her rights does not have the objective opportunity to deliver the required by the law documents entitling him/her to see the client and, therefore, is unable to effectively ensure the arrestee's right to legal aid.

There should not be any reasonable requirements imposed on the lawyer visiting to advocate the rights of the arrestee held in the PKA unless such requirement are emanated from national legislation and, specifically, from the Criminal Procedure Code. Consequently, the requirement to show the appropriate certificate addressed to the detention facility administration keeping the arrestee or detainee shall be applied to the defense attorney but not to the advocate visiting the client to undertake the protection of his or her rights.

Therefore, Article 15.3 of the Law of RA "On Keeping of Arrestees and Detained Persons" should be respectively amended in order to solve this problem

5.4. Contact with the outside world

Contact with the outside world is of crucial importance for the arrestees, especially in terms of maintaining their established social bodings in freedom.

Almost all visits to PKAs (with some exception, e.g. Noyemberyan, Ijevan, Dilijan, Chambarak and Martuni PKAs) were arranged in rooms with glass partition limiting the possibility of physical contact with persons during the visit. This contact is ensured through the holes made in the glass partition or by phone.

This is a persisting issue, which was also highlighted in the Annual Report on 2016 Activities of Human Rights Defender of the Republic of Armenia as National Preventive Mechanism.

Although Article 119 of the RA Government Decree No 574-N of 5 June 2008 requires to separate the meeting rooms with a solid barrier and a transparent partition, such an approach is in contrast to international requirements.

For instance, the CPT 2015 Report to the Government of Austria states that, - *The Committee recommends that apprehended persons be, as a rule, able to receive visits from their family members without physical separation; visits with a partition should be the exception and applied in individual cases where there is a clear security concern* [76].

The European Court of Human Rights also expressed its position on this issue in the case of *Maiseyev vs. Russia.* According to the factual background, the complainant was separated from his relatives by the glass partition during the visits and contacted them by the internal telephony. In this case, the European Court has considered this as a violation of the right guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [77].

The Court, in particular, stated that *although receiving a visit though glass partitions may be substantiated by security-related reasons, nevertheless such measure shall not deem necessary unless there is a clear security risk concern* [78].

Thus, according to generally accepted international standards, any person deprived of his or her liberty shall have the right to contact with the outside world, which is also stipulated by domestic law (Article 13.1.9 of the Law of RA "On Keeping of Arrestees and Detained Persons"; Article 12.1.9 of the Penitentiary Code). **Any person deprived of his or her liberty shall have the right to contact with the outside world, disregard the duration of the deprivation of liberty unless there is a reasonable and justified need to limit this right to contact with the outside world.**

It is also worth mentioning that according to the written clarification of the RA Police, the RA Police Headquarters is elaborating draft amendments in and additions to the RA Government Decree 574-N of 5 June 2008, which, among other things, will include recommendations made by the Human Rights Defender's Office, including the proposal to remove the transparent partitions from the visits room.

During the visits, the general conditions of the PKAs' visits room were also examined. There was neither natural nor artificial light in the Artik PKA's visit room. The only source of light in the room was the open door.

In addition, in both parts of the room there were protruding electric wires with open ends without insulation.

[76] See: https://rm.coe.int/1680653ec7 , as of 31.03.2018 ; Par. 86.
[77] See: Ruling made on October 9, 2008 on Maiseyev vs. Russia, Claim # 62936/00, Par. 80, 257-259:
[78] See: Ruling made on June 19, 2007 on Siorap vs. Moldova, Claim # 12066/02, Par. 117.

At the time of the visits it was found that there was only one room designated both for interrogation and medical aid, or investigation and visits in Noyemberyan, Tumanyan, Ijevan, Chambarak, Vardenis, Dilijan, and Martuni PKAs.

Under such circumstances it is impossible to simultaneously exercise the persons' right to receive visits and to perform necessary investigation proceeding.

One of the important guarantees of the contact with the outside world is the access to telephone. Telephone-related problems are largely conditioned by the broken pay-phones in the PKAs or the lack of instructions for using them.

During the visit to Sisian PKA, the pay-phone was out of order and needed repair (as explained by the officers).

At the time of a visit to a number of PKAs (Noyemberyan, Ijevan, Tavush PKAs), the pay-phones were out of order. However, even if they worked, it was impossible to call the Human Rights Defender's *116 hotline* (e.g. in Artik and Mush PKAs). In some PKAs, the calls could be made only after hitting certain buttons: for example, in Vardenis PKA in order to call the Human Rights Defender's *116 hotline* one had to hit (#) button after dialing the *hotline* number. While, for calling the Human Rights Defender's *116 hotline,* for instance, from Mosh PKA's pay-phone, one had to have a prepaid telephone card. It was impossible to call the Human Rights Defender's *116 hotline* from Artik PKA even by using a prepaid telephone card.

It turns out that for using the pay-phone one has to hit specific buttons for which no instructions were posted in the PKAs.

According to the written clarifications of the RA Police, the pay-phones in PKA under the subdivisions of Tavush Marz Police Department were replaced with new ones, while the pay-phone installed in the visits room in Sevan Department PKA were repaired. At the same time, the RA Police Headquarters' Chief had assigned to clarify the procedure for calling the Human Rights Defender's Hotline phone number and post respective instruction next to the pay-phones installed in PKAs.

The steps taken by the RA Police to ensure the operation and use of pay-phones are welcomed. There was a proof of such measures found by monitoring visits conducted in Goris, Kapan and Meghri PKAs, where the Human Rights Defender's *hotline* telephone number with respective instructions were posted on the pay-phones.

Based on the above, it is necessary to:

- ✓ ***Modify the requirements set forth in Article 119 of the RA Government Decree No 574-N of June 5, 2008, and ensure the organization of visits to persons deprived of their liberty without any partitions limiting the physical contact;***
- ✓ ***Duly furnish the PKAs with separate rooms for each purpose, i.e. for investigations, medical aid, and for visits.***

CHAPTER 6. LEGAL BAN ON TORTURE, INHUMAN OR DEGRADING TREATMENT, OR PUNISHMENT, AND ITS PRACTICAL ENFORCEMENT

The absolute prohibition of torture is recognized in a number of international documents. It was fixed in Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and other international instruments.

Domestic legislation also provides for the absolute prohibition of torture. According to Article 26 of the RA Constitution, *no one shall be subjected to torture, inhuman or degrading treatment or punishment, body punishments are prohibited, and persons deprived of their liberty shall be entitles to humane treatment.*

From the point of view of the absolute prohibition of torture and its prevention, criminalization of such acts is a priority, envisaging proportionate punishment for such alleged offense.

Thus, according to Article 309.1 of the Criminal Code of the Republic of Armenia, torture is defined as: "*Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*"

Torture as an aggravating circumstance is envisaged by Article 341 of the Criminal Code of the Republic of Armenia (compulsion by a judge, prosecutor, investigator or investigative body for such purpose as giving testimony or explanation or false opinion or misinterpretation), while 309 (exceeding official authority) considers the use of violence, weapons or special means as aggravating circumstance.

When referring to the material rights, it should be noted that Article 309.1 of the Criminal Code of the Republic of Armenia is added with the Chapter on crimes against public service where the official person is considered as a *special subject* specific for a large number of offences. In the sense of this Chapter, the term *official person* is defined in Article 308, Part 3 of the RA Criminal Code, according to which official persons are:

1. A person acting as a representative of the government having full-time, temporarily or special authority;
2. A person performing organizational, administrative, or managerial functions in the state government or local self-governing bodies, or in their organizations, or in the Armed Forces of the Republic of Armenia, or in other troops and military units of the Republic of Armenia having full-time, temporarily or special authority.

A specific subject of torture is also an official or other person authorized to act for and on behalf of the state body. It should be noted that there are problems in terms of defining the subject of the torture. The point is that in places of deprivation of liberty a person might be subjected to torture or other ill-treatment by a person other than an official person recognized as such in national legislation while such act is also a torture or ill-treatment from the point of view of internationally recognized documents.

For instance, a person with mental health problems may be subjected to ill-treatment in a psychiatric organization by, e.g. sanitary or health care person who does not perform organizational, administrative, or managerial functions as a government representative and, therefore, should not be considered a subject of torture offence. In such cases, the offence could be classified as a crime against human life or health but not as a torture, which may cause problems. This is also the reason why it is impossible to get comprehensive and clear statistical profile neither of torture and ill-treatment in the country nor of its prevention.

Yet, both torture and other forms of cruel, inhuman or degrading treatment or punishment may be expressed in various manners and forms in the international law, while from the perspective of the Criminal Code of Armenia the objective side of torture is expressed by intentionally inflicting severe pain or suffering, whether physical or mental.

The Human Rights Defender's Office has examined statistical data on offences and criminal cases (pursuant to Article 309 (2), 309 (1) and Article 341 (2) of the RA Criminal Code) lodged by the competent authorities in 2017.

Thus, according to statistical data provided by RA Special Investigation Service, in 2017 [79], 51 cases were examined under Article 309 part 2 of the RA Criminal Code, of which the dismissed cases - 29, the suspended cases - 4, and 9 cases are in process of preliminary investigation. 47 cases were examined under Article 309.1 of the RA Criminal Code, of which 31 proceedings were dismissed, 3 proceedings were suspended and 6 cases were still in preliminary investigation. Under Article 3 of the Article 341 of the RA Criminal Code there was only 1 investigated case which was dismissed.

In 2017, of 99 criminal cases filed under the aforementioned Articles 16 criminal cases were transferred from year 2016. Of the above-mentioned criminal cases only one criminal case (under Article 309.1), was tried by court of justice. It should be noted that the number of cases under Article 309.1 increased as compared to the previous year (from January 9, 2015 to February 7, 2015 the RA Special Investigation Service examined 20 cases under the Article 309.1 of the RA Criminal Code [80]), but from the point of view of the number of dismissed cases, there were no significant differences in the number of such cases.

Effective investigation of alleged acts of torture is crucial in terms of ensuring a positive duty of the state on acts of torture as such requirement is fixed in international instruments. According to

[79] Based on the information from the RA Special Investigation Service, as of 14.03.2018.
[80] Based on the information from the RA Special Investigation Service, as of 15.02.2017.

Article 12 of the United Nations 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (...) *Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction*.

The Law of the European Court of Human Rights has been repeatedly pointing out that in view of *Article 3 of the European Convention, -the State's positive duty shall be to proceed to effective and through investigation into the acts of torture* [81]. The promptness of the measures taken by the body conducting the criminal proceedings, proper collection of evidence, verification, and evaluation are of crucial importance in such cases.

Principles and criteria for conducting an effective investigation also include the Minnesota Protocol on the Investigation of Potentially Unlawful Death [82]. According to this document, - *International law requires that investigations be: (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv)transparent.*

According to clarification made by RA Prosecutor General's Office as regards the effective investigations into torture and ill-treatment or other similar offences: Pursuant to the Resolution of Board of the RA Prosecutor's Office of February 8, 2008, - after determining the subordination basis, all materials and criminal files under the jurisdiction of the RA Special Investigation Service shall be promptly forwarded with the attached cover letter signed by the respective prosecutor, to the Prosecutor General, and the forwarded materials and other documentation of the criminal files shall be promptly submitted to the Special Investigation Service of the Republic of Armenia.

It was also mentioned that the status of the preliminary investigation into the cases of torture and other forms of ill-treatment was discussed at the meeting of the Board of the RA Prosecutor's Office on June 23, 2017. The Prosecutor General of Armenia also invited the representatives of Department for the Prevention of Torture and Ill-treatment adjunct to the Human Rights Defender Office to participate in the session.

Driven from the outcomes of the discussion, it was decided that the supervision over the legality of the criminal pre-investigation into the alleged torture cases must ensure that:

- at the time or immediately after the date of filing the criminal case persons allegedly subjected to torture are recognized as a victim and thoroughly questioned about the allegations of ill-treatment;
- the victim's medical records are properly collected, examined, and evaluated, and persons that have made said record are interrogated;

[81] See: Ruling mad on October 28,1998, on Assenov et al vs. Bulgaria, Claim # 28957/95, Par. 117; Ruling mad on December 18, 1996, on Aksoy vs. Turkey; Claim 21987/93*, Par.* 98.

[82] See: http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf as of 31.03.2018.

- ruling on justification or cancellation or exemption from criminal liability under the investigated criminal cases of alleged acts of torture include detailed assessment of all the reported circumstances of ill-treatment.

According to information provided by the RA General Prosecutor's Office, along with a number of other issues, it was decided that, driven by the necessity of observing the criteria for conducting investigation by the independent body, ensure the following guidelines for promptly sending the prepared material on the reported cases of bodily injuries detected on the arrestees or detained persons to the Special Investigation Service of the Republic of Armenia. Such guidelines include:

- Where, as a result of investigation into the notice on the bodily injuries the body conducting the criminal proceedings finds that the arrestee or detainee had reported of such injury being inflicted by an act of torture, a forensic examination shall be promptly assigned and the prepared materials shall be promptly send to the Special Investigation Service of Armenia with the cover letter signed by the head of the relevant department of the Prosecutor General' Office of the Republic of Armenia.
- Where, in preparing materials on the notice on bodily injury the investigator finds that such bodily injury on an arrestee or detained person is explicitly in contrast with the circumstances described in the notice therein and for which a person was taken into custody under the filed criminal case for such offence, and where it is found that the complainant makes inaccurate and frivolous statements on the circumstances of being injured, the same procedure shall apply: i.e. the prepared materials shall be send with the cover letter signed by the head of the relevant department of the Prosecutor General' Office of the Republic of Armenia to the Prosecutor General with the request for further consideration of the case by Special Investigation Service of RA.

While considering these steps taken by the RA Prosecutor General's Office as positive, it should be noted that the effective investigation of torture and other acts of ill-treatment is of utmost importance not only in terms of prosecution of the offenders and restoration of social justice, but also from the standpoint of preventing torture. Failure to conduct proper and consistent investigation into the acts of torture and other forms of ill-treatment, and impunity for such offences might increase the risks of torture and other forms of ill-treatment and contribute to the increase in such incidents. Therefore, the competent authorities should examine each case of torture with due diligence being guided by internationally recognized criteria and standards.

From the standpoint of Article 3 of the European Convention, the positive responsibilities of the State also include providing compensation to victims of an act of torture. Such compensation is also envisaged under Article 14 of 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: - *Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.*

In this regard, it should be noted that in 2016 the Civil Code of the Republic of Armenia was supplemented by Article 1087.3, which regulates the issues of compensation to be provided to the

victims of torture. Thus, according to Part 2, Article 1087.3, of the Civil Code of the Republic of Armenia, *the compensation provided to victims of an act of torture shall include the right to compensation for material and non-material damage inflicted on such person*. Under Part 3 of the same Article, *the right of the victim of an act of torture to redress shall also include the right to medical assistance and reimbursement for such service as well as free psychological and free legal services. Psychological services shall be provided within a reasonable time after the notice by the victim of such act of torture with due regard being paid to the victim's legitimate interests. Psychological services shall be provided through traditional and alternative methods of intervention paying due regard to any individual needs of the victim.*

The Decree of the Government of the Republic of Armenia No 1367-N, of October 26, 2017 [83], defines the procedure and conditions for receiving psychological services by victims of torture. According to Paragraph 3 of the Annex to said Decree, *the psychological services to victim of torture shall be provided by a professional psychological service center, which must have at least 3 qualified psychologists and at least three years of work experience,* while *Ministry of Justice of the Republic of Armenia shall conclude a contract with such psychological service providers.*

This Decree, however, neither clarify the kind of psychological assistance to be provided by such Center nor the guiding criteria and principle, the body to supervise over the proper operation of such center, as well as a number of other issues. Due to the lack of detailed regulations, it is difficult to clearly understand the procedure of providing effective psychological assistance to victims of torture by such center.

Effective investigation into the alleged acts of torture and proper organization of compensation procedure for victims of torture are of utmost importance for the absolute prohibition of torture and protection against torture. Therefore, to contribute to torture prevention and the rehabilitation of social justice in the country the State should ensure the above activities be implemented in proper manner.

It should also be noted that, in the context of the absolute prohibition of torture, it is inadmissible to exempt persons committed an act of torture from criminal liability conditioned by statute of limitation, or by granting pardon or amnesty.

In Article 75, Part 6, Article 309, Part 2, Article 309.1, Part 141, Part 3 and 3 of the Criminal Code of the Republic of Armenia there is no reference to repealing the statute of limitation.

For instance, according to the case law of the European Court, in all cases *where a representative of the State is sentenced for torture or ill-treatment,* ***it is crucial that in terms of achieving the goals of "effective measure" the criminal proceeding and punishment of the person be not restricted by the statute of limitation, and is impermissible to grand amnesty or pardon to such persons [84].***

[83] The Decree the Government of the Republic of Armenia No 1367-N, “on the Approval of procedure and conditions for provision of psychological assistance to victims of torture”.
[84] See: Ruling made on November 2, 2004 on Abdulsamen Yaman vs. Turkey, Claim # 32446/96, Para. 55.

With regard to this, the Concluding observations on the fourth periodic report of Armenia, January 26, 2017, of the UN Committee against Torture *urges the State party to repeal the statute of limitations for the crime of torture or other acts amounting thereto (...). The State party should also ensure that pardon, amnesty and any other similar measures leading to impunity for acts of torture are prohibited both in law and in practice.*

It should be noted that the RA draft law "On Amnesty" was presented to Human Rights Defender's Office for opinion. As regards the Draft, the HRDO has made, among other recommendations, a proposal to repeal the statute of limitation for the crime of torture as described above. As a result, according to Article 7 (4) of the RA Law "On Amnesty" adopted on March 7, 2017, - *no pardon shall be granted to persons sentenced for crimes against peace and humanity or for torture as described in the Criminal Code of the Republic of Armenia.*

From the viewpoint of absolute prohibition of torture, it is inacceptable to exempt perpetrators of torture from criminal liability by using discretionary powers and as a result of a certain period of time passed since such offence, as it does not stem from the international recognized criteria and from the standpoint of preventing and combatting torture.

Therefore, it is necessary to make appropriate amendments to the Criminal Code of the Republic of Armenia to repeal statute of limitation and amnesty for persons alleged of an act of torture and other forms of ill-treatment.

CHAPTER 7. LEGAL REGULATION ISSUES

In the course of monitoring visits to places of deprivation of liberty, as well as based on individual complaints, the legal regulation issues identified by the Human Rights Defender's Office include:

7.1. The system of early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence.

The Annual Report on the 2016 Activities of Human Rights Defender of The Republic of Armenia as National Preventive Mechanism reflected on the problem as regards the practical application of institute of early conditional release, the existing legislative gaps and regulatory shortcomings, and stressed on the need for fundamental changes [85].

The Report also noted that there are no clear and predictable procedures and criteria for early conditional release that would properly inform the sentenced persons on the venue and the time of the sitting of the *Independent Commission for Early conditional release or Commuting the Sentence to a More Lenient Form of Punishment* (hereinafter, the Independent Commission), would enable the a person to receive legal aid, study the Independent Commission's documentation on his or her case, get copies free of charge, to file recuses, to appeal against the decisions in the court, etc.

In 2017, the RA Ministry of Justice took steps to improve the legal regulation of the institute of early conditional release.

Particularly, the former tri-tier, i.e. Penitentiary Administration- Independent Commission – Court system was replaced with two-tier system, i.e. Independent Commission and Court. There will also be a mechanism to separating the functions of the penitentiary institution from the functions of the Independent Commissions. Realistic standards have been established to pay due regard to circumstances for early conditional release of a sentenced person. Also, the sentenced persons shall be entitled to participate in the decision-making process on his or her case.

Nevertheless, despite the above-mentioned amendments, the system of early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence still remains defective in practice and negatively affects the protection of the rights of persons deprived of their liberty. The involvement, by the force of the RA Penitentiary Code, of the representatives of the Human Rights Defender's Office in the Independent Commission was crucial in elimination of deficiencies in the existing system and the lack of uniform approaches.

[85] See: http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf , as of 31.03.2018, Pages 89-90.

Examination of the statistical data is important for evaluating the effectiveness of said early conditional release system. The importance of statistics was also pointed out in Paragraph 43 in the Recommendation of the Committee of Ministers to member states on conditional release (parole), dated September 24, 2003, which states that: "*In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release*" [86].

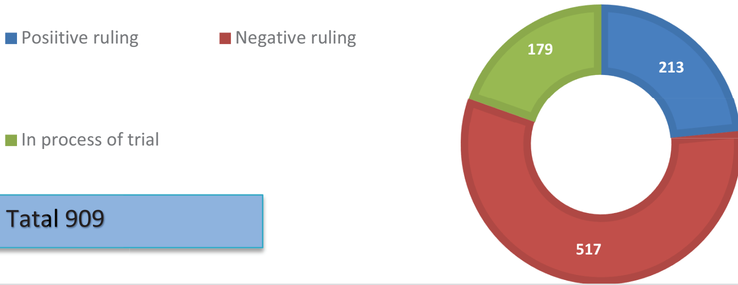
Consequently, relevant statistical data was also analyzed when performing a systematical review of the institute of early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence [87]. In drafting the Repot, statistics covering the period from July 1 to December 31, 2017, on the functioning of the system in question was reviewed. Particularly, HRDO reviewed the number of positive and negative conclusions made by the Independent Commission on early conditional release or commuting the sentence to a more lenient form of punishment, as well as the number of cases of early conditional release or commuting the sentence to a more lenient form of punishment.

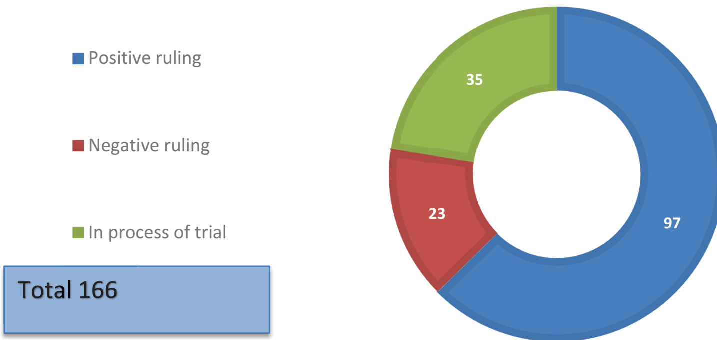
HRDO also considered the statistical data on the conclusions made by the Independent Commission and court rulings for the period covering from July 1 to December 31, 2017.

The study indicates that all the positive conclusions made by the Commission were submitted by the prisoners to the court while the number of court rulings on early conditional release was 62% of the total. At the same time, of all cases the negative conclusions made by the Independent Commission totaled to 57%.

The statistical data on the number of court rulings on both positive and negative conclusions made by the Independent Commission from July 1 to December 31, 2017, is described in the Figures below:

[86] See: https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2003)+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67 , as of 31.03.2018, Para. 43.
[87] According to information from the Ministry of Justice of RA.





It should be noted that though as a result of said changes the system in question has been improved, however, under the new regulatory provisions a number of new issues have emerged in terms of the practical application of this institution which requires appropriate legislative solutions:

According to Part 3, Article 115 of the Penitentiary Code of the Republic of Armenia, *"in the event* ***where the sentenced person refuses to submit the Independent Commission's conclusion to the Court****, the respective administration of the penitentiary institution shall submit the case of said prisoner for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence* ***after three months*** *following the date of the Independent Commission's conclusion (...).*

In the event where the court denies the early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence, the relevant administration of the penitentiary institution shall submit the case of said sentenced person for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence to the Independent Commission ***in 45 days prior to the expiry of six-month period*** *as specified in to Article 434 (3) of the Criminal Procedure Code of the Republic of Armenia(...).*

It is understood from the above-mentioned regulations that, if the sentenced person refuses to exercise his or her right to submit a conclusion made by the Independent Commission to the court, then the request for his or her early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence shall be submitted after three months, whereas if the conclusion is submitted to the court and denied by the latter's ruling then the next such request shall be submitted after 6 months.

The findings of the Human Rights Defender's Office showed that the sentenced persons having received the Independent Commission's positive conclusion in all cases submit the request to the court as it could have a positive impact on the court decision. And in contrary, the person being constrained by the negative conclusion of the Independent Commission often refuses to submit a request to the court for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of sentence. This is due to the fact that where the court declines the request for early conditional release (if the Independent Commission's conclusion is negative) the next request for early conditional release shall be subject to consideration only after 6 months.

It is clear from the aforementioned that the Independent Commission's conclusion could be an external factor discouraging a sentenced person to submit a request to the court where the conclusions of the Independent Commission does not contain any proof or grounds justifying such decision and would definitely bring to predictable developments should the sentenced person file a request to the court for his or her early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence.

In accordance with paragraph 16 of the Decree issued by the President of the Republic of Armenia "On the procedure of establishment and operation of the Independent Commissions for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence" (hereinafter Presidential Decree), - "*After the beginning of the Commission's sitting each member of the Commission shall be handed over one ballot including*

the full names of the sentenced persons listed in the order as in the agenda. In the ballot, following the full name of each sentenced person there is a note: 'I agree to the positive conclusion' and 'I am against the positive conclusion' with boxes to tick. The ballots shall be signed by the Commission chairperson and the secretary." This means that there are no requirements to providing any proof or grounds justifying the conclusions made by Independent Commission. Independent commission members are expected to just tick an appropriate box.

While, the grounds lying under the Commission's position is crucial for a number of reasons. Firstly, it would make the Independent Commission's conclusions predictable for the sentenced person since the underlying arguments would make reasons of the "agree" or "against" votes clear to the person in question and would serve as a kind of guideline for his or her further social rehabilitation. Secondly, the availability of such grounds would also be useful for the Independent Commission as the examination of the sentenced person's personal file as well as the grounds for the previous conclusion made would clearly demonstrate said sentenced person's social rehabilitation progress which will contribute to more grounded decision in reconsidering his or her case.

Consequently, the substantiation of the Independent Commission's conclusions on early conditional release or commuting the sentence to a more lenient form of punishment is crucial in terms of ensuring the further social rehabilitation of the sentenced person and for the effectiveness of the Independent Commission's activities.

The validity of the decisions on early conditional release or commuting the sentence to a more lenient form of punishment is also highlighted in international instruments. In particular, in accordance with the recommendations made in Paragraph 18 of the Committee of Ministers of the Council of Europe (on September 24, 2003) - "*The criteria that prisoners have to fulfill in order to be conditionally released should be clear and explicit. (...)"* [88]. Points (b) and (d) of paragraph 32 of the same recommendation states that, -*b) the decision-making authority should give careful consideration to any elements, including statements, presented by convicted persons in support of their case*; and – *d) decisions should state the underlying reasons and be notified in writing* [89].

Paragraph 10 of the Resolution (76) 2 of the Committee of Ministers of the Council of Europe (CoE) - *Recommends that the governments of the member states (...) grant the prisoner conditional release, subject to the statutory requirements relating to time served, as soon as a favorable prognosis can be formulated* [90].

[88] See: https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2003)+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67 , as of 31.03.2018, Para. 18.
[89] See: https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2003)+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67 , as of 31.03.2018; Para. 32 (b) and (d).
[90] See: https://rm.coe.int/16804f2385, as of 31.03.2018, Para. 10.

At the same time, the reasons underlying the conclusion made would enable the Independent Commission to submit a more substantial document to the court. It should be noted that an Independent Commission cannot function of itself. The basic function of the Specialized Independent Commission should be the provision of a professional judgment to the court, which would greatly contribute to an objective court ruling on the case for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence.

In the absence of a legally binding requirement to justify the conclusion such conclusion becomes a kind of formality and are very often ignored by the court as a decisive factor. Moreover, the analysis of the statistical data reveals even more concerning situation, where the number or court rulings granting early conditional release on the negative conclusion made by the Commission is more than the number of positive conclusions. This is really concerning in the sense of the effectiveness of the Independent Commission and its reputation among the sentenced persons as the rulings made by the court being in majority of cased different from the conclusions of Independent Commission definitely undermines the confidence to such Commission.

However, it should be noted that under the current legal regulation it is impossible to ensure justified and well-grounded conclusions be made by the Independent Commission. For instance, the Commission members work on voluntary basis and have other full-time jobs. It is therefore impossible in the sense of time to make a justified conclusion on each and every sentenced person, especially where the Independent Commission sometimes have to consider up to 80 cases of sentenced persons for early conditional release or commuting the sentence to a more lenient form of punishment at a session.

It can be assumed that the reason for almost the lack of "special opinion" expressed by Commission members in contrast to the Independent Commission's conclusion is due to the members' full-time job load. In particular, in accordance with paragraph 24 of the Presidential Decree, - *"in the event where the position of a Commission member is* ***different from the conclusions made by the Commission*** *on cases under provisions of Parts 1.1 and 1.2 of Article 76 or Part 1 of Article 77 of the Criminal Code of the Republic of Armenia,* ***such member may express his or her special opinion****. The Special Opinion shall be submitted within two days following the date of the Commission sitting."*

The special opinion expressed on a specific case by the Independent Commission members (performing as experts representing various professions) might include specific analysis and contribute to the court ruling on said case.

Therefore, in order to promote further social rehabilitation and correction of sentenced persons, as well as for making grounded court rulings it is necessary to establish legally binding requirements to justify such conclusions.

Some issues in the sense of the jurisdictions of the Independent Commission sessions and the voting procedure are also problematic. In particular, pursuant to Clause 14 of the Presidential Decree, "*Commission sessions are deemed valid if at least 4 members of the Commission are present."* In accordance with paragraph 30 of the Presidential Decree, *"the Commission's conclusions shall be adopted at least by more than the half of (votes) the total number of members of the Commission*".

The analysis of the cited norms suggests that, although the Commission's sessions are considered to be **valid** with participating of at least 4 members of the Independent Commission for early conditional release or commuting the sentence to a more lenient form of punishment, however, the conclusion shall be adopted not by the majority of votes cast by the members present at said session but at **least by more than the half of the total number of members (7 members) of the Commission**.

In other words, it turns out that if there are only four members of the Independent Commission participating in the session, then there must be **only a unanimous vote** (of all four) to make either the positive or the negative conclusions. Otherwise, the Independent Commission will not be in the position of making any conclusions on cases for early conditional release or commuting the sentence to a more lenient form of punishment while the Presidential Decree offers no solution in such situations.

Therefore, there is a need to clarify this gap in the legislative regulation by establishing a requirement to grant a positive conclusion to the sentenced person where the votes are in par.

The next systemic issue refers to the consideration of cases on commuting the sentence to a more lenient form of punishment. Paragraph 7 of the Presidential Decree obliges the Independent Commission to consider not only the early conditional release of the sentenced person but also, upon availability of appropriate circumstances, the matter of commuting the sentence to a more lenient form of punishment and issue a positive or negative conclusion under provisions of Parts 1.1 and 1.2 of Article 76 or Part 1 of Article 77 of the Criminal Code of the Republic of Armenia. But in practice, only the cases for early conditional release of sentenced persons are submitted to the Commissions consideration while the possibility of commuting the sentence to a more lenient form of punishment is considered and decided on only where the conclusion on early conditional release is negative. The above, however, does not derive from the content and concept of currently effective regulations.

It should be noted that the early conditional release and commuting the sentence to a more lenient form of punishment are in fact different institutions with different underlying circumstances for their implementation. Consequently, should there be an appropriate ground for both early conditional release and commuting the sentence to a more lenient form of punishment then the Independent Commission should consider both matters and make individual conclusions for each of them.

Thus, even though the legislation provides for mandatory requirements for the Independent Commission to consider, if there are appropriate grounds, both early conditional release and commuting the sentence to a more lenient form of punishment, the lack of clear and explicit

regulations prevent from practical realization of these institutions in question. Therefore, there is a need to find appropriate solutions to practically ensure the consideration and decision making not only on the sentenced persons' cases for early conditional release but also on the commuting the sentence to a more lenient form of punishment.

The practical realization of the institution in question often leads to a deadlock situation where the decision on l early conditional release and commuting the sentence to a more lenient form of punishment is appealed to the RA Court of Appeal or the RA Court of Cassation and the process would last more than six months. In the given situation there could be a question whether the case for early conditional release and commuting the sentence to a more lenient form of punishment could be submitted to the Independent Commission's consideration upon expiration of the six-month period where the proceedings on the case is still in appellate or cassation courts on the one hand; and on the other hand, if the sentenced person has to wait for the end of the court proceedings then such person will be in breach of the deadline (prescribed by Article 115, paragraph 3, of the RA Penitentiary Code) for submitting his or her case for early conditional release and commuting the sentence to a more lenient form of punishment to the Independent Commission one more time. Thus, in line with the above-mentioned norm, "(...) *In the event where the court denies the early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence, the relevant administration of the penitentiary institution shall submit the case of said sentenced person for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence to the Independent Commission in* ***45 days prior to the expiry of six-month period*** *as specified in to Article 434 (3) of the Criminal Procedure Code of the Republic of Armenia, unless otherwise specified in Article 116 of this Code".*

It should be noted that in practice there is no common approach on this issue, and solutions vary from case to case. Therefore, in order to ensure legal certainty there will be a need for appropriate legislative changes.

Various national regulations dealing with the early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion refer to the Advisory Statement on the early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion to be made by the State Probation Service under the Ministry of Justice of Armenia.

In particular, pursuant to Article 23 (2) of the RA Law "on Probation "(...) *upon the request of the Independent Commission for early conditional release or commuting the sentence to a more lenient form of punishment or the Court, the Regional Body shall submit an Advisory Statement on the case for early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence".*

According to Article 75 (5.1) of the Criminal Code of RA, *"When granting the early conditional release to a sentenced person the court shall pay due regard to the* ***Advisory Statement delivered***

upon the request of the Independent Commission or the Court by the State Probation Service *on the case for early conditional release."*

Article 438, part 3.2 of the RA Criminal Procedure Code envisages that, *"If necessary, the court may request an Advisory Statement from State Probation Services of the Ministry of Justice of the Republic of Armenia unless said Statement is already submitted to the Independent Commission".*

Paragraphs 8 and 9 of the Presidential Decree envisage the procedure for delivering upon request of the Independent Commission of an Advisory Statement to be made by the Probation Service on the case on early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence.

The aforementioned regulatory provisions indicate that both the Court and the Independent Commission are entitled to request from the Probation Service an Advisory Statement on early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence. Nevertheless, given the limited capacities of the State Probation Service one would doubt whether they could be able to produce an Advisory Statements of adequate quality on the case on early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence.

Moreover, in March 2018, the Human Rights Defender's Office was asked to consider the new draft legislation on early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence. The proposed regulations envisage a mandatory requirement from the State Probation Service to deliver Advisory Statements where such requirement would make the situation even more complicated due to the lack of resources.

Therefore, given the aforementioned circumstances it is recommended to:

- ✓ ***Take adequate capacity building measure for State Probation Service should it be involved in the process of early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence;***
- ✓ ***Establish a statutory requirement to provide well-grounded conclusions on early conditional release or commuting the sentence to a more lenient form of punishment for the remaining portion of the sentence to support the court in its decision making process on such cases;***
- ✓ ***Envisage appropriate solutions to practically ensure the consideration and decision making not only on the sentenced persons' cases for early conditional release but also on the commuting the sentence to a more lenient form of punishment.***

It should be noted that implementation of said and other recommendations made in this Report with regard to early conditional release system may be actual as well as in March 2018, at the time when the draft law circulated by the Ministry of Justice of the Republic of Armenia to be adopted. Therefore, due regard should be paid to these recommendation during the drafting process of this law.

7.2. Issues related to the operations of the Allocation Board at the Central Body of the Penitentiary Service of the Ministry of Justice of RA

There is an Allocation Board under the Central Body of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia (hereinafter the Allocation Board). The Board makes decisions on the type of correctional institution, changing the type of institution, transferring from one institution to another institution of the same type, as well as on transferring to closed-type facilities for housekeeping and technical tasks, or to leave the detained persons the in the same place of detention or to send to another place [91].

In the course of the study of complaints addressed to the HRD in 2017 a number of legislative and enforcement issues related to the activities of the Allocation Board had been revealed. Said issues basically refer to the following: allocation to the correctional facility or transferring to another facility paying no due regard to person's right to respect for personal and family life; absence of grounds in the Board's decisions for such allocation or transfer; or non-uniform implementation of the provisions of the Penitentiary Code conditioned by unclear regulations under the Penal Legislation.

With regard to the right of persons deprived of their liberty to maintain family ties, it should be noted that such right is fixed in a number of international legal instruments.

For instance, according to Article 17.1 of the European Prison Rules, - *Prisoners shall be allocated, as far as possible, to prisons close to their homes* (...) [92].

The CPT 2016 report to Armenian Government, - *has stressed many times in the past 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 or she serves his or her sentence) is fundamentally flawed* [93].

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[91] The legal basis and the functions of the Allocation Board are fixed in the Criminal Procedure Law of Armenia, as well as defined by the Order of the Minister of Justice of RA No 34-n of March 14, 2012, on the "Approval of the composition and functions of the Allocation Board under the Penitentiary Service of the Ministry of Justice of the Republic of Armenia, and on revoking the Order of the Minister of Justice of RA No QH-26-N of April 21, 2005.

[92] See also: Committee of Minsters of the Council of Europe "Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules" http://www.refworld.org.ru/docid/55c36e8b4.html as of 31.03.2018; Page 7.

[93] See: https://rm.coe.int/16806bf46f , as of 31.03.2018; Para. 107.

According to the legal position of the European Court of Human Rights, - *the assistance provided by the prison authorities in maintaining contacts with their near relatives is an integral part of the right of persons deprived of their liberty to respect for family life* [94].

The European Court of Human Rights ruled in the case of Vintman v. Ukraine that in the meaning of Article 8, § 2 of the European Convention, *there shall be no restriction with the exercise of right of a person deprived of his or her liberty to respect for private and family life except such as is "in accordance with the law". The term "in accordance with the law" not only implies conformity with domestic law, but also the quality of law.*

According to the legal position of the Court, the *law which grants discretion to the public authorities does not contradict that requirement in itself. Nevertheless,* ***the law should clarify the extent of discretion granted to the public authorities and the manner in which they apply****, with due regard being paid to the legitimate aim of the subject matter to ensure proper protection against arbitrary interference*.

It is interesting that in this case the European Court referred to Article 93 of the Penitentiary Code of Ukraine according to which *a person deprived of his or her liberty, as a rule, shall serve the full sentence in a correctional institution* ***in the administrative area of his or her place of residence****.* According to the Court, *said general rule is in conformity with the European Prison Rules, as well as the requirement that the competent authorities should support sentenced persons in maintaining contact with the family*.

At the same time, the Court noted that the *legislative regulation permitting the transfer of a prisoner from one penitentiary institution to anther in exceptional circumstances where a person cannot stay in the "initial" institution is not problematic* ***if the general rule of the initial allocation of the prisoner is observed*** [95].

The international practices of addressing such issues suggest that the Penal Legislation of foreign countries consider the guarantee of the sentenced person's contacts with the family as an important factor to take into account when allocating the person to a penitentiary institution.

Particularly, according to the French Penitentiary Code, there should be orientation proceedings prior to selection of the penitentiary institution. It includes collecting all the necessary information about a person for further allocation. Such information includes: personal qualities of the sentenced person, his or her past, his or her abilities, physical and mental conditions of the prison, the social reintegration capabilities.

[94] See: Ruling made on Mesian vs. Italy (# 2), Claim # 25498/94, Para. 61.
[95] See: Ruling made on October 23, 2014, on Vintman vs. Ukraine case, Claim # 28403/05; Para-s 78, 84-85, 88, 90.

The Code states that at any period of serving the sentence the inmate may require to change his or her place of allocation. Such request may be conditioned by, inter alia, family ties, the reintegration prospects, or the desire to change the detention regime [96].

Under the Italian Law on "Penitentiary system and deprivation from liberty and means of restrictions" the sentenced persons shall be allocated to penitentiary institutions close to their homes [97].

Article 11 of the Portuguese Declarative Law on the Use of Deprivation Capacities provides that in allocating the sentenced persons to penitentiary institutions due respect must be paid to the sex, age, criminal status, the term of imprisonment, physical and mental health, the need for specific correctional measures, the place of family residence, as well as the education and job which will contribute to the social reintegration of a person [98].

As regards the national legislative regulations for determining the type of correctional institution, changing the type of institution, transferring from one institution to another institution of the same type, it should be noted that Article 69 of the RA Penitentiary Code states *that the sentenced person shall typically serve the entire term of the sentence in one correctional institution*.

At the same time, the Article provides for certain exceptions, pointing out that *the sentenced person can be transferred from one institution to another institution of the same type to continue his or her sentence on the grounds as follows: reorganization or liquidation of the correctional institution, prisoner's personal security reasons and other exceptional circumstances preventing the further serving of the sentence in said penitentiary institution.*

According to Article 100 of the Code, *the type of correctional facility for serving the sentence shall be determined by the Allocation Board under the Central body of the Penitentiary Service of the Ministry of Justice, taking into account the peculiarities set out in Article 100.2 and the requirements for separate accommodation of the sentenced persons in a correctional institution set out in Article 68 of the Penitentiary Code.*

In accordance with Article 101 of the Code, *the Allocation Board shall be in the position to change the type of correctional institution for the execution of the sentence, taking into account the person's sentenced to term or life imprisonment behavior, the expediency of isolation, and the requirements of Article 68 of the same Code.*
Findings of the comparative study of the Penal Legislation shoed that the type of correctional institution will be determined based on the consideration of the combined criteria as follows: the

[96] See: http://prison.eu.org/spip.php?article74, as of 31.03.2018.
[97]See: http://www.prisonobservatory.org/upload/Italy_Peniten.pdf , as of 31.03.2018; Page 18.
[98] See: http://www.legislationline.org/documents/action/popup/id/4424, as of 31.03.2018.

gravity of offence; the sentence, the recidiv (the need to arrange for appropriate assistance in the case of transferring to a Medical Correctional Institution) and the need to keep the sentenced persons separately. These legislative criteria predetermine the degree of isolation of a person in serving his or her sentence in an open, semi-open, semi-closed, or closed correctional institution. **At the same time, there are no standards at the legislative level to guide the Allocation Board in determining the penitentiary institution for serving the sentence base on the Board's decision (on the type of a correctional institution).**

Perhaps it is due to the lack of clear legislative directives that the Allocation Board's decisions in question be made on the "expediency" grounds rather than on the grounds of sentenced person's rights and freedoms, including the right to contact with the outside world, and the right to respect for private and family life.

These issues become more tangible when examining the complaints addressed to the Human Rights Defender.

Particularly, in one of the complaints addressed to the Defender, the person informed that the Allocation Board decided to continue serving his or her sentence in "Hrazdan" penitentiary institution without paying due regard to the fact that his or her parents were registered and resided in city of Yerevan.

The Ministry of Justice of the Republic of Armenia informed on this issue that said prisoner requested the Allocation Board to transfer him from "Yerevan-Kentron" closed type correctional facility to "Hrazdan" closed type correctional facility. It was noted that according to information available in the Operative Department of the Penitentiary Authority, it is inexpedient to transfer said prisoner to "Yerevan-Kentron" penitentiary for further serving of the sentence.

In another case, a person serving a sentence in "Goris" penitentiary institution asked for Defender's assistance for transferring him to "Nubarashen" penitentiary institution as his wife was registered and resided in Yerevan.

In repose to the inquiry, the was a clarification that according to the information available at the Operative Department of the Penitentiary Authority it is inexpedient to transfer said prisoner to "Nubarashen" penitentiary institution for further serving of the sentence.

The Human Rights Defender stated that the right to respect for private and family life is a serious guarantee of the social rehabilitation of a sentenced person.

In order to promote the social rehabilitation of persons deprived of their liberty there should be such requirements for the conditions for serving the sentence that are sufficient to ensure that the sentenced person does not lose the rules of conduct and skills acquired in the society before being sentenced.

Such condition would contribute to the normal life and work of sentenced persons and strengthen their family and social ties.

In another instance, the Human Rights Defender found a violation of the rights of the person deprived of liberty where the request of a person sentenced to life imprisonment to transfer him to another Penitentiary Facility closer to his daughter's place of residence was denied on the grounds that said prisoner was visited by his daughter only once during his 22 years of imprisonment due to her disability and remoteness of her place of residence.

Examination of complaints addressed to the Defender provided sufficient grounds to conclude that the practices with regard to the issue in question established at the Allocation Board are not uniform, which in some sense is conditioned by the absence of clear legislative regulations.

For instance, a person asked for the Human Rights Defender's assistance to transfer her husband to "Goris" penitentiary institution. The person informed that the Allocation Board made a decision on transferring the sentenced person to "Armavir" penitentiary institution paying no regard to the fact that his or her family lived in another city and under such circumstances his or her family members would be deprived of the opportunity of making regular visits to him. The citizen's request for changing the penitentiary institution was denied by the Allocation Board on the grounds that there is no exceptional circumstance as per Article 69, part2 of the Penitentiary Code impeding the allocation of said sentenced person in that correctional institution.

In contrast to the aforementioned case, the Ministry of Justice of the Republic of Armenia clarified that according to the Board's decision, the sentenced person was allocated to a penitentiary institution close to his or her family's place of residence. This gives grounds to assume that, in some cases, the need to contact with the family had been viewed by the Allocation Board as an exceptional circumstance in the sense of Article 69 of the Penitentiary Code.

At the same time, it should be noted that even in the absence of direct legislative regulations, the state acting as a public authority is obliged to ensure the fundamental human rights and freedoms.

In this specific case, the Allocation Board, as a part of the penitentiary system and having vested rights to specific functions in executing the sentence must be guided by the power of Article 3 of the Constitution, acting as a direct requirement to respect for fundamental human rights and freedoms. This means that the absence of specific regulations for defining or changing the correctional institution would not justify the Allocation Board's practices of making discretional decisions on the grounds of "expediency" not driven by any lawful interest.

Additionally, the Human Rights Defender hade ruled on the case of violation of the rights and freedoms where a request of the sentenced to life imprisonment person to transfer him or her to a penitentiary institution close to his or her family's place of residence was denied on the grounds of the general rule set out in Article 69.1 of the Penitentiary Code, i.e. to serve the entire sentence in one correctional institution. Additionally, the Allocation Board referred to the legislative provision for holding prisoners sentenced to term imprisonment separately from prisoners sentenced to life imprisonment, as well as to the lack of adequate conditions and security systems for the persons sentenced to life imprisonment in said penitentiary institution.

The Defender has stated that the right of prisoners sentenced to term or life imprisonment to contact with the outside world, including the right to receive visits are part of their fundamental rights while the conditions for exercising such rights should allow, as far as possible, maintain and develop family relationships where the penitentiary system shall be obliged to support the persons deprived of their liberty in establishing and maintenance their contact with the outside world including the allocation of persons deprived of their liberty to a penitentiary institution close to their homes.

The absence in the Penitentiary code of direct requirement for the grounded decisions be made by the Allocation Board should not, in any manner, allow for absolute discretion of the Allocation Board and rule out its accountability. And in the end, the Allocation Board being vested in administrative powers shall be constrained by the principles of public law.

It should be noted that according to the Case Law of the Court of Cassation, *administration is characterized by the fact of its relation to public law. This should be an action aiming at addressing a specific issue in the extent of public law exercised by the administrative body while the extent of public law means a person's relationship with the state, which acts as a bearer of public power* [99].

Therefore, the aforementioned statement drives to the conclusion that the Allocation Board's decision-making process should, from the standpoint of safeguarding the rights of persons deprived of their, be guided by at least the basic principles of administration, such as, in particular, the limitation of discretionary powers and arbitrariness, and administrative adequacy.

Consequently, it is unacceptable to automatically refer to the non-absolute rule of serving the entire sentence in one correctional institution when justifying the denial to transfer the sentenced person from one penitentiary institution to another: this issue directly arises from the fact that there are no grounds under the Allocation Board decisions.

The transfer of the sentenced person to another penitentiary institution pursuant to provisions envisaged in Article 69.2 of the Penitentiary Code should not be considered as an acceptable practice even if the reference is made to the application of current legislative regulations, for reasons as follows:

1. The provisions of the Penitentiary Code in question provides for exceptions from the general rule, i.e. exceptional circumstances impeding the serving of the sentence in a given penitentiary institution. However, transferring a person to another penitentiary institution to ensure his or her contact with close relatives should be viewed as a necessary precondition for a person's social rehabilitation and such concept should apply as regular practice.

2. The position of the Allocation Board that the legislative basis for transferring a person from one penitentiary institution to another institution is restricted by Article 69.2 of the Penitentiary Code is groundless. The point is that Article 110 of the Code also provides for a transfer of the sentenced person to another closed or semi-closed correctional facility, i.e.,

[99] See: RA Court of Cassation, verdict on case ԵԱՔԴ/1369/02/09, date: December 3, 2010.

for engaging a prisoner demonstrating law-abiding behavior in housekeeping and technical task.

Obviously, engaging sentenced persons in certain work tasks, including transferring them from one penitentiary institution to another aims to promote the lawful behavior of sentenced persons. Same concept shall apply when changing the penitentiary institution for ensuring the contact of a sentenced person with family.

At the same time, the contact with close relatives and family is of utmost importance not only for ensuring the right to respect for private and family guaranteed by Article 31 of the RA Constitution and Article 8 of the European Convention, but also in terms of the performance of state's function for the preparing them for their reintegration into society. Particularly, in accordance with Article 76 of the Criminal Code of the Republic of Armenia, *in granting early conditional release due regard should be paid to, inter alia, the inmate's contacts with the outside world and family, and the presence of dependent family members*.

A draft law on amendments to the RA Penitentiary Code was initiated and put into circulated by the Human Rights Defender's Office aiming at addressing the issues in question [100]. Particularly, it was proposed that a sentenced person's contact with family, among other conditions, shall serve as a good grounds for transferring a person from one institution to another (in Article 69 of the Penitentiary Code).

Such a solution is intended to directly establish the legal basis for transferring a person from one correctional institution to another conditioned by the need to contact with the family, as well as it is aimed to eliminate the practices of various interpretations and selective application of this provision of the law.

At the same time, within the framework of the drafting of new Penal Legislation, changes should be made by fixing the conceptual approach that the state is responsible for preparing a sentenced person for his or her release at the moment the person enters the penitentiary institution and, accordingly, the execution of the punishment should be arranged in a manner to achieve the priority objectives aiming at their social rehabilitation and reintegration into society.

In this respect, the right of a prisoner to maintain his or her contacts with the family and the outside world should be taken into account not only when deciding on changing the type of penitentiary institution for serving the sentence but also at the initial stage of serving the sentence. In this sense, the criteria to be based on in deciding on the type of specific facility for serving a sentence should be fixed at the legislative level. This should not refer to the general rules under the effective law to be taken into account in determining the type of the correctional facility, but rather to personal circumstances (including contact with the family) thus ensuring an individual approach to persons deprived of their liberty.

[100] See: http://pashtpan.am/images/Naxagic_kapn_artaqin_ashxarhi_het_2.pdf, as of 31.03.2018.

Therefore, it is necessary to:

- ✓ ***Ensure, in practice, that the decisions of the Allocation Board are made on good grounds, in particular, the content of the Allocation Board decisions on determining the type of correctional facility or transferring a person from one correctional facility to another reflect the priority right of person to contact with the family as found in considering the respective case.***
- ✓ ***Ensure, in practice, the uniform application of Article 69.2 of the Penitentiary Code, excluding any groundless and frivolous approaches;***
- ✓ ***Within the framework of drafting the new Penal Legislation, set such standards for determining a correctional institution for serving sentences that would serve as a basis for complying, as much as possible, the individual needs and ensuring the individualized execution of the sentence.***

7.3. Standard report forms and manuals for medical examination of torture and other forms of ill-treatment

With regard to the absolute prohibition of torture, the international community has developed a set of criteria for protecting persons from and preventing and detecting of the acts of torture.

Thus, the 2004 Protocol of the United Nations "On Effective Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" [101] (hereinafter referred to as "the Protocol") contains important criteria for effective investigation of torture and ill-treatment. This includes guidelines for investigating cases of alleged torture and other forms of ill-treatment, for the medical examination of the alleged victims and for submitting the information to competent authorities.

Article 104 of the Protocol instructs that, - *A medical examination should be undertaken regardless of the length of time since the torture, (...) such an examination should be arranged urgently before acute signs faded.*

With regard to alleged acts of torture and other forms of ill-treatment, reports prepared upon the findings of medical examination are important in solving the alleged crimes. According to paragraph 83 of the Protocol, - *The medical expert should promptly prepare an accurate written report. This report should include at least the following*:

1. *The circumstances of the interview. The name of the subject and name and affiliation of those present at the examination; the exact time and date, location of the medical examination, etc.*

[101] See: UN 2004 Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf, as of 31.03.2018.

2. *The background. A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms;*
3. *A physical and psychological examination. A record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;*
4. *An opinion. An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given;*
5. *A record of authorship. The report should clearly identify those carrying out the examination and should be signed.*

The protocol stipulates criteria for medical examination of alleged subjects of torture and ill-treatment. In accordance with Paragraph 175, - *The examiner should note all pertinent positive and negative findings, using body diagrams to record the location and nature of all injuries.* For that purpose, there should be special annexes to the report showing anatomical drawings of man and woman, and instructions for making respective notes.

The aforementioned notes have also preventive effect as the use by independent medical experts of the report forms and guidelines offered in the Protocol will contribute to both effective investigation and solving the alleged act of torture and ill-treatment, and to their prevention.

The European Court of Human Rights also attached importance to the application of the Protocol's principles and manuals when evaluating the legitimacy of State Parties in the context of Article 3 of the European Convention on Torture [102].

The RA legislation provides for regulations for undertaking initial medical screening on admission of persons deprived of their liberty to a penitentiary institution. These issues were reflected in detail in the 2017 Special Public Report of the Human Rights Defender of the Republic of Armenia on ensuring the right to health protection for persons deprived of their liberty in penitentiary institutions [103].

Thus, in accordance with Article 65.2 of the RA Penitentiary Code, *a prisoner conveyed to a correctional facility shall be placed in a quarantine block for up to seven days for medical screening (...).*

More detailed regulations on medical screening are envisaged in the RA Government Decree No 825-N of May 26, 2006, where paragraph 37 of Annex 1 provided for the following:

"In selecting the place of detention *(including transit) persons shall undergo a preliminary medical screening where all findings shall be entered in the appropriate register to provide health assistance*

[102] See: Ruling made on July 3, 2004 on Batin el al vs. Turkey, Claim 33097/96 և 57834/00 Para. 100; Ruling made on March 10, 2009 on Boke and Kandimir vs. Turkey, Claim 71912/01, 26968/02, 36397/03, Para. 48.
[103] See: http://pashtpan.am/resources/ombudsman/uploads/files/publications/b8beba20cc5240c574dd202b118ce109.pdf as of 31.03.2018; Pages 67-83:

or to record any injury or complain on the person's health condition. The medical screening record of the detained or sentenced person shall include the following:

1. *The full picture of all statements made by a person subject to medical screening (including any description of his or her health conditions and any statement on ill-treatment);*
2. *Complete profile of the findings from objective medical screening;*
3. *Medical expert's conclusion based on pints 1 and 2 herein.*

All medical screenings should be performed out of hearing and out of sight of the detention facility staff or other services."

In 2017, a number of systemic issues with regard to the performance of external screening in places of deprivation of liberty were revealed by the monitoring visits and examination of relevant documents. Said issues relate to the presence of non-healthcare professional, inadequate room conditions for medical screening, medical screening was performed in parallel to search with participation of several persons deprived of their liberty, and the improper records made on the findings from medical screening.

For instance, it was found that a medical screening in the penitentiary facility was performed in the presence of a duty officer or his or her assistant, an inspector, the convoying policemen, while the signatures of the latters in the protocol proved said facts. In addition, a physical examination was performed in parallel to a search in a short-term visitor's room or in the checkpoint. The immediate observations showed that the observed injuries were not described in detail, the records are sometimes made only from the own words of the person deprived of his or her liberty, the records bear some corrections and erased words.

The problems as found drive to conclusions that neither the external medical screening procedures nor the practice of making records on observed injuries comply with international legal standards.

For performing the medical screening in a unified and effective manner, as well as for preventing acts of torture and other forms of ill-treatment and identifying such acts it is necessary to elaborate and fix at the legislative level the standard forms for medical screening records for persons deprived of their liberty, and manuals for filling-in said records, standards and criteria of the protocols to be made in compliance with respective annexes thereto (e.g. anatomical drawings and guidelines).

7.4. Registration of marriage between persons deprived of their liberty; legislative and practical issues

The right to marry is a person's constitutional right. The constitution recognizes the family as the natural and fundamental part of the society, the basis for the preservation and reproduction of the population. This means that the right to marry must be properly guaranteed both by law and practice. It equally applies to persons in freedom as well as to persons deprived of their liberty.

In the complaint addressed to Defender in 2017 the sentenced person from "Abovyan" penitentiary institution informed that she and a sentenced person from "Sevan" penitentiary institution hade filed a request to register their marriage but the Penitentiary Authority rejected it on the grounds that the Law of RA on Civil Status Acts and the Order [104] of the Ministry of Justice No. 153-N of April 2, 2003 did not provide for any procedures for marriage registration between sentenced persons.

The studies conducted by the Human Rights Defender's Office identified the legislative and practical issues related to the registration of marriage between persons deprived of their liberty.

Freedom of marriage is enshrined in Article 35 of the Constitution of the Republic of Armenia, *where in accordance with Part 1 any man and woman of marriageable age have in free expression of their will the right to marry and found a family;* and in accordance with Part 3, *freedom to marry shall only be restricted by law for health and morals protection purpose.*

Paragraph 6 of Article 1 of the RA Family Code defines that the limitation on the right of marriage may be envisaged only by this Code. Thus, Article 11 of the same Code exhaustively defines the cases where a marriage can be forbidden. Such cases include:

- Where even one of the persons is already in registered marriage;
- Where persons to marry are close relatives (direct relatives: parents and children; grandparents and grandchildren; sons and daughters of same father and mother; first cousins);
- Where persons to marry are in adopted-adoptee relationships,
- Where at least one of the persons to marry is recognized by court as incapable.

The aforementioned proves that there are no legal restrictions on marriage conditioned by the fact of being a person deprivation of his and her liberty. Although the Penitentiary Code of the Republic of Armenia directly stipulate neither the freedom of persons deprived of their liberty of marriage nor the procedure for safeguarding such freedom, nevertheless, according to Article 92. 1 of the Penitentiary Code, *the administration of the correctional institution shall create appropriate conditions to ensure the contacts of a sentenced person with the family and the outside world.* Such regulation for detained persons is provided in Article 17 of the RA Law on "On Keeping of Arrestees and Detained Persons"

The RA Law "on Civil Status Acts" in its turn defines the procedures for registration of marriages of persons deprived of their liberty: specifically, pursuant to Article 27 (6) of the Law, *the state registration of marriage of detained or sentenced persons serving the sentence in places of deprivation of liberty shall be performed by the head of Civil Status Acts Registration body (hereinafter referred to as the CSAR) in a place designated by the head of the relevant penitentiary institution.*

[104] The Order of the Ministry of Justice No. 153-N of April 2, 2003 "on Establishing the procedure for registering marriage between persons held in placed of detention".

The procedure of marriage registration for persons deprived of their liberty is defined by the Order of the RA Minister of Justice No. 153-N of April 2, 2003, where, in accordance with paragraph 1 of the Annex, - *a person wishing to marry a person deprived of his or her liberty shall file an application to the territorial office (of his or her place of residence, or the place of the correctional facility) of Civil Status Acts Registration.* Paragraph 4 of the Annex provides for, that *the marriage shall be registered in the administrative building of the correctional institution.*

While these legal acts do not provide for any regulations or specific procedure for marriage registration between two sentenced persons, neither there is a legislative restriction on freedom of marriage conditioned by the fact of a person being deprivation of his or her liberty. Restriction of fundamental freedoms such as the freedom of marriage stem from neither the RA Constitution nor other legal acts or international standards in the field of human rights protection.

For instance, the right to marry is enshrined in Article 12 of the European Convention, - *Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right*. The European Court of Human Rights, having further developed the regulations under the Convention, has stressed out that *the right to marry leads to social, personal and legal consequences. It is subject to regulation by the national laws of the State Parties, while limitations imposed on such right should neither prohibit nor restrict the exercise of this right in the extent of substantially damaging the essence of such right* [105].

Therefore, a State should not be entitled to free discretional power in defining the conditions for marriage.

The European Court of Human Rights (Yermovich vs. Poland [106]) has pointed out that *personal freedom is not a prerequisite for exercising the right to marriage.* In this case, the complainant, who was sentenced to imprisonment, was denied to leave for another penitentiary institution to marry another person serving the sentence. The European Court of Human Rights having examined the Polish law found no barriers to marriage registration between sentenced persons. As regards, the European Court of Human Rights had stated that *along with the deprivation of liberty, some civil rights and privileges are also inevitably or possibly deprived of. This, however, does not mean that persons deprived of their liberty will not be entitled to their right to marry*. The European Court has reiterated that *other fundamental rights and freedoms continue to exist for persons deprived of their liberty the exercise of which does not contravene the meaning of deprivation of liberty while every additional limitation needs to be justified by the competent authorities. Naturally, prior to marriage there should be some arrangement to be made by the penitentiary administration. The proper exercise of the right to marriage for persons deprived of their liberty shall be the State's positive duty.* Finally, in this case, the Court has found a violation of Article 12 of the European Convention.

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[105] See: Ruling made on July 11, 2002, on Kristine Goodwin vs. United Kingdom, *28957/95*, Para. 99.
[106] See: Ruling made on January 7, 2010 on Yermovich vs. Poland, Claim # *24023/03*, Para-s 27,28, 43-51, 53, 55, 58, 59, 62-64.

In the light of the aforementioned approaches, it should be stressed out that along with the deprivation of liberty, certain human rights are also substantially limited. However, the content of any penal sanction is not limited only by punishing the perpetrator. Article 48.2 of the Criminal Code of the Republic of Armenia defines the purpose a penalty, among other goals, such as restoration of social justice and prevention of offenses as a mean for correcting a penalized person. In this regard, it is important to maintain the contact of persons deprived of their liberty with the outside word and, specifically, with their families. Therefore, marriages of persons deprived of their liberty would make a major effect on their correction progress in the sense of promoting their law-abiding behavior and reintegration into the society.

From both international and national laws, it is evident, that the fact of being deprived of liberty must not serve as a ground for limiting the freedom of a person to marry. This rule applies to marriages between a person deprived of his or her liberty and a person at large, and between persons deprived of their liberty, unless there are other legal restrictions for registration of such marriage.

Consequently, the denial of marriage registration between persons deprived of their liberty on the grounds of the lack of respective regulations leads to an unjustified restriction of the right of the person to marry.

Defining the procedure for marriage registration between persons deprived of their liberty is the positive duty of the State. Therefore, there is a need to make amendments in relevant legal acts to include clear procedure and rules for marriage registration between persons deprived of their liberty.

Nevertheless, the absence of appropriate procedures should not serve as a ground for limiting the freedom of a person to marry.

7.5. Temporary isolation for 24-hour of persons deprived of their liberty for violation of internal regulations

Paragraph 1 of Article 95 of the Penitentiary Code of the Republic of Armenia stipulates *that a person sentenced to imprisonment may be imposed on a penalty for violation of regulations in serving the sentence, including: reprimand, severe reprimand or transfer to a disciplinary cell for up to fifteen days, or for up to ten days for juvenile prisoners*.

The procedure for imposing penalties on persons sentenced to imprisonment is defined by the Government Decree No 1543-N of August 3, 2006. Accordance to paragraph 214 of the Annex hereto, *penalties envisaged by the legislation of the Republic of Armenia for detained and sentenced persons shall be applied upon a decision of the head of detention facility and the head of correctional institution respectively.*

According to Article 20, paragraph 24, of the Order [107] No. 214-N of November 21, 2011, issued by the Minister of Justice of the Republic of Armenia, - *in the absence of the head of a penitentiary institution, where there is a disciplinary violation or a need of eliminating circumstances prone to such violation, or based on the respective request made by a detained or sentenced person, the duty officer of the penitentiary institution shall, upon a written report made by a security staff or other officer of the penitentiary institution, be entitled to temporarily isolate an arrestee or sentenced person* ***for maximum of 24 hours and draw an appropriate protocol.***

Entitling the duty officer of the penitentiary institution to such powers might lead to a number of problems as powers to impose penalties on a person deprived of his or her liberty (including placement into the disciplinary cell) are reserved, pursuant to the Penitentiary Code, only to the head of the penitentiary institution. The Order No 194-N of the Minister of Justice of the Republic of Armenia, of November 21, 2011, does not define any maximum limit for the number of decisions following one-another on temporary isolation of a person deprived of his or her liberty for up to a maximum of 24 hours to be made until the arrival of the head of a penitentiary institution. There are also no clear regulations on the accommodation conditions for a person deprived of his or her liberty while being held in isolation.

There is still a question whether the time spent in isolation shall be added to the time spent in the disciplinary cell where the head of the penitentiary institution had decided to apply a penalty in the form of placement into the disciplinary cell of a person already placed in temporary isolation.

There would also be other problematic situations where an inmate is already placed into isolation for up to 24 hours while later the head of the penitentiary institution decides not to penalize said inmate or apply a reprimand or severe reprimand as a penalty.

For ensuring the legal clarities with regard to the decisions on insolating a person made by an official having no such powers to impose such penalty in the penitentiary institution and to the status of the inmate changed as a result of such decision, and to the term of penalty measure imposed on the person deprived of his or her liberty, it is necessary to clearly regulate the issues at the legislative level. Specifically, there should be a requirement that a temporarily isolated person shall not be held in a disciplinary cell. It is also important to ban the practices of making a number of decisions following one-another on temporary isolation for up to a maximum of 24 hours.

It should be noted that since 2016 no measures had been taken by the competent body to address this issues while the need for proper regulations still remains relevant.

7.6. Appealing mechanisms against actions or lack of action of the penitentiary system officials

[107] The Order of the Minister of Justice of RA No. 214-N "On approval of the functions of the Structural Security Unit under the Penitentiary Service of the Ministry of Justice of the Republic of Armenia".

In the sense of exercising and protecting the rights of persons deprived of their liberty it is crucial to guarantee the opportunity of appealing against the actions or lack of action or decisions of penitentiary administration which will contribute to the careful implementation of the penitentiary administration powers.

The opportunity of appealing against actions (luck of action) of the penitentiary administration and other competent authorities are also fixed by international standards. For instance, in accordance with Part 36, Point 3 of the "Standard Minimum Rules for the Treatment of Prisoners" adopted by the United Nations First Congress on 30 August 1955, - *every prisoner shall be allowed to make a request or complaint, (...) to the central prison administration, the judicial authority or other proper authorities through approved channels; while Point 4 states that, - every request or complaint shall be promptly dealt with and replied to without undue delay.*

According to Rule 70.1 of the European Prison Rules, - *prisoners must have ample opportunity to make requests and lodge complaints the prison director or to any other competent body.* According to the Comments on European Prison Rules [108], *complaints are formal objections against the decisions, actions or lack of actions of the prison administration or other competent authorities, and prisoners must have the opportunity to convoy complaints to any authority inspecting or supervising the prison (...). The regulatory provisions should provide for a special appeal procedure.*

The issue of the lack of mechanisms for appealing against actions (lack of action) and decisions of the competent authorities in the penitentiary system of the Republic of Armenia were raised in a number of complaints addressed to the Human Rights Defender. It should be noted that according to the principle of legitimacy enshrined in Article 7 of the RA Penitentiary Code *officials of the penitentiary authorities and institutions are authorized to perform only the actions reserved to them by law and the actions of officials may be appealed to a court or other bodies as prescribed by law*. However, the Penitentiary Code of the Republic of Armenia does not provide any clearly defined procedures, deadlines, requirements for lodging, reviewing process, and resolving of appeals, and other important matters for appealing against the actions or lack of action or decisions of the penitentiary administration and other competent authorities.

For instance, under current regulatory provisions there is a necessity of clear mechanism to envisage appealing against actions, lack of action or decisions of the penitentiary administration and other competent authorities by persons deprived of their liberty. Moreover, there should be an opportunity of lodging appeals by detained persons. Such mechanism must include the appeal procedure, requirements for lodging claims, deadlines, complainant's rights in the proceeding reviewing the claim (such as the right of access to case documentation) and the review procedure.

When making legal provisions for the right of persons deprived of their liberty to appeal due regard must be paid to the clarification of the scope of the bodies entitled to review and consider such complaints. It is also necessary to set timeframes for considering such complaints, i.e. deadlines for

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[108] Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules; https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae as of 31.03.2018 .

both the start of respective proceeding and for final decision made after considering the case in order to avoid undue delays.

In setting the deadlines for filing a complaint by a person deprived of his or her liberty consideration must be also taken into the circumstances that may hinder the submission of the prisoner's complaint to the competent authority within the specific deadline thus depriving the prisoner of the opportunity to appeal. Therefore, it is also important to envisage a legal opportunity to restore the missed deadline if the person has the appropriate grounds.

Another important issue is the need to make relevant amendments to the Criminal Procedure Code of Armenia as regards the appealing by persons deprived of their liberty against actions or lack of action, and legal acts of penitentiary institutions or other competent authorities to court

When referring to the principle of law the current Penitentiary Code of Armenia does not specify the court (the First Instance Court of General Jurisdiction or the Administrative Court) entitled to consider such complaints. Under Article 10.2 of the RA Administrative Procedure Code, *the Administrative Court does not have jurisdiction over the execution of a sentence.* According to Article 41, part 2 (6) of the Criminal Procedure Code of Armenia, *the Court of General Jurisdiction is competent to settle issues arising from the execution of the sentence.*

In this respect, it is also necessary to make appropriate amendments in the Criminal Procedure Code of the Republic of Armenia, envisaging special regulation for: the procedures for appealing to court against actions or lack of action, and legal acts of penitentiary institutions or other competent authorities in executing a sentence as well as in holding a person under detention; the deadlines for lodging complaints by persons deprived of their liberty; the timeframes for considering such cases by the court; the type of judicial act to be made and, in this senses, the date such act to enter into effect, the procedure of disputing such acts in the Appeals Court and the Court of Cassation.

When determining the type of judicial act on such cases, it is also necessary to take into account the cases where during the appeal proceedings the satisfaction of the complaint lodged by a person deprived of his or her liberty turns to be useless. For example, an inmate complains against the lack of action of penitentiary Medical Care Department for not providing the indicated medicine where such medicine is to be administers in a specific period of time (e.g. when the inmate is in pain) while at the time of the decision made by the court there in no more need in said medicine.

Establishing a mechanism for appealing against the actions or lack of action, or decisions of the penitentiary institution and other competent authorities will be of great importance for the proper exercise of the rights of persons deprived of their liberty. However, while defining such mechanisms, it is necessary to carry out a thorough examination into the matter and provide clear regulations for addressing all of the above issues in question.

This translation and publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the Human Rights Defender's Office of the Republic of Armenia and do not necessarily reflect the views of the European Union.