



ევროკავშირი  
საქართველოსთვის  
The European Union for Georgia



## REPORT ON MONITORING THE PENITENTIARY ESTABLISHMENT N8



2020



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## REPORT ON MONITORING THE PENITENTIARY FACILITY N8

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*The following report was prepared by Human Rights Center (HRC). The current Report presents the results of the monitoring carried out in the penitentiary facility N8 (Prison N8) in August 2020 and the relevant recommendations.*

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*The monitoring visits were carried out by the representatives of following non-governmental organizations – Human Rights Center (HRC), Penal Reform International together with the representatives of National Preventive Mechanism of Public Defender of Georgia.*

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## INTRODUCTION

The current Report presents the results of the monitoring conducted in the penitentiary facility N8 (Prison N8) on August 4-7, 2020 and delivers relevant recommendations.

The monitoring was carried out within the framework of the National Preventive Mechanism (NPM) in accordance with Article 3.1(a) of the Rules of Cooperation between the Office of Public Defender of Georgia and Non-Governmental Organizations<sup>1</sup>, following the participation of the candidates into the announced competition provided for by the same Rules and the selection of the monitors by the Advisory Board.

The monitoring visits were carried out by the representatives of the NGOs: Human Rights Center (HRC) and the Penal Reform International within frameworks of the mandate of the Public Defender of Georgia together with the representatives of the National Preventive Mechanism of the PDO based on the memorandum signed between the parties. Considering the risks related to the pandemic, the members of the monitoring group received special instructions on the monitoring of the penitentiary facility.

The purpose of the monitoring was to study the conditions of imprisonment and issues related to the treatment of prisoners, especially in relation to following particularly vulnerable three groups of prisoners: accused and convicted juvenile persons, life-sentenced prisoners and alien prisoners (both accused and convicted persons). The monitoring was carried out within the frames of the projects implemented by the financial support of the European Union and the Open Society Georgia Foundation. The preliminary draft version of the Report was shared with the Public Defender's Office (PDO). The Report was also communicated to the Special Penitentiary Service.

The monitoring participant organizations are grateful to PDO for giving the opportunity to carry out the monitoring missions in 2018 and 2020. The monitoring during mentioned periods was carried out pursuant to the

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<sup>1</sup> Approved by Order N366 of the Public Defender of Georgia from December 4, 2017. Changes and amendments were made to the Rules based on Order N383 of the Public Defender of Georgia from October 22, 2018.

cooperation rules between PDO and the nongovernmental organizations within the framework of the National Preventive Mechanism (NPM). In 2018, the monitoring visits were carried out to the penitentiary facilities N2, N3, N16 and N17 covering the following issues: risk assessment and classification of the convicts, disciplinary liabilities; rehabilitation and resocialization of the convicts and the working conditions of the prison staff.

## METHODOLOGY

Based on the random selection principle, the monitoring group interviewed in Prison N8 the prisoners of the target group, the members of the administration and the staff, further, the monitoring group examined the prison conditions and studied respective documentations. The monitors interviewed the accused and convicted inmates of Prison N8 by using the questionnaire specially developed for this purpose. The monitors also examined the compliance of the prison conditions with the international standards, the safeguards and procedural guarantees against ill-treatment of prisoners. Alien prisoners were interviewed at the facility on a random basis, based on a list obtained from the facility administration, taking into account the language barrier.

NPM representatives provided special training to the members of the monitoring group regarding the usage of individual means when monitoring the prison. HRC purchased those items and assigned to the monitoring group members. The monitors were allowed to enter the facility with wearing safety gears (considering the COVID-19 related situation) after going through the examination procedures.

## GENERAL ISSUES

The monitoring of the facility revealed some problematic issues related to the prison conditions, which are of concern for all three target categories of prisoners and in general are inherent to the prison.

Some gaps are evident in the living conditions of the prison, for example some cells felt damp and were badly aired. The prisoners complained that the ventilation system was out of order and nobody would repair it. Existence of pests in the cells of the prison (like cockroaches, bugs, bed ticks) is a huge problem. Disinsection treatment is not performed regularly or is not performed in every

cell, or the prisoners themselves refuse to let the disinfection treatment to be performed in their cells. It is partly caused by the fact that the inmates are not removed to another place while the disinfection treatment is performed and thus the inmates do not wish to stay under the influence of the harmful substances, or alternatively they had to stay on feet for a long time while walking in the yard, as many prisoners are not able to do so. Some prisoners individually buy various means of disinfection in the prison shop but not all inmates can afford this.

Generally, as reported by the prisoners, they do not receive personal hygiene items regularly and in sufficient numbers and they have to buy them in the prison shop. Considering the pandemic related risks, it is necessary to supply the prisoners with sufficient number of hygienic and disinfection items.

Many prisoners do not use prison yard for walking and they spend big part of their time in the closed cells because there is no possibility to exercise in the cells for walking, there are no chairs to rest on and the prisoners lack the opportunity to be in touch with nature; another reason named by the inmates is that according to the schedule, they can go for a walk only early in the morning. “Prisoners often refuse to walk because they are offered to walk at 7-8 am while the walk is not scheduled at that time according the timetable.” Moreover, “there are problems with the walking yards and shortage of sport equipment”<sup>2</sup>.

The practice of placing the accused and convicted inmates together is also a problem contradicting the international standards<sup>3</sup>, and the requirements under the national legislation<sup>4</sup>. Placement of the inmates subject to different legal treatment in the same cells allegedly because of prison overcrowding often creates the grounds for conflicts.

There is only one telephone set on each floor of every wing, which does not give prisoners the possibility to enjoy their maximum time to speak over the phone. There are no phone-booths available making impossible to talk in isolation and depriving the prisoners the right to confidentiality of phone calls.

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<sup>2</sup>The 2019 Report of the Torture Prevention National Mechanism of the Public Defender, p. 63

<sup>3</sup> Nelson Mandela’s Rules, Rule 11-b; updated European Prison Rules, Rule 18.8a

<sup>4</sup> Imprisonment Code, Article 9.2

There is a practice of strip-searching the inmates upon admission to the penitentiary facility though there is a scanner in the facility, which can be used as an alternative means to the full search.

De-escalation rooms and safe cells are used for the informal punishment of the prisoners.

The cases of oppression and harassment of inmates by other inmates were observed in the penitentiary facility as confirmed by the stories told by the inmates. Those cases include misappropriation of the personal belongings (for example phones or shop cards) or coercing them to let the items be used by other persons, the facts of extortion of money, etc.

### IMPACT OF THE RESTRICTIONS INTRODUCED DUE TO THE CORONAVIRUS PANDEMIC

During the monitoring, the restrictions established due to the new coronavirus were in force in the penitentiary facility.

For the prevention of the spread of the coronavirus, in the end of March 2020, the special restrictions were introduced in the penitentiary system<sup>5</sup> and 780 prison officers shifted to work under special conditions (living in the prison)<sup>6</sup>, among them were the staff of Gldani prison N8<sup>7</sup>, which is the closed prison facility. Working under special conditions means that the employees who are in direct contact with the inmates, and the employees working in shifts in the security and legal regime departments of the facility shall live in the premises of the penitentiary facility to reduce the threat of the spread of the virus inside the facility<sup>8</sup>. Those employees, after having taken PCR tests once in a fortnight and after receiving negative answers enter the facility and stay there during 20 days (they work every second day and rest for the remaining period doing physical

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<sup>5</sup> See the information of the Special Penitentiary Service <http://www.sps.gov.ge/ka/media/akhali-ambebi/article/23450-akhali-koronavirusis-shesadzlo-gavrcelebis-prevenciis-miznith-penitenciu-datselebulebebshi-ori-kviris-vadith-gansakuthrebuli-pirobebi-amogmedda.html>

<sup>6</sup> See information <https://1tv.ge/news/koronavirusis-prevenciis-miznit-penitenciu-dawesebulebebis-780-tanamshromeli-momdevno-kviris-ganmavlobashi-sapatimroebis-shenobebshi-ickhovrebs/>

<sup>7</sup> Article 28 of the Regulations of the Prison Facility N8 provides for the possibility to introduce special conditions in the facility in particular circumstances among them during the "epidemic of life-threatening deceases."

<sup>8</sup> Ibid:



exercises in the fitness room, etc.); they spend 10 days with their families. The facility supplies the personnel with the special items of personal hygiene.

The prison staff receives meals on site at the expense of the penitentiary facility<sup>9</sup>. According to the reports of the administration, one employee of the record keeping office of Gldani prison N8 is also working under special conditions. Others (including medical personnel) enter the facility wearing full safety gear. The number of shifts were also altered. Before the pandemic, 3 officers were on duty throughout a shift per wing; now, 2 officers work in a shift.

According to the reports from prisoners, before the pandemic, they felt more care and attention from the officers who had more contacts with them; respectively there were more possibilities to apply to the officers for help with regard to various needs. During the pandemic, after the facility began to work under the special conditions, and the number of on-duty officers were reduced, the prisoners said that they feel lack of attention because the employees hardly cope with the overload of their duties. This Report, while reflecting on specific issues, pays attention to the problems, caused by the special conditions and reduced number of the employees during the COVID-19 pandemic.

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In the period of the spread of the new coronavirus, after special restrictions were introduced in the penitentiary system, social workers and psychologists stopped entering the premises of the prisons and did not have direct contact with the inmates that negatively influenced the rehabilitation and resocialization processes. From April through July 2020, social workers did not enter the facility because of the restrictions established in relation to the pandemic. They were working remotely and had contacts with the inmates only over the phone. As the inmates reported, before the state of emergency was announced, social workers and psychologist used to enter their facility during working days and had direct contacts with them. The director of the prison facility said, the social workers are sitting in the public waiting room of the facility during the working hours and

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<sup>9</sup> Under Article 9 of Order N393 of the Minister of Justice of Georgia from April 3, 2019, stipulating the Norms for the Provision of Items and Food to the Officers and Employees of the Main Division of Escorts and Special Measures of the Penitentiary Department of the Special Penitentiary Service (SPS) under the Ministry of Justice of Georgia, further that of the Officers of the Main Division of Outdoor Security of the Penitentiary Department of SPS, and that of the Officers of the Mandatory Military Service and the Employees of SPS, the food supply norms apply to those employees and officers of the penitentiary facility, who work in 24-hour shifts.

contact the inmates online. From the beginning of August, they started visiting the facility and meeting the inmates during weekends.

In the department for juvenile prisoners, the psychologist resumed visits on the previous day before the monitoring started and met the juvenile prisoners directly wearing special safety gears. After the special restrictions were introduced, social workers contacted the juveniles through video-conference, sent them some tutorial materials (pencils, coloring materials) and programs.

Throughout the monitoring, the complaint boxes<sup>10</sup> were not sealed. The director of the prison facility clarified that as the social workers no longer come to the penitentiary facility due to the restrictions in connection with COVID-19, the boxes are no longer sealed with the signatures of the social workers.

Sending and accepting parcels in the period of March-June 2020, during the state of emergency, was prohibited. From July 2020, the prohibition was lifted. As this was explained to the prisoners, the parcels are opened and clothes sent in parcels are disinfected with special substances.

During the state of emergency declared due to the coronavirus pandemic, in accordance with the Decree of the President from March 21 to May 23, 2020, the inmates of the penitentiary establishments (including the prison N8) were deprived of the right to visits and accordingly all long-term and short-term visits were cancelled<sup>11</sup>. From July, 2020, the short-term visits were allowed and the inmates could meet their visitors across the glass-barriers<sup>12</sup>, which is not attended by the prison employee and is confidential.

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<sup>10</sup> The Imprisonment Code, Article 100: a complaints box shall be placed in the territory of a facility, in the place accessible to all accused/convicted persons. Several complaints boxes may be placed in the territory of a facility.

A sign with the inscription 'Complaints Box' shall be attached to the box. The box shall be sealed. An employee of the Social Services Department of the facility shall lock and seal a complaints box in the presence of the director of the facility or his/her deputy at the end of each day.

<sup>11</sup> See the Decree N1 of the President of Georgia (March 21, 2020) On Measures to be implemented in connection with the Declaration of a State of Emergency throughout the whole Territory of Georgia

<sup>12</sup> The Regulation of Prison N8 provides for the short-term visits through glass barriers, Article 43.5 (approved by the Order #117 of the Minister of Penitentiary and Corrections from August 27, 2015). Short-term visits in a form of direct meetings shall be allowed upon the written consent of the director of the prison in special rooms observing the prison regime and security norms of the facility.

During the pandemic, from the date the state of emergency was declared till July 15, 2020<sup>13</sup> the court hearings were held remotely. From the interviews with the inmates within the monitoring it was found that technical flaws and problems with Internet services caused problems in hearing and watching the proceedings. Moreover, remote court hearings caused problems for the accused persons to have confidential communication with the lawyer, to identify the witnesses, to ensure high-quality translation and often the trials were delayed or suspended because of Internet problems<sup>14</sup>.

**RECOMMENDATIONS TO THE SPECIAL PENITENTIARY SERVICE AND THE PRISON ADMINISTRATION**

- During the pandemic, social workers have to continue working in the facility at reasonable intervals, enter the facilities with special safety gears and within their competence, to provide the services to prisoners;
- Technical flaws have to be remedied in the online system operating in the penitentiary facilities through which the court proceedings are held remotely;
- Considering the uncertain period of the pandemic, special measures have to be taken to ensure provision of some services remotely.

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<sup>13</sup> Initially, remote court hearings were allowed based on the Decree of the President (Article 7), however from May 22, 2020, the remote hearings held following the amendments to the Criminal Procedure Code of Georgia (Article 332<sup>5</sup>).

<sup>14</sup> Special Report of the Public Defender of Georgia on Remote Hearings of Criminal Cases, 2020.

## 1. IMPRISONMENT CONDITIONS

### 1.1. Physical environment

#### ➤ *LIVING SPACE AND OVERCROWDED FACILITY*

The Order of the Minister of Justice<sup>15</sup> provides for the upper limit for the number of inmates in the penitentiary facility N8 set this to 3170 accused and convicted persons in Gldani prison N8; and 698 accused and convicted persons in the Block located in Ksani. According to the data from August 2020<sup>16</sup>, there were 2 683 inmates in the penitentiary facility (1449 accused and 1234 convicted persons). The limit was 85% complete.

According to the information by the National Preventive Mechanism<sup>17</sup>, the problem remains with the failure to provide in Prison N8 each convict with at least 4 sq. m space as provided for by Article 15 of the Imprisonment Code. Part of the inmates of the prison N8 live in double cells, where there is very limited space. In Prison N8, there is up to 2.5 - 3 sqm provided to the inmates living in the cells for six and more inmates. Pursuant to paragraphs 2 and 3 of Article 15 of the Imprisonment Code of Georgia, the standard for space per convicted person shall be 4 sqm and 3 sqm for each accused person. Where accused and convicted persons are placed in the same cell in Prison N8, we face the problem of differentiation of the personal space as provided for by the law.

In Prison N8, a part of the cells for the life-sentenced prisoners is renovated but another part is not. One of the prisoners said the renovation is ongoing and his cell will also be done. This difference between the cells is caused by the fact that part of life-sentenced prisoners, following the permission of the administration, renovated the cells with their own resources. The above causes non-homogeneous living conditions for the life-sentenced convicts and place them in unequal conditions.

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<sup>15</sup> Order N 106 of the Minister of Corrections and Probation from August 27, 2015 on the Penitentiary Facilities of the Ministry of Georgia for Prisons and Probations as amended by Order N 505 of the Minister of Justice (March 19, 2020)

<sup>16</sup> Geostat, statistics of law offenses, data from August, 2020. comparing the number of accused and convicts with the upper limits set in the penitentiary facilities, p.110

<sup>17</sup> See the Special Report of the National Preventive Mechanism of the Public Defender of Georgia, 2019. 31

Poor conditions of the roof and the floor in the bathrooms in the building for the life-sentenced prisoners create serious problems. Periodically water leaks into the cells from the roof and the shower-rooms. The walls and ceilings damaged with water and damp can be felt in the cells. The sun does not reach the cells on the ground floor in the north of the building and damp can be felt.

The monitoring team examined the de-escalation rooms, isolation cells and safe cells. The toilet in the de-escalation room is under the focus of the surveillance cameras that is inadmissible. There are “soft” tiles on the floor. The room does not have windows. The prisoner has to sleep on the floor in the room and for that purpose there was mattress-like thin item put against the wall, which was already damaged from wear. The same situation is in the safe cell. The difference is that the bed is built into the wall and there is a mattress on it. A toilet and a sink are next to the bed.

The monitoring group found a prisoner in one of the safe cell under the conditions detrimental to the health. There was water in the cell and the prisoner said the water had leaked into the room on the previous evening and he had spent the entire night and half of the day in water; he was begging the prison administration to be removed to another cell but they did not respond. The prisoner was placed in the cell two weeks before.

In the so called isolation cells, it was wet and damp in some places. The water is leaking or leaked before and the plaster is falling from the ceiling and walls. In the isolation cell, there is an iron table and an iron bed connected to the bed. There is a sink and squat toilet with a tank over it in the cell. In one of the isolation cells, there was plaster fallen from the ceiling on the table. The prisoner in it said he had to spend 14 days in the isolation cell as a disciplinary action. He said spending those days in the isolation cell was equal to degrading treatment because the toilet was not isolated with a wall in the cell and he had to take food in unhygienic environment.

The prison employees stated that the dampness in the isolation, safe cells and de-escalation rooms is caused by the water leaked from the upper floors due to the carelessness of the prisoners who take showers right in the lavatory when it is hot and in the lavatory there are no tiles on the floor so the water leaks downstairs. Sometimes, they throw towels or other subjects in the sewerage system

(sometimes purposefully) and damage the water-supply system. There are water-pipes next to the isolation cells, and the water leaks from them and damage the walls in the cells. The National Prevention Mechanism of the Public Defender of Georgia also noted this problem in their 2019 special report<sup>18</sup>.

The director of the prison confirmed that the water-supply system had problems and stated that the water company had already started replacing the damaged pipes and 70% of them was already changed; however, they could not finish the work because of the pandemic.

#### **RECOMMENDATIONS TO THE SPECIAL PENITENTIARY SERVICE AND THE PRISON ADMINISTRATION**

- Renovation of the water-supply system has to be finalized and the causes of the dampness in the cells must be eradicated;
- Afterwards, the damaged isolation and safe cells and de-escalation rooms have to be renovated;
- The physical environment in the isolation and safe cells and in the de-escalation room has to be adjusted to the international human rights standards.

#### ➤ *VENTILATION*

In the cells of Prison N 8, the windows are constructed in a way that they can be opened only in half and because of this the cells are not well aired. In some cells, only holes are left next to toilets without ventilation system. Some prisoners complained that the ventilator in the toilets were out of order and nobody repairs them.

The ventilation problem of the various types of cells in Prison N8 is noted in the 2019 Special Report of the National Preventive Mechanism of the Public Defender<sup>19</sup>. It reads that “artificial ventilation is not sufficient in the living and so-called solitary confinement cells of Prison N8. There is no artificial ventilation in the solitary cells and other cells of internal classification of Prison N8. The windows do not open in the de-escalation rooms. Therefore, the inmates do not

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<sup>18</sup> See the Special Report of the NPM of the Public Defender on visits to the prison facilities N2, N8, N14 and N15, 2019. P. 32

<sup>19</sup> *Ibid*

have access to the natural ventilation.” The report also mentioned the problem of the natural lighting in the cells of internal classifications, in the so-called safe cells and solitary cells of the facility.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- To repair the artificial ventilation systems in the cells;
- To ensure adequate lighting in the cells of internal classification.

➤ *SANITARY-HYGIENIC CONDITION*

The design, infrastructure and settings of the spaces designated for inmates of the penitentiary facility must ensure sanitary and hygienic conditions<sup>20</sup>, satisfying natural physiological needs, taking care of personal hygiene, creation of the environment safe for health, without degrading human dignity and honor, which among other measures includes the following: a) to connect the facility to the centralized network of the water-supply and sewerage systems, and supply the inmates with respectively equipped sanitary and technical infrastructure and hygiene items (soap, toothpaste, mop, towel); b) to supply the inmates with the bed and bed-clothes (mattress, pillow and blanket); c) to provide the inmates with clean linen at least once a week; d) to supply the inmates with the special seasonal clothes and change them when dirty; e) to collect and timely remove of the rubbish; f) to organize the cleaning of the space every day, to clean the furniture and windows every week, to provide disinfection, disinsection and deratization of the rooms and canteens periodically.

In the course of the monitoring, in several cells, which were dirtier than other cells, the members of the monitoring group noticed cockroaches. The prisoners complained about the bugs in their cells. As reported by the prisoners, the administration periodically disinsects the cells to kill the insects but the prisoners are against their cells to be treated with disinsection because they are afraid of getting poisoned through breathing the chemical residuals of the substances used

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<sup>20</sup> These requirements are determined based on the joint Order (N388–N01-18/n) of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, March 6, 2019.

for this purpose. During the disinsection of the cells the administration takes the opinion of the prisoners into account and where the prisoner does not wish his cell to be treated with disinsection, the administration does not so. According to the received information, the prisoners refuse their cells to be disinfected because during the process they have to leave the cells for 3-4 hours and stay on foot in the walking room where there are no chairs to sit on.

➤ *HYGIENE ITEMS*

When admitting to the facility, the prisoners receive minimal hygiene items such as: bedsheets, towel, washing soap, washing powder, toothpaste, toothbrush and toilet paper. Afterwards, upon request, the prisoners receive only toilet paper, washing soap and powder. They have to purchase other hygiene items themselves. For example, they will receive the soap in 3-4 days after they request it. There were cases when the soap was not available in the prison shop. Sometimes, they receive toilet paper in late. According to the prisoners, they get along with the support of each other from month to month. If somebody has money to buy the hygiene items in the prison shop, he shares it with others.

Considering the COVID-19 related risks, pursuant to the recommendation of the World Health Organization, the prisoners shall get hand hygiene items once a day (soaps, individual towels) and the treatment with disinfection shall be carried out more often<sup>21</sup>.

There are shower rooms next to the solitary cells and the inmates, who are in those cells, can take a shower twice a week in accordance with the legislation and the prison regulations. Other prisoners in the same facility also can take shower twice a week as provided for by the regulations of the prison<sup>22</sup>. The prisoners said that in the past the shower systems were problematic and only cold water was available. However, the shower rooms were renovated and now water is heated better. Each prisoner can spend up to 15 minutes on the hygiene procedures.

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<sup>21</sup> WHO, Regional Office of Europe, readiness for the COVID-19, prevention and control in prisons and other facilities of the restriction of freedom, interim guideline, March 15, 2020. P. 13

<sup>22</sup> Order N 117 of the Minister of Penitentiary (August 27, 2015) and Probations approving the Regulations of Prison N8



**RECOMMENDATION TO THE SPECIAL PENITENTIARY SERVICE AND THE PRISON ADMINISTRATION:**

- Considering the risks related to the pandemic and COVID-19, particular attention has to be paid to the supply of the prisoners with hygiene items, to the disinfection and disinsection of the cells.

➤ *RIGHT TO BE IN THE OPEN AIR/TO WALK*

In accordance with the European Prison Rules, every prisoner shall be provided with the opportunity of at least one hour to exercise every day in the open air, if the weather permits so<sup>23</sup>. Pursuant to the Georgian legislation, an accused and a convict has a right to spend no less than 1 hour in the fresh air every day (enjoy the right to walk)<sup>24</sup> in the space allocated for this purpose in the facility.

The walking space in Prison N8 is allocated on the roof of the building, on two opposite sides of the corridor. Prisoners do not stay alone there: the prison officer stays with them to watch them. The walking yard is a space between four walls, which is roofed with the metal net and is different from other cells only with larger space and with not having a concrete roof.

The interviewed prisoners cannot fully enjoy their right to walk and exercise. They can walk only during early morning hours for up to one hour when the prisoners are asleep. The prisoners can go for a walk at different times starting from 6 am so that their walking time did not coincide with the breakfast and dinner times: varying across the floors, prisoners go for a walk at 6, at 7 and at 10 am. Majority of the prisoners do not wish to walk. The main reason of the refusal is morning hours prescribed for this activity: 6 and 7 am is too early for them; further, the walking space is not equipped with relevant infrastructure. They cannot do physical exercises, there is even no chair where they could sit down and rest. It is particularly problematic for the prisoners with disabilities, health problems and elderly prisoners.

The interviewed prisoners said that they are not keen to spend time there because nothing can be seen from the walking space except for the sky; they

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<sup>23</sup> European Prison Rules, Rule 27.1

<sup>24</sup> Imprisonment Code of Georgia, Article 14, Part 1 Paragraph (g); Article 25

cannot be in touch with the nature either. One of the prisoners said the space looked like a cage for animals, where, as he said, he would not wish to go. The director of the prison said the location of the walking space was connected with the flaws in the design of Gldani prison. He said the administration would take the needs of the prisoners into account and install the benches in the walking area.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE AND SPECIAL PENITENTIARY SERVICE:**

- To arrange waking spaces in the yard of Prison N8;

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

To arrange benches in the walking spaces; further, to the extent possible, the spaces shall be equipped with the exercise equipment;

- To re-schedule the timetable in the facility so that all prisoners could go for a walk during the day time;

## REHABILITATION ACTIVITIES AND DAILY SCHEDULE

The re-socialisation of a convict means to develop a sense of responsibility and respect towards the society and other persons, to moral standards and to established rules of human coexistence in him/her<sup>25</sup>. The main means for the re-socialization of convicted persons are rehabilitation programs, employment of the convicts, provision of general, vocational, high educational and professional trainings<sup>26</sup>. In accordance with Georgian legislation, only convicted persons may be involved in the rehabilitation programs<sup>27</sup>. The penitentiary service and the penitentiary facilities shall ensure re-socialization of the convicts with the support of the social workers and other persons having respective qualifications. Pursuant to the Imprisonment Code, the rehabilitation work shall be conducted with the convicted individuals aiming at the following: to develop among the convicted persons the respect to the law, to other people, to labor, to moral standards and to the established rules of human coexistence; to create normal psychological environment between the convicts in the penitentiary facility; to improve the

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<sup>25</sup> Imprisonment Code, Article 116.1

<sup>26</sup> Imprisonment Code, Article 116.2

<sup>27</sup> Imprisonment Code, Article 14.2(a)

educational and professional skills of the convicts; to prepare the convicts for freedom; to rehabilitate the persons with various addictions. Participation in the rehabilitation programs shall be taken into account while evaluating the level of correction of the convicted person and while selecting the incentives for them. The rehabilitation work with the convicted person is conducted based on the analysis of his/her personal character and nature of the committed crime.

In accordance with the law, the re-socialization activities for particular convicted persons are planned considering the imposed punishment, gravity of the committed offense, personality of the convict, his/her psychological condition and behavior. At the same time, criminogenic and other needs of the convicted shall be taken into account in order to meet the goals of the punishment, among them, to prevent the repeated crime. It is noteworthy that the Imprisonment Code does not recognize the term “needs” and envisages only the assessment of the risks of danger of the prisoners. However, the respective subordinate legislation<sup>28</sup> specifies the re-socialization and rehabilitation of the convicted persons, determines risk and need assessment of the convicted person, also the procedures related to the development, implementation and monitoring of the individual sentence plan (case management) and approves the forms of such procedures to be used in the working process.

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In accordance with the data from August 2020, only 181 convicts (14.6%) in Prison N8 out of 1234 convicts were involved in various rehabilitation activities: 164 were employed (130 in the prison housekeeping services, 34 in entrepreneurial activities), and 17 are involved in the educational process<sup>29</sup>.

During the monitoring, the rehabilitation program related to agriculture was successfully being implemented in the facility. In the yard of the facility, 0.9 hectare plot of land was cleaned from the construction ruins and garden was planted, where prisoners grow fruit and vegetables (watermelon, melon,

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<sup>28</sup> Order N502 of the Minister of Justice (March 12, 2020) approving the Procedures for assessing the Risks and Needs of adult convicts and former Prisoners with an aim to re-socialize and rehabilitate them and the Procedures for developing, implementing and monitoring the individual plans (case management).

<sup>29</sup> For comparison, in January 2020, 121 were employed in the prison (98 in the prison housekeeping services, 23 in the entrepreneurial activities), as for juvenile prisoners, 30 of them were involved in various educational activities (15 were attending classes of public schools); in February: 136 adults and 23 juvenile prisoners were involved in the programs; in March: 149 adults and 25 juveniles.

pumpkin, raspberries, onion, garlic, herbs); they also grow various imported plants, which are in great demand on the market (e.g. bamia). The agriculturist selects fruits and vegetables for the prisoners according to the demand on the market. Eight prisoners take care of the garden; 7 of them are life-sentenced prisoners. Their work is reimbursed in accordance with the income from the sold products and per month their average income amounts to GEL 300-400. The prisoners involved in the program spend much time in the fresh air, working on the land and plants. Therefore, they have possibility of rehabilitation and re-socialization (in comparison with the convicts spending long time in the cells of the closed prison facility) and also have financial income. Hypermarket Goodwill purchases the products from the prison garden. However, it is noteworthy that regardless the huge desire of the convicted persons, the number of the program participant prisoners is limited, the selection criteria and process is not transparent, and some convicts are not informed about their chances to be involved in the program.

There is a training room on one of the floors of the living blocks for the life-sentenced prisoners, where before the state of emergency due to the pandemic various meetings were organized. Clergies were delivering theological lectures to the prisoners. Meetings with the writers, professors were organized in the same room. Ethnic Azerbaijani prisoners used to read the Georgian literature there. For the past 7 months, because of the pandemic, all these activities were cancelled.

However, as the mentioned statistical data show, in the closed prison facility N8 the involvement of the prisoners in the programs is very limited as well as the diversity of the offered programs. The facility does not have a preliminarily developed plan of the rehabilitation activities, which would be tailored to the specific and real needs of the convicted individuals.

During the pandemic, the situation is further aggravated by the fact that the entry of the social workers and psychologists to the facility is limited; consequently, the access to the services of social workers and psychologists is also limited. However, it is worth to mention, that in general, the prisoners quite negatively evaluate the services and attitudes of the psychologist towards them.

The convicts do not participate in developing their individual sentence plans that does not comply with international standards<sup>30</sup>. The respective subordinate legal act also envisages the involvement of the prisoners in this process<sup>31</sup>: Multi-disciplinary team shall introduce the draft individual sentence plan to the prisoner during the meeting.

In Prison N8, like for the overall population of the facility, the chances to get involved in the rehabilitation and re-socialization activities are also limited for foreign prisoners. As reported by the prison administration, before the pandemic, foreign prisoners had a possibility to participate in one of the rehabilitation activities (digitalization program). However, the foreign prisoners, who were interviewed within the monitoring, did not have information about the possibility to participate in the rehabilitation and re-socialization activities. None of them took part in similar activities before and during the pandemic. No educational, sport or entertaining events are organized in the facility. The work on individual sentence plans is also suspended. Pursuant to the European standards<sup>32</sup>, in order to ensure equal access to a balanced programme of activities, prison authorities shall, where necessary, take specific measures to counter the difficulties foreign prisoners may face. Where necessary, specific measures shall be taken to ensure that foreign prisoners have access to an income-generating work.

In the course of the monitoring, the lack of rehabilitation programs designed to respond the real needs of the life-sentenced prisoners was also identified. The offered and implemented programs can hardly be evaluated as the activities addressing the individual needs, as regular, purposeful and diverse. In accordance with the recommendation of the CoE Committee of the Ministers, particular attention shall be paid to providing appropriate sentence plans and treatment for

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<sup>30</sup> Revised Recommendation of the Committee of the Ministers REC(2006)2-Rev, 2 to the member states with regard to the European Prison Rules (adopted by the Committee of the Ministers on January 11, 2006, updated on July 1, 2020), Rule 103.3 and 104.2

<sup>31</sup>Order N502 of the Minister of Justice (March 12, 2020) approving the Procedures for assessing the Risks and Needs of adult Convicts and former Prisoners with an aim to re-socialize and rehabilitate them and the procedures for developing, implementing and monitoring the individual plans (case management).

<sup>32</sup> Recommendation of the CoE Committee of Ministers CM / Rec (2012) 12 to the member states with regard to the foreign prisoners (adopted by the Committee of Ministers on October 10, 2012, Rule 26,1, Rule 27.1 and Rule 27.2)

life-sentenced and other long-term prisoners<sup>33</sup>. Order N502 of the Minister of Justice names the life-sentenced prisoners as one of the priority groups, with whom the case management model shall be developed from the very beginning (needs and risks assessment as well as elaboration and implementation of individual plans). However, as the monitoring, found out this model is not operable up to the date.

It is significant to have individually tailored program for each prisoner providing a realistic means of intervention oriented on the results. This programme requires regular reviews where the objective should always be to engage the prisoner in the process of his development and to provide the prisoner with assessments per stage and to have a feedback on his performance. As a result, such a programme should ensure that all life-sentenced prisoners are given the opportunity to address every aspect of their situation before the date of the first review of their sentences. This should include serving the sentence under less severe and strict conditions. This is also necessary in order to ensure that the risk and needs management plan would function outside a secured environment. Further, in order to ensure successful reintegration, it is essentially important to carry on the care when living in the community. Thus, the relevant care plan must be developed much earlier before the release date<sup>34</sup>.

The life sentence must be served in accordance with the individual planning of the sentence. The sentence plans should include a risk and needs assessment of each prisoner. The life-sentenced persons shall be subject only to those restrictions that are necessary for their safe imprisonment in compliance with safeguarding the order. The risks shall be clearly separated: the risks the life-sentenced persons create to the external community, and the risks they create to other prisoners and the prison staff. The life-sentenced prisoners should not be segregated from the long-term prisoners on the sole ground of their sentence; they should have communication with other inmates based on the risk assessment, taking into account all relevant factors; sentence plans should include a risk and needs assessment of each prisoner and be used to provide a systematic approach

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<sup>33</sup> Revised Recommendation of the Committee of the Ministers REC(2006)2-Rev, 2 to the member states with regard to the European Prison Rules (adopted by the Committee of the Ministers on January 11, 2006, updated on July 1, 2020)

<sup>34</sup> See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, extract from the 25th General Report of the CPT *CPT/Inf (2016) 10*, April 2016

to progressive movement of life-sentenced prisoners through the prison system from more to less restrictive conditions<sup>35</sup>.

The Recommendation Rec (2003)23 of the Committee of Ministers of the Council of Europe<sup>36</sup>, which is the most relevant and comprehensive document with regard to the life-sentenced and long-term prisoners, stipulates the following principles for their case management:

Individualisation principle: Consideration should be given to the diversity of personal characteristics to be found among life sentence and long-term prisoners and account taken of them to make individual plans for the implementation of the sentence;

Normalisation principle: life-sentenced prisoners shall be subject to only those restrictions, which are necessary only for their safety and public order in the course of freedom restriction;

Responsibility principle: Prisoners should be given opportunities to exercise personal responsibility in daily prison life including under the individual plan of the sentence.

Security and safety principle: A clear distinction should be made between any risks posed by life sentence and other long-term prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison.

Non-segregation principle: Consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence; they should have communication with other inmates based on the risk assessment, while all respective factors will be taken into account;

Progression principle: Individual planning for the management of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system based on their individual approach to the programs, personnel and other prisoners. The mentioned principle is built upon the idea that life-sentenced prisoners shall not be subject to negative treatment in comparison with

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<sup>35</sup> Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners (Adopted by the Committee of Ministers on 9 October 2003).

<sup>36</sup> *Ibid*

the other convicts only based on their punishment. Therefore, the regime of the life-sentenced prisoners shall be considered and evaluated in due respect of the non-discrimination principle<sup>37</sup>.

**RECOMMENDATIONS TO THE MINISTRY OF JUSTICE AND THE PRISON ADMINISTRATION:**

- Social service shall study which rehabilitation and re-socialization activities are in demand among the life sentence and long-term prisoners; the programs shall be launched in the facility and the convicts shall participate in them in accordance with the results of risk and needs assessment, and individual plans;
- Basic rehabilitation services shall be ensured during the pandemic. In case of necessity, they shall be provided remotely, online;
- To continue assessment of the individual needs of the convicts (where needed remotely) and development of the individual sentence plans;
- With regard to the life-sentenced convicts, the work on the individual sentence plans is to be commenced in accordance with the case management model provided for by Order N502 of the Minister of Justice.

## 2. PROVISION OF THE INFORMATION ABOUT DUTIES AND RESPONSIBILITIES

Upon admission, every prisoner shall be promptly provided with written information about the following<sup>38</sup>: (a) The prison law and applicable prison regulations; (b) His or her rights including: authorized methods of seeking the information, access to legal aid, and procedures for making requests and complaints; (c) His or her obligations, including applicable disciplinary actions; and (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

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<sup>37</sup> See (the Recommendation CM/Rec (2003) 23 of the Committee of the Ministers).  
see the Recommendation Rec (2003)23 of the Committee of Ministers; also European Prison Rules (2006) and UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela's Rules - 2015)

<sup>38</sup> Nelson Mandela's Rules, Rule 54.



The interviews with the prisoners in Prison N8 revealed that they do not receive the mentioned information in a written form which represents the continuation of the malpractice.

In accordance with the Special Report of the NPM of the Public Defender of Georgia<sup>39</sup>, during the monitoring, the majority of prisoners in facility N8 were not informed about their rights, as well as procedure of filing requests and complaints, disciplinary actions and disciplinary proceedings. According to the interviewed prisoners, while they are verbally given some information upon their admission to the facility, they find it difficult to remember them. Furthermore, on one of the TV channels in the facility, excerpts from the legislation are constantly rolling. In the opinion of the Special Preventive Group, it is important to give a prisoner, upon admission, structured information in the language he/she understands and in writing so that he/she does not have to search for information electronically, especially when he/she still experiences penitentiary stress.

This problem also refers to the particular categories of the prisoners. The monitoring revealed that upon admission to Prison N8, the juveniles were not clarified their rights and duties either. Furthermore, the adolescents are not informed about the mechanism of filing requests and complaints in case their rights are violated in the facility. It is necessary that the administration provide each juvenile prisoner with the detailed written and verbal information about their rights and duties in the language they understand.

**Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action<sup>40</sup>.** A juvenile accused/convicted placed in a detention facility/prison facility must immediately be allowed by an authorized person of the facility to read information about his/her rights (including the right to file a complaint) and duties and the appeals procedure determined by the law. A

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<sup>39</sup> Special Report of the Public Defender of Georgia, NPM, the Report on Monitoring Visits to Penitentiary Facilities nos. 2, 8, 14 and 15. 2019. pp. 41-42.

<sup>40</sup> Convention on the Rights of the Child, Article 37

juvenile accused or convicted shall be provided with the information in a manner understandable to him/her<sup>41</sup>.

Neither foreign prisoners are informed about their rights. None of the interviewed foreign prisoners had received the list of their rights in a written form in the languages they understand. Several inmates said that the information leaflets printed by the Council of Europe were handed to them, however, they were also informed that the information on the leaflets were already outdated. Majority of the interviewed foreign prisoners were not informed about the purposes of the complaints box and the possibility to call the hotline of the Public Defender of Georgia. According to the prisoners, neither were they informed about the prohibited items.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE:**

- To prepare and print information leaflets about the rights and duties of the accused and convicted prisoners, about complaint and disciplinary legal proceedings in the penitentiary facility, further about other information stipulated by the law.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- To provide the juvenile prisoners with the information about their rights and duties in written and verbal forms in the language they understand;
- To provide the foreign prisoners with the information about their rights and duties in the language they understand (English, Russian, Turkish and Persian);
- To inform all categories of prisoners about the complaint procedures;
- To inform the prisoners about the possibility to call the hotline of the Public Defender's Office.

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<sup>41</sup> Juvenile Justice Code of Georgia, Article 94

### 3. MEDICAL SERVICES

Every prisoner has the right to have access to necessary medical services<sup>42</sup>. The prisoner, in terms of their legal status, enjoy the guarantees of additional protection. It is fundamental right of a prisoner to receive a medical aid at a quality which is equal to the medical services provided to the wider public (principle of equality).

The monitoring revealed that the medical services are provided in delays due to the spread of the pandemic, the specialized doctors can no longer enter the facility. The services of a psychiatrist are also limited. The prisoners reported that the timing and quality of the mental health services are a problem. In some cases, the complaints of the prisoners are not considered seriously as it is deemed that the prisoners are manipulating. The prisoners, who have noticeable mental problems, state that they do not understand how a psychologist can assist them in solving their problems. After the spread of the new coronavirus, since the state of emergency was introduced in the penitentiary system, they had not seen the psychologist at all. One of the prisoners very positively spoke about the doctor psychiatrist of the facility, who is very attentive towards the patients.

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Where no necessary medicines are available in the facility, there are delays in their supply.

The prisoners very positively spoke about the primary healthcare doctors and nurses. Particularly those prisoners, who have chronic diseases (e.g. hypertension, heart problems) and require daily care. They said, maybe a bit in delay but every day they receive necessary medicines and where they need the nurse comes to check their blood pressure.

Elderly prisoners and prisoners with chronic diseases receive medical services in time. According to a prisoner, he has high blood pressure and have had a crisis and he has received first aid in time; he was also taken to a civil hospital by ambulance.

According to a young prisoner, the health problems of young prisoners are not considered seriously and despite many requests, they receive medical aid in late.

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<sup>42</sup> Imprisonment Code, Article 24.

One of the prisoners told the monitors that he has ulcer disease and informed the doctors about this. However, they did not pay attention to him until he vomited bloody mass in front of them. Consequently, he had to obtain the medicines with support of his relatives.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE:**

- Improve the quality and timing of the medical services in the penitentiary system

#### 4. NUTRITION

The meal portions for the accused and the convicted persons are determined based on the joint Order of the Minister of Healthcare and Minister of Justice<sup>43</sup>. The Articles 5 and 13 of the Order along with the respective annexes, determine the menu and meals for the convicted and accused persons in the closed prison facilities and in the special risk prison facilities.

Part of the prisoners interviewed in the course of the monitoring quite negatively evaluated the quality, diversity and taste of the meals served in the prison. Only few of them said the normal food is served and they would eat it to the end. The others said some meals are acceptable (e.g. beans on Wednesdays and Fridays), but do not eat other meals (e.g. meat soap) or try to improve their taste with the species or herbs purchased in the prison shop. Some respondents said they eat mostly the food they buy in the shop.

When preparing food in the facility, the cultural and religious specificities of foreign convicts are not taken into account<sup>44</sup>. Some Sikhs serve their prison terms in Gldani prison N8, who, due to their religious beliefs do not eat meat. The prison administration does not provide them with the food they can eat in accordance with their religious and cultural specificities. They mostly buy food in the shop.

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<sup>43</sup> the joint Order (N388–N01-18/n) of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia from March 6, 2019, determining the nutrition, sanitary and hygienic norms for the accused and convicted individuals.

<sup>44</sup> Such problems existing in the penitentiary system of Georgia are described in the Special Report of the NPM of the Public Defender of Georgia, 2019, p. 36 (Reports following the Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15) 45.

Neither Muslim prisoners receive food in due respect of their religious and cultural specificities. The Muslim prisoners said, the meat processed with the so-called Halal rules is sold only in the prison shop but it is very expensive.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- The specificities of various religious groups shall be taken into account when preparing the meals;
- To ensure that the meals cooked in the facility meet the standards established by the joint Order of the ministers.

## 5. CONTACT WITH THE EXTERNAL WORLD

As reported by the director of the prison, there are several Georgian and foreign cable channels (Russian, Turkish, Armenian, Azerbaijani, French and Arabic) available in the penitentiary facility. Moreover, the facility has its local channel, which broadcasts interesting awareness raising programs that was confirmed by some of the prisoners (the director of the prison mentioned the awareness-raising video rolls prepared in several languages about COVID-19).

The director of the prison said the transmission of the channels depends on the availability of free channels from the satellite in the facility. If any of the channels is not available on the satellite, it cannot be transmitted in the prison.

Allocation of the special corner for the Legislative Herald of Georgia (Official Gazette) in the training room for the life-sentenced convicts can be evaluated positively. There is a computer in the room, where the prisoners, whenever it is necessary, get acquainted with the updated legislative database. Rolling bookcase is standing aside, where printed versions of recent laws are available.

There is one landline telephone on each floor of the facility. The life-sentenced prisoners do not have limits on phone conversations, however they talk about half an hour to allow other inmates to make calls. The other prisoners may talk over phone for approximately 15 minutes. They can also use the phone devices in the duty room on each floor, when the prison officer is inside and can hear their conversation. The prison director said they repaired one of the wings of the building in accordance with the European standards where an isolated booth was

placed for phone calls. The members of the monitoring group went to see the phone booth which is a construction from white reinforced plastic designed for one person; the booth does not have a roof and the walls start at 30 centimeters above the floor. The booth is located on the fourth floor of E8 building in the duty room where a prison officer was also present and the phone conversation of the prisoner was very well heard from the open parts of the booth so the confidentiality was not ensured.

The issue of supplying the library of the facility with foreign literature is a problem.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE:**

- To improve the communication means for the alien prisoners to the external world by increasing availability to the channels in the languages they understand

**RECOMMENDATION TO THE PRISON ADMINISTRATION:**

- To ensure privacy of the phone conversations

## 6. ORDER, SAFETY AND REGIME

### 6.1 The rule of separation of the accused and convicted persons

The Georgian legislation and the international standards<sup>45</sup> envisage the principle of separation of the accused and convicted persons. In accordance with the Imprisonment Code of Georgia<sup>46</sup>, accused persons shall be isolated from the convicted persons at least by living spaces separated from one another.

Interviews with the prisoners revealed that often, the principle of separation of the accused and convicted persons is infringed. The documents examined in the penitentiary facility prove the same, according to which, often the accused and convicted prisoners have conflicts where they are placed in the same cell. The list presented by the prison administration to the monitoring group confirmed the same as it was possible to identify the cells according to their numbers where the accused and convicted prisoners were placed together.

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<sup>45</sup> Nelson Mandela's Rules, Rule 11-b; updated European Prison Rules, Rule 18.8a

<sup>46</sup> Imprisonment Code, Article 9.2

In the monitoring report of 2019<sup>47</sup>, the NPM group explained the reasons for placing the accused and convicted prisoners in the same cells in Prison N8 by overcrowding of the facility and noted the frequent conflicts between the accused and convicted inmates caused by placing them together. The documentation examined by the Monitoring Group revealed that in all cells where the accused persons were placed at least one convicted person was also placed. Apart the reasons of overcrowding, this fact raises doubt about the causes related to the sub-culture. Namely, the convicted person might be placed in the same cell with the accused persons purposefully to control them.

**RECOMMENDATION TO THE PRISON ADMINISTRATION:**

- To ensure the separate placement of the accused and convicted persons in accordance with the national legislation and international standards.

**6.2 Assessment of the security risks, disciplinary actions and incentives**

In accordance with the international standards, a convicted person shall be involved in the risk-assessment process to have information about the ongoing process and the final conclusion of the assessment<sup>48</sup>. The international standards also stipulate that the convicted person shall have an opportunity “to address the specific risk factors and other characteristics that contribute to their current classification as a dangerous offender.”<sup>49</sup>

Majority of the interviewed convicted persons did not have information about the risk assessment procedures, about the risk and complaint mechanisms available for them. The prisoners do not have information which factors are taken into account when the risks of danger are assessed. They are not involved in the risk assessment process. No information is provided to them about this process. The prisoners do not receive information about the process; they are not interviewed

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<sup>47</sup> Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15 of the NPM of the Public Defender of Georgia, 2019 p. pp.

<sup>48</sup> See the Recommendation CM/Rec (2014) 3 of the Committee of the Ministers of the CoE about dangerous offenders. February 19, 2014

<sup>49</sup> *Ibid* Paragraph 20

about those circumstances which are taken into consideration during the risk assessment process. The prisoners are not aware which circumstances and which behaviors may negatively or positively influence the determination of the type of risk. The prisoners do not receive information about the commencement of the risk assessment process. They are informed only about the type of the risk assigned to them, after the process is over. The prisoners are not aware about the possibility to appeal the final conclusion of the assessment, neither about the possibilities to review the risk re-assessment outcomes and about the relevant timeframe.

The assessment of the risk of danger and the determination of the risk type have essential impact on the rights of the prisoner. Following the assigned type of the risk, the decisions are made regarding in which type facility and under what restrictive conditions the convict shall be placed. The high danger risk means that the prisoner will be placed in the closed prison facility, where communication with the external world and socialization possibilities are quite limited. Consequently, engagement of the prisoners in the risk assessment process is important, to hear their position, to speak with them and to inform them about the ongoing process and those circumstances which may influence the determination of the risk type.

The prisoners said, the multi-disciplinary team responsible for the assessment of the risks and needs had never organized any interviews with them; those prisoners, who have been serving their prison terms in Prison N8 had not received any information about the revision of the risks. They hoped they will not have to serve their entire imprisonment term in Prison N8 but also noted that they do not want to move to a semi-open prison facility because of the conflicts between the prisoners, informal rules or less guarantees of privacy in them.

None of the interviewed foreign prisoners reported to have been provided with some incentives from the prison administration. One of the foreign prisoners told the monitoring group: “there is no motivation for a prisoner to behave well.”



**RECOMMENDATIONS TO THE MINISTRY OF JUSTICE AND THE PRISON ADMINISTRATION**

- To regulate under the law and enforce in practice the responsibility to inform the convicted persons about the risk assessment criteria and procedures upon admission of the convicted prisoners to the facility and upon the commencement of the assessment of the risk of danger or risk revision process;
- To guarantee under the law and to enforce in practice the right of the convicted person to be engaged in the risk assessment process, to present his/her position with regard to those factors, based on which the type of the risk is determined, to provide him/her with the information about the ongoing process and final conclusion of the assessment;
- Multi-disciplinary team shall work on individual sentence plans of the foreign prisoners, their individual needs shall be studied carefully and their involvement in rehabilitation and resocialization activities shall be planned accordingly;
- To introduce various forms of encouragement in practice for the foreign prisoners in the cases of good behavior;
- Considering the restrictions related with the pandemic, the risk assessment process shall be carried out remotely through electronic means of communication.

**6.3 Strip search**

In accordance with the Nelson Mandela Rules, the laws and regulations governing search of the prisoners and the cells shall comply with obligations under the international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison<sup>50</sup>. Personal search shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity<sup>51</sup>.

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<sup>50</sup> Nelson Mandela's Rules, Rule 50

<sup>51</sup> *Ibid*

Interviews with the prisoners (both accused and convicted persons) revealed the facts, when upon admission to the facility they are strip searched and ordered to do a knee bend. This form of search is conducted to prevent the prisoners to take prohibited subjects into the facility. Demanding from the prisoners to do a knee bend for the cavity search is degrading treatment and similar practice shall be immediately eradicated in the penitentiary facility. Further, it is inadmissible to perform full personal search through stripping the prisoner full naked. When there is well grounded doubt, the prison officers may apply the strip search but the prisoner shall not be naked all at once but in two parts (first the clothes up from the waist and then down from the waist). Moreover, the officers shall offer a prisoner which method of the search he prefers, strip-search or scanner, and clarify to them what each of them means.

The European Committee for the Prevention of Torture underlined that the strip search can take place only based on the particular suspicion, in the relevant environment and in due respect to the human honor and dignity<sup>52</sup>. The CPT noted that during the strip search different parts of the body shall not be naked all at once<sup>53</sup>. European Court of Human Rights stated with regard to the case *Wainwright v. the United Kingdom* – that strip search, in general, is invasion in the privacy of a person. In this light, it is important that the prison administration used the strip search only in compliance with the law, as an extremely necessary measure to achieve the legitimate goal<sup>54</sup>.

According to the information obtained during the monitoring, the strip search of the juveniles for security purposes still remains a problem. The prison employees request the adolescents to push pants down and do a knee bend. When juveniles

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<sup>52</sup> Council of Europe: Committee for the Prevention of Torture, Report to the Government of Bulgaria about the visit to Bulgaria, which was carried out by the CPT from March 24 to April 3, 2014; the report was published on January 29, 2015 and is available in English at: [http://hudoc.cpt.coe.int/eng#{"fulltext":\["squat"\],"CPTSectionID":\["p-bgr20140324-en-23"\]}](http://hudoc.cpt.coe.int/eng#{) [last seen: 10.06.2018].

<sup>53</sup> The Council of Europe: Committee for the Prevention of Torture, Report to the Government of Bulgaria about the visit to Bulgaria, which was carried out by the CPT from March 24 to April 3, 2014; the report was published on January 29, 2015 and is available in English at 85, published March 31, 2015, available in English at: [HUDOC-CPT \(coe.int\)](http://hudoc.cpt.coe.int)

<sup>54</sup> ECtHR ruling on the case *Wainwright v. the United Kingdom*, released on September 26, 2006, Paragraph 42-43.11. See the 2016 Parliamentary Report of the Public Defender of Georgia, Pp. 71, 75, available at: <http://www.ombudsman.ge/uploads/other/4/4585.pdf> [Last seen: 30.05.2018].

are first admitted to the prison,<sup>55</sup> the personal items are seized from them and they are searched by the prison officer in accordance with the regulations of the facility. This procedure in practice includes examination of the prisoner with scanner, then the officers demand the juveniles to take off all clothing and do a knee bend. In the end, for medical purposes, doctor conducts initial medical examination. This process, mostly, is attended by a prison officer in contradiction with the principle of medical confidentiality<sup>56</sup>.

It is important that the scanner must be used as an alternative means of search<sup>57</sup> and not as one of the additional tools; the juveniles shall be strip searched only where there is a well-grounded necessity, under the conditions of respect to the dignity of the juvenile prisoners and knee bends must not be required from them. Further, in order to ensure the medical confidentiality, a prison officer must not regularly attend the medical examination of a juvenile prisoner (exceptions would be the cases where the doctor due to safety measures requests such attendance). In accordance with the report of the Public Defender, “Although the prison staff is allowed to attend the medical examination of a prisoner only in exceptional cases<sup>58</sup>, as the practice in prisons and closed facilities shows the meeting between prisoners and doctors is always attended by a legal regime officer and/or security officer, who can hear the conversation between prisoners and doctors<sup>59</sup>.”

**RECOMMENDATION TO THE MINISTRY OF JUSTICE**

- To revise the procedures of the body cavity search of juveniles, to regulate the procedure in more details under the subordinate legal acts and make it more coherent with the requirements/positive practice of the international standards;

<sup>55</sup> Regulations of the Penitentiary Facility N8, Article 15, Article 16

<sup>56</sup> In accordance with Article 3.2 of Order N131 of the Minister of Corrections and Probation from October 26, 2016, “the presence of a third person during the examination shall be inadmissible. If a doctor, due to his or a patient’s safety decides to allow a prison officer to attend the medical examination, the examination shall be conducted only under visual surveillance, without hearing the conversation.”

<sup>57</sup> Nelson Mandela’s Rules, Rule 52

<sup>58</sup> In accordance with Article 3.2 of Order N131 of the Minister of Corrections and Probation from October 26, 2016, “the presence of a third person during the examination shall be inadmissible. If a doctor, due to his or a patient’s safety decides to allow a prison officer to attend the medical examination, the examination shall be conducted only under visual surveillance, without hearing the conversation.”

<sup>59</sup> Report of the NPM of the Public Defender, 2019, p. 51.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION**

- To separate the accused and convicted prisoners from each other in coherence with the national legislation and international standards; to create respective legal regime for each category of prisoners as it is required under the law and to ensure equal respect to their rights;
- To cancel routine presence of a prison officer during the medical examination of a prisoner; in case of presence, the officer shall conduct only visual surveillance without listening.

**7. TREATMENT AND INSTITUTIONAL ENVIRONMENT**

In terms of ill-treatment risks, it should be noted that the current situation related to the irregular working hours of the prison staff during the pandemic has affected their attitude towards the prisoners. The fact that the prison staff were exhausted because of working under special conditions and the level of stress was high was evident in their relations with the prisoners. The monitoring group members personally witnessed a quarrel between a prison officer railed against an inmate - they were both shouting at each other. Later, the prison officer told the monitoring group members that he was exhausted.

In general, the prisoners say “you would be treated like you treat others.” The prison personnel were relatively generous towards elderly prisoners and their needs; they treated them with respect.

As reported by the prisoners, before the pandemic, they felt more care and attention from the officers, who had more contact with them and there was more possibility to apply to them for help with regard to various needs. During the pandemic, after the prison staff shifted to special regime and the number of officers were reduced, the prisoners, as they said, felt lack of attention because the officers could not cope with lot of tasks.

However, it must be noted that during the monitoring, the group members observed some positive cases when the prison personnel, who were working in irregular shifts, were treating the foreign prisoners with adequate attention and communicated with them in positive terms. Several foreign prisoners serving their

terms in Prison N8 very positively characterized one of the officers, who is very attentive towards the prisoners, answers all their questions, provides them with the information about their rights and tries to respond to their lawful requests within his competence.

As reported by the inmates of Prison N8, the practice typical to criminal subculture is observed in the facility. This practice is revealed in the facts when some prisoners try to oppress others, obtain power over them and humiliate them. The 2019 Special Report of the NPM and the Public Defender also mentioned the facts when some prisoners gained power over other inmates and oppressed them. “There are cases in closed prison facilities where one prisoner attempts to control cellmates and subject them to psychological violence. In Prison N8, the fact of misappropriation of personal items of an inmate by another inmate was identified. The Special Preventive Group learned that in the same facility one prisoner tried to control a cell and introduce his own rules. Others were supposed to give him their cards and he would decide what they would buy and how they would arrange the cell. As that prisoner had good contacts within and outside the facility, other prisoners were afraid of him.<sup>60</sup>” The prisoners also informed the monitoring group about this problem within the frameworks of the present monitoring. During the monitoring, the instances were found where a prisoner extorted money from other inmates and took their phone cards. The monitoring group was informed about an alleged fact when a shop card of a foreign prisoner was stolen and the money credited on the card was spent.

It is worth to mention that, according to the information provided by the prisoners, they have extra expenditures on their cards when they buy something in the prison shop because the convicts working in housekeeping services of the facility purchase cigarettes for about GEL 5-6 from their cards and say it is “a tip” for their services.

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<sup>60</sup> See the 2019 Special Report of the PDO/NPM. P. 9

**RECOMMENDATION TO THE PRISON ADMINISTRATION:**

- Administration of the prison N8 shall study and eliminate the facts of oppression and harassment of the prisoners by other prisoners;

**RECOMMENDATION TO THE MINISTRY OF JUSTICE AND THE SPECIAL PENITENTIARY SERVICE:**

- The Ministry of Justice and the Special Penitentiary Service have to ensure the measures against professional exhaustion of the employees working in irregular shifts.

## 8. SPECIAL CATEGORY PRISONERS

### 8.1 Accused and convicted juvenile prisoners

On the first day of the monitoring, there were 20 juveniles in the penitentiary facility, among them: 14 were accused, 5 were convicted and 1 has both status of accused and convicted.

In accordance with the international standards, the arrest, detention or imprisonment of a child shall be used only as a measure of last resort<sup>61</sup>. In the cases of urgent necessity, the period of time in a remand facility of a juvenile shall be as short as possible.

In the penitentiary facility to where juveniles are admitted and placed, the environment shall be adapted to the needs of a child. It is inadmissible to place a child in an environment, where he/she may become subject to inhuman treatment, degrading treatment or be deprived of the possibility to develop.

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest

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<sup>61</sup> The Convention on the Rights of the Child, Article 37.

not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances<sup>62</sup>.

The monitoring revealed that the acceptance-placement procedures of juvenile prisoners is still problematic in Prison N8; the deficient practice of entire body search of the juveniles upon their admission still continues. Further problems stem from using de-escalation rooms and safe cells for informal punishment of juvenile prisoners; and also from lack of information available to the juvenile prisoners about the rights and duties they have in the penitentiary facility.

➤ *ADMISSION AND PLACEMENT*

In the course of monitoring, the monitoring group learned that the accused and convicted juveniles are placed together in contradiction to the requirements of the national legislation<sup>63</sup> and the international standards<sup>64</sup>. Like in the case of adult prisoners, the reason for this is prison overcrowding. This fact increases the risks of conflicts between the accused and convicted prisoners.

➤ *THE REGIME IN THE PENITENTIARY FACILITY AND DISCIPLINARY PROCEEDINGS*

At admission, and as often as necessary afterwards, all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison<sup>65</sup>. In accordance with the Georgian legislation<sup>66</sup>, an accused/convicted juvenile placed in a detention facility/prison facility must immediately be allowed by an authorized person of the facility to read information about his/her rights (including the right to file a complaint) and duties and the appeals procedure determined by the law. An illiterate accused/convicted juvenile shall be provided with this information verbally. The same is provided for by the international standards<sup>67</sup>.

In the course of the monitoring, the examination revealed that the juvenile inmates had limited information about the official rules applicable in the facility.

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<sup>62</sup> *Ibid*

<sup>63</sup> Juvenile Justice Code, Article 81.1(a)

<sup>64</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 17

<sup>65</sup> Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules (30.1)

<sup>66</sup> Juvenile Justice Code, Article 94

<sup>67</sup> UN Rules on the Protection of Juveniles Deprived of their Liberty, Rules 24 and 25

According to the juveniles interviewed, there are rules in the facility about which the prison personnel and cellmates informed them. As juveniles reported the rules are as follows: they must not make noise, must clean their cells and must not quarrel among each other. The juveniles do not have information about their right to file a request/complaint and about disciplinary proceedings either.

According to the administration of the Department for Juveniles in Prison N8, no disciplinary proceedings are performed against the juveniles because in accordance with the law such proceedings are complicated as the law provides for the requirements that are difficult to be met in practice. One of these requirements is the participation of a defense counsel in the case examination upon the consent of the juvenile. An accused or convicted juvenile enjoys a right to have a defense counsel in hearing the case of disciplinary action. Prior to the oral hearing, the accused or convicted juvenile shall be informed of the right to invite the defense counsel and, in the case of consent from the juvenile, the right shall be implemented within six hours after the accused or convicted juvenile is notified about the right. Where the defense counsel fails to appear within the established period of time, a public attorney shall be assigned to the accused or convicted juvenile<sup>68</sup>.

According to the prison administration, in the case of disciplinary misconduct, they try to resolve the issue through an interview with the juvenile. However, where they fail to calm the juvenile down, then he may be placed in the safe cell. It can be stated that such practice aims at punishing the prisoner.

The absence of facts of disciplinary proceedings against juveniles could have been assessed in positive terms. However, the information obtained in the course of the monitoring revealed that in the case of disciplinary misconduct in the facility, where the disciplinary proceedings are not instituted, in some instances the juveniles are informally punished.

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<sup>68</sup> Juvenile Justice Code, Article 93



➤ *PLACEMENT IN SAFE CELLS AND DE-ESCALATION ROOMS*

**Safe cell**

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment<sup>69</sup>. Regardless the priorities granted to the goals of the juvenile justice and to the defense of the best interests of the child, the monitoring identified in Prison N8 the instances of placing the juveniles in safe cells.

According to the administration, in the cases of conflicts among the children, the prison staff try to solve the situation through talking with them or moving the juvenile to another cell. However, in the course of the monitoring, a juvenile prisoner was placed in a safe cell because he had a conflict with a cellmate.

The juveniles are placed in the safe cells located between the solitary cells on the ground floor in Prison N8. Most significantly, there is almost no difference between the conditions in the safe cells and solitary cells. According to the assessment of NPM of the Public Defender of Georgia<sup>70</sup>, a so-called safe cell is a solitary cell, which is equipped with the electronic surveillance system, non-breakable sink and toilet because of which the cell is called “safe cell” and a prisoner is placed in the safe cell for no longer than 24 hours in security measures<sup>71</sup>. However, in accordance with the Juvenile Justice Code<sup>72</sup>, an accused/convicted juvenile may not be placed in a solitary cell. In accordance with the Imprisonment Code, security measures may not be applied for punishing an accused/convicted person<sup>73</sup>.

In addition to unsatisfactory sanitary and hygienic conditions in the safe cell designed for single prisoner, damp can also be felt there. The window with opaque glass installed there cannot provide sufficient natural lighting. The cell is not ventilated in a natural way, while the artificial ventilation is not sufficient. The video-camera installed in the cell covers the area, including the toilet. There was only one rusty, crumbled and polluted toilet resistant to damage with a sink over it. In the safe cell, there was a mattress over the wooden board that was placed on bed built in concrete.

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<sup>69</sup> Convention on the Rights of the Child, Article 37

<sup>70</sup> Special Report of the PDO/NMP, 2019. P. 23

<sup>71</sup> Imprisonment Code of Georgia, Article 57.1(c): placing in a solitary cell for no more than 24 hours.

<sup>72</sup> Juvenile Justice Code, Article 92.2

<sup>73</sup> Imprisonment Code of Georgia, Article 57.5

When the safe cells of Prison N8 were examined, the monitoring group found a juvenile in one of them, who had not received personal hygiene items. Under the grave sanitary and hygienic conditions in the safe cell, the child had only one plastic glass for water. A slice of bread was paced on the dirty and worn out mattress.

The official grounds for placing the juvenile in the safe cell as the entry in the respective logbook read was his “inadequate behavior.” However, interviews with the juvenile and the administration revealed that he had a conflict with a cellmate following which he was brought to the safe cell. Therefore, the juvenile was possibly placed in the safe cell in punishment and not for his safety. According to the information obtained during the monitoring, the administration of the Department for Juveniles was informed about the conflict between the children due to which they did not want to be in the same cell. However, as the monitoring group found out, the administration did not take preventive measures (for example temporary separation of the prisoners in different cells) to avoid verbal and physical controversy between the children. This contradicts the requirements of the international standards<sup>74</sup>.

The monitoring team believes that placement of a juvenile prisoner in a safe cell is equal to his placement in a solitary cell that neglects the prohibitions determined under the law <sup>75</sup> and the requirements of the international standards in terms of the rights of the child as mentioned above. Stemming from the living conditions in the safe cell, placing a child under such conditions would be equal to inhuman and degrading treatment and would mean blatant violations of the principle to protect the best interests of the child. Further, the requirement of the law is also violated providing for that accused or convicted juveniles shall have better living conditions in comparison with the adult accused and convicted persons.

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<sup>74</sup> Council of Europe, Recommendation CM/Rec (2008)11 of the Committee of Ministers to the member states on the European Rules for juvenile offenders subject to sanctions or measures. Rule 88.1 Good order shall be maintained by creating a safe and secure environment in which the dignity and physical integrity of the juveniles are respected and their primary developmental goals are met. Rule 88.3. Staff shall develop a dynamic approach to safety and security which builds on positive relationships with juveniles in the institutions. Rule 88.4. Juveniles shall be encouraged to commit themselves individually and collectively to the maintenance of good order in the institution.

<sup>75</sup> Juvenile Justice Code, Article 92.2: An accused/convicted juvenile may not be placed in a solitary cell.

Therefore, the monitoring group believes it is unjustifiable to place juveniles in safe cells for the means of punishment.

The examined documentation showed that from January 1 through August 7, 2020, juveniles were placed in the safe cells on 10 occasions. Among them, six cases listed in the table below (in the period from July 28 to August 3) referred to a juvenile who during six days, after 24 hours, was released from the safe cell and in most cases, only after several minutes was sent back. Consequently, we can say that according to the logbook, the juvenile prisoner spent 6 days and nights in the safe cell with small intervals.

N	TIME OF ENTRY	TIME OF REMOVAL
1	17 .04 2020; 15:55	18 .04 2020; 13:21
2	18 .04 2020; 19:54	19 .04 2020; 14:20
3	19 .04 2020; 20:07	20 .04 2020; 20:07
4	28. 07. 2020; 01:46	29. 07. 2020; 21:46
5	29. 07. 2020; 21:51	30. 07. 2020; 21:41
6	30. 07. 2020; 21:56	31. 07. 2020; 21:56
7	31. 07. 2020; 22:01	01. 08. 2020; 22:01
8	01. 08. 2020; 22:06	02. 08. 2020; 22:06
9	02. 08. 2020; 22:11	03. 08. 2020; 15:08
10	05. 08. 2020; 20:39	06. 08. 2020

The Imprisonment Code of Georgia envisages other measures of security, like separation of the prisoner from other accused and convicted prisoners, or to temporarily move him to another penitentiary facility. Where the safety interests of the juvenile so require, it is reasonable to take any of the mentioned measures. In such a case, the requirements of the European standards shall be met<sup>76</sup>.

***De-escalation room***

The monitoring revealed that placement of the juvenile prisoners in the de-escalation room remains an abusive practice in Prison N8. From January 1 through

<sup>76</sup> Revised European Prison Rules (2006)2-rev. Rule 53a

August 7, in 2020, a juvenile prisoner was placed in the de-escalation room for 3 days. In accordance with Article 17.4 of the Regulations of the penitentiary facility N8, an accused or convicted person may be placed in the de-escalation room until the threat due to which he was placed in the de-escalation room is eliminated, however not longer than 72 hours. In the given case, the necessity to place the juvenile in the de-escalation room longer than it is determined under the Regulations was not substantiated.

TIME OF ENTRY	TIME OF REMOVAL
29. 04. 2020; 23:36	02. 05. 2020; 11:18

The Parliamentary Report of the Public Defender of Georgia from 2019 states that the practice of unofficial punishment by placing prisoners in the de-escalation rooms and solitary (so-called safe) cells still continues including in the penitentiary facility N8. “In the Public Defender’s opinion, virtually uninterrupted placement of prisoners in de-escalation rooms and solitary (so called safe) cells for long periods amounts to inhuman and degrading treatment.<sup>77</sup>” Such assessment derives from the fact that there are extremely grave sanitary-hygiene conditions in those cells and number of the rights of the prisoners are restricted. Further, access to personal items and hygiene means is also restricted. “During their stay in de-escalation rooms, prisoners are mostly prohibited from taking a shower and to be in the open air; their rights to use the shop, make a phone call, maintain correspondence and have visits are limited. The existing sanitary and hygiene conditions are unsatisfactory. According to prisoners, when in the de-escalation room they are not allowed to call the Public Defender or defense counsels; they are not given cigarettes, the window in the cell is shut and the air is stuffy. Therefore, prisoners perceive the placement in such cells/rooms as a punishment.<sup>78</sup>” The Public Defender of Georgia and the monitoring group believe that it is inadmissible to subject juveniles to the conditions existing in the de-escalation rooms as it may be equal to inhuman and degrading treatment<sup>79</sup>.

<sup>77</sup> See the 2019 Parliamentary Report of the Public Defender of Georgia. P. 45. Can be accessed at: <https>

<sup>78</sup> Ibid:

<sup>79</sup> See the Special Report of the Public Defender and the NPM about the Visit in the Prisons, 2019. P. 49.

It is worth to mention that during the time the abovementioned juvenile was placed in the de-escalation room and afterwards, no multi-disciplinary work was carried out to avoid further risks to the extent possible<sup>80</sup>. Placement of the juvenile in the de-escalation room cannot be perceived as a prevention against risks. The physical environment in the de-escalation room, accompanied with the restriction in the minimum rights contradicts the protection of the best interests of the child, the goals of the Juvenile Justice Code and the aspirations of the Convention on the Rights of the Child. Any form of isolation of juveniles is a measure that can compromise their physical and/or mental well-being and should therefore be applied only as a means of last resort<sup>81</sup>. The placement of a violent and/or agitated juvenile in a calming-down room should be a highly exceptional measure. Any such measure should not last for more than a few hours and should never be used as an informal punishment. Every placement of a juvenile in a calming-down room should be documented and immediately brought to the attention of a doctor<sup>82</sup>.

It is necessary to have multi-disciplinary approach towards the juveniles in situations of crisis. It is important to make decision on the legislative level to eradicate the practice of placing juveniles in safe cells and de-escalation rooms.

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<sup>80</sup> Ibid p. 58 “The Public Defender of Georgia and the Special Preventive Group consider it inadmissible to place a juvenile in the de-escalation room and believe that the above may equal to inhuman and degrading treatment. In case the life or health of a juvenile or another person are endangered due to the juvenile’s psycho-emotional state, instead of placing him/her in the de-escalation room, the prison administration should immediately ensure the involvement of a multidisciplinary team (psychologist, social worker, doctor and, if necessary, psychiatrist) and eliminate the dangers with verbal de-escalation methods. At the same time, the use of the de-escalation room is a static security measure and it cannot replace the direct supervision of the personnel and their involvement in the critical situation.”

<sup>81</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Juveniles Deprived of Their Liberty Under Criminal Legislation*; Extract from the 24th General Report of the CPT, published in 2015, CPT/Inf(2015)1-part rev1 Paragraph 128, p. 7

<sup>82</sup> Ibid, Paragraph 129, p. 8

**RECOMMENDATION TO THE MINISTER OF JUSTICE:**

- The Minister of Justice shall issue an order to regulate the rules and conditions for the use of safety measures and special means against the accused and convicted juveniles, in order to clearly determine the means and measures in coherence with the international standards (Article 80(h) of the Juvenile Justice Code of Georgia);

**RECOMMENDATIONS TO THE ADMINISTRATION OF PRISON N8**

- To stop placement of the juvenile prisoners in so-called safe cells in the penitentiary facility because of inadequate living conditions in the cells;
- To stop the practice of informal punishment of juveniles in the facility; to impose disciplinary actions in accordance with the legislation and the rules of disciplinary proceedings;

**RECOMMENDATION TO THE PARLIAMENT OF GEORGIA:**

- To prohibit placement of juvenile prisoners in safe cells and de-escalation rooms on the legislative level in due respect to the best interests of the child.

➤ *EDUCATION AND REHABILITATION*

Pursuant to the Juvenile Justice Code, accused/convicted juveniles shall have an opportunity to receive complete general education as determined by a joint Order of the Minister of Justice of Georgia and the Minister of Education, Science, Culture and Sport of Georgia<sup>83</sup>. Every juvenile prisoner who is subject to compulsory education shall have access to such education<sup>84</sup>. The issues of general education of the juveniles in the penitentiary facility is regulated under the joint Order of the Minister of Penitentiary and Probation and the Minister of Education<sup>85</sup>.

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<sup>83</sup> Juvenile Justice Code, Article 84

<sup>84</sup> Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, Rule 35-2.

<sup>85</sup> Joint Order №110/N/124 of the Minister of Penitentiary and Probation of Georgia and the Minister of Education and Science of Georgia from September 1, 2016 approving the Rules on receiving General Education by the Accused/Convicted Juveniles and Regulation of Learning Process in Penitentiary Institutions of the Ministry of Penitentiary and Probation.

A School is not functioning in Prison N8 which could be affiliated with any particular public school. In the facility, a logbook shall be opened for the juveniles assigned to the public school they were enrolled in before the detention and the teachers, who conduct lessons for the juvenile prisoners in the facility, send the records from the logbook to their schools<sup>86</sup>.

According to the current statistical data<sup>87</sup>, in August 2020, 15 juvenile inmates of Prison N8 were enrolled in public schools; one of them had successfully passed the Unified National Exams. In the beginning of August, during the monitoring carried out in times of summer vacations, the monitoring group members were informed that in Prison N8, for the means of prevention of the spread of COVID-19, (after the emergency measures were introduced in the penitentiary system) all educational and rehabilitation programs for the juveniles were suspended since March 2020<sup>88</sup>. Noteworthy, the juveniles were not properly informed about the educational process and their outcomes. Further, the children were not aware the graduation certificates of which public schools they would receive after graduating the school in the penitentiary facility and whether their imprisonment term would be recorded in it.

Under the conditions of the fight against the COVID-19 related pandemic, it is necessary that the educational and rehabilitation processes shall be resumed in Prison N8 immediately. Considering the current situation, the process shall be conducted remotely through means of electronic communication. Moreover, the juveniles must receive detailed information about the general education. It is necessary to resume the work of the social workers and their engagement to

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<sup>86</sup> Ibid, Article 21: "Where a convicted juvenile is not placed in the rehabilitation facility for juveniles and serves his/her term in other penitentiary facility, the general educational program can be implemented by the freelancer teachers of the Ministry of Education and Science on behalf of those public schools, where the accused juvenile studied before having been remanded in custody or imprisoned because of the conviction,, or on behalf of the public school, where the juvenile was registered after having been remanded in custody or imprisoned due to the conviction."

<sup>87</sup> Georgian Statistics, offense statistics, ongoing re-socialization events according to the total number of participants in them, July 2020. Can be accessed at: <https://www.geostat.ge/media/33293/danartivlisi-2020.pdf>

<sup>88</sup> However, according to the data provided by the Geostat, in April 2020, 21 juveniles were registered in the public school, 14 – in May, 19 – in June and 13-in July (5 juveniles had successfully graduated from school, 2-failed and 1 was taking the Unified National Exams) (Geostat, Offense Statistics, 2020, ongoing re-socialization programs according to the general number of the participants in them, table N38).

increase the motivation of the juveniles to study and encourage them to get involved in various rehabilitation programs in accordance with their individual needs.

**RECOMMENDATIONS TO THE MINISTRY OF JUSTICE AND THE ADMINISTRATION OF PRISON N8:**

- To resume the educational and rehabilitation programs for the juveniles in the penitentiary establishment – at least in a remote mode through respective electronic devices;
- To provide the juvenile prisoners with all necessary information about the opportunities to receive education in the facility.

➤ *PHYSICAL ENVIRONMENT AND ACCOMMODATION*

The physical environment in the penitentiary facility shall be tailored to the needs of juveniles to the extent possible. The juveniles kept in custody shall be provided with personal space, personal care and hygiene items; have a possibility to be in the open air to the extent possible. The prison cells shall have sufficient artificial lighting, ventilation and heating, as well as the natural light and ventilation<sup>89</sup>.

Services in detention and prison facilities where accused or convicted juveniles are placed shall meet the requirements for the health care and shall respect the dignity of the juveniles<sup>90</sup>. The juveniles in custody pending trial shall be kept separate from adults and shall be detained in a separate institution or in a special department of an institution also holding adults. While in custody, juveniles shall receive care, protection and all necessary individual assistance: social, educational, vocational, psychological, medical and physical support that they may be required in view of their age, sex and personality<sup>91</sup>.

There are 9 cells in the department for juveniles in Prison N8. There are 4 places in each cell. Besides living cells, there are two walking areas, a class-room, a library,

<sup>89</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>90</sup> Juvenile Justice Code, Article 79.

<sup>91</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Rules 13.4. – 13.5, see at: <https://idsdge.files.wordpress.com/2017/06/e1839ee18394e18399e18398e1839ce18398e183a1-e183ace18394e183a1e18394e18391e18398.pdf>



a fitness room, a doctor's room, two rooms for individual meetings (one of which is currently used by the prison personnel) in the department for the juveniles. There are entertaining/exercising equipment in the walking spaces. In the fitness room, there are three multi-trainers, children can enter there only on weekends, once a day.

During the monitoring, it was hot in the living cells of Prison N8 because existing natural and artificial ventilations are not sufficient. Further, there were cockroaches and bugs in the cells that created huge discomfort to the children. The living cells are treated with disinsection only once a month.

In accordance with the daily schedule of the prison, the juveniles enjoy a right to one-hour walk every day; if they wish, the administration gives them additional time for training and playing<sup>92</sup>. The juvenile prisoners can take shower three times a week. They can also get the service of a hairdresser. The adult prisoners employed in the housekeeping service of the facility bring food to the juvenile prisoners and help them instead of hairdressers.

It is important that juvenile prisoners had more time to spend in the open air for their physical development. The department of juveniles shall be arranged so that the children would have walking yards on the ground and not upstairs.

Generally, it is necessary to have separate facility for the juvenile prisoners, far from Prison N8 that will ensure complete isolation of the juvenile prisoners from the adults and creation of adequate physical environment for their needs and age requirements<sup>93</sup>. The detention of juveniles should only take place under the conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offense, as well as mental and physical health. This would ensure their protection from harmful influences and risk situations<sup>94</sup>. The mentioned conditions are not ensured for the juveniles in Prison N8.

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<sup>92</sup> Regulation of Prison N8, Article 34 (a-h): an accused juvenile has right to take part in sport activities no less than 4 hours per week.

<sup>93</sup> The same recommendation is stipulated in the Article 37( c) of the Convention on the Rights of the Child, also under Rule 59.1 of the Recommendation CM/Rec (2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures. Juveniles shall not be held in institutions for adults, but in institutions specially designed for them.

<sup>94</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 28

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- To arrange walking yard for the juveniles on the ground (like it was done in Prison N2 for the accused juveniles);
- To enable the juveniles to spend more time in the open air and do physical exercises;
- To pay adequate attention to the disinsection of the cells.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE**

- To develop a plan for the construction of a separate small facility for the accused juveniles, where child-oriented environment will be created in accordance with the international standards.

**➤ HEALTHCARE**

In accordance with the Juvenile Justice Code, an accused or convicted juvenile shall be provided with regular medical examinations, required medical treatment, preventive medical services, and special medical items<sup>95</sup>.

There is a doctor's room in the department for juvenile prisoners in Prison N8, where all necessary medicines are stored. The doctor is in the room throughout the day. During night hours, whenever necessary, a doctor on duty in Prison N8 goes to the department for juveniles. The juvenile prisoners can also enjoy the service of a dentist.

***Smoking a tobacco***

The monitoring revealed that almost absolute majority of the juveniles in prison smoke a tobacco. As the juveniles reported, every day, the administration gives out several pieces of cigarette that is allocated for them. The juveniles can also buy tobacco in the prison shop. Further, it is noteworthy that nobody explains to juveniles how harmful the tobacco is for them and nobody works with them to help quitting.

It is necessary to implement non-stop special programs for quitting smoking in the prison facility for juveniles, where various means will be used to provide the children with the information how harmful the smoking is for them.

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<sup>95</sup> Juvenile Justice Code, Article 82.

**RECOMMENDATION TO THE PRISON ADMINISTRATION:**

- To raise awareness of the juveniles about the harmfulness of the tobacco with the support of respective educational and promotion programs.

➤ *NUTRITION*

Juvenile Justice Code<sup>96</sup> offers better nutrition conditions for the accused and convicted juveniles in comparison with other prisoners. In accordance with the international standards, “every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements.<sup>97</sup>”

In the Parliamentary Report from 2019, the Public Defender of Georgia addressed the Minister of Justice with a recommendation<sup>98</sup> to amend Order N 388 to ensure the provision of juveniles with healthy meals four times a day, one meal being a three-course dinner. It was based on the technical regulations under the Ordinance of the Government of Georgia<sup>99</sup> approving the Standards on Child Care referring to the institution which provide 24-hour services to children.

It is noteworthy that the separate menu and eating schedule for juveniles determined under Order N388 applies only to the juvenile rehabilitation facility. Nothing is mentioned in the Order about the juveniles (particularly accused ones), who are placed in Prison N8.

During the monitoring, the daily eating schedule and <sup>100</sup> the Regulations<sup>101</sup> operable in Prison N8 provided for three meals a day for the juveniles. As reported by the children, the meals often taste bad and is unacceptable to them. In the

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<sup>96</sup> Juvenile Justice Code, Article 83.1.

<sup>97</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Paragraph 37.

<sup>98</sup> See the 2019 Parliamentary Report of the Public Defender of Georgia. P. 80-81.

<https://ombudsman.ge/res/docs/2020070407523954521.pdf>, p. 63

<sup>99</sup> Ordinance N66 of the Government of Georgia (adopted on January 14, 2014)

<sup>100</sup> According to the timetable in the department for juveniles in Prison N8, the breakfast is served at 10:30-11:00; lunch at 14:00 – 14:30, and supper at 17:30 – 18:00.

<sup>101</sup> The Regulations of Prison N8, Article 37.4

menu they have fruit once a week: an apple or a nectarine per child. The children mostly eat the food they get with parcels or buy in the prison shop.

**RECOMMENDATION TO THE MINISTER OF JUSTICE AND THE MINISTER OF IDPS FROM THE OCCUPIED TERRITORIES, LABOR, HEALTH AND SOCIAL PROTECTION:**

- To amend Order N388 in accordance with the recommendation of the Public Defender of Georgia and provide the juveniles with four meals a day; these amendments shall apply to the juveniles both in the rehabilitation facility N11 and to the juveniles in the department for juveniles in Prison N8.

**RECOMMENDATION TO THE PRISON ADMINISTRATION:**

- The administration of Prison N8 shall prepare the meal in accordance with the menu and daily schedule determined under Order N388 and supply the juvenile prisoners with it.

➤ *CONTACT WITH THE EXTERNAL WORLD*

In accordance with Article 87.2 of the Juvenile Justice Code, an accused juvenile may enjoy not more than 4 short visits a month. He/she may, under the control of the facility, also have 3 telephone conversations at his/her own expense, each lasting for not longer than 15 minutes, and receive correspondence and parcels without limit. These rights may be restricted by a decision of an investigator or a prosecutor or by a ruling of a court, based on the best interests of the juvenile. In the initial period of the imprisonment or deprivation of liberty, when psychological state of the juvenile is grave and needs to adopt to the closed space, it is essential for him/her to maintain contact with the family members.

In the course of the monitoring, 5 out of 20 accused juveniles, based on the interests of the investigation, were restricted in the right to have phone conversations. During the interviews with the monitoring group members they spoke about the desire and the need to contact with the family members.

The phones are located in the corridor near the duty room, but, despite this, it may be said that the confidentiality of the phone conversations is protected.

The visits in Prison N8 are held in the booths which are divided with the glass walls<sup>102</sup>, where juveniles contact their family members via phone and cannot physically contact them.

After the epidemic restrictions are lifted, it is important to intensively facilitate the contact of the accused juveniles with the family members. Further, during the meetings, juveniles shall have possibility to have direct contact with the family members without the glass barrier. During the pandemic, the juvenile's contact with the family members shall be facilitated via alternative means.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE**

- To amend the Regulations of Prison N8 and allow the juvenile prisoners to have physical contact with their family members during the meetings.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION**

- To facilitate the contact of the accused juveniles with the family members; during the restrictions due to the epidemic, alternative means of the meeting with the family members shall be facilitated (e.g. video-meetings, phone calls, short meetings across barriers).
- Juvenile prisoners shall have possibility to have direct physical contact with the family members during the meetings (after the epidemic related restrictions are lifted).

**8.2 Life sentenced prisoners**

During the monitoring, there were 49 life-sentenced convicted persons in the closed penitentiary facility N8; they live on the second and third floors of Block A.

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<sup>102</sup> Pursuant to Article 43.5 of the Regulations of Prison N8, short visits in the facility are held across the glass barrier. Direct meetings are allowed only based on the written permission of the prison director in special rooms, in due respect of the legal regime and security norms of the facility.

➤ *GAPS IN THE RELEASE MECHANISMS*

Life imprisonment is the punishment for uncertain period of time applied only for the punishment of criminal offenses and requires long-term imprisonment of an offender, may be till the end of life, without fixing a calendar day of his/her release<sup>103</sup>. In Georgia, there are two chances for life-sentenced individuals to be released from prison: An Act of Pardon by the President and a hearing by a court on conditional early release from prison.

Life-sentenced prisoners belong to particularly vulnerable group in the penitentiary system. Therefore, the treatment of this category of convicts shall aim at increasing the sense of dignity and responsibility<sup>104</sup>.

In Georgia, following the national legislation, life-sentenced persons serve their terms in the closed prison facilities<sup>105</sup>. Placement of a person in the closed environment for uncertain time is harmful and has negative impact on all convicts<sup>106</sup>. Imprisonment without the chance of being released excludes one of the essential goals of the punishment – possibility of rehabilitation. It can also be assessed as ill-treatment. The European Court of Human Rights found a violation of the Article 3 of the European Convention on Human Rights and Basic Freedoms (Prohibition of Torture) in those cases, where there were no opportunities to reduce the life-imprisonment to limited imprisonment term<sup>107</sup>.

Therefore, it is necessary to take measures to mitigate the harm caused by the long-term imprisonment. In the case of the life-sentenced prisoners, one important method to achieve is to give the life-sentenced prisoners a definite date for the first review for possible release, and a tailored individual program which

<sup>103</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Situation of Life-Sentenced Prisoners, Extract from the 25th General Report of the CPT, published in April, 2016

<sup>104</sup> See United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) Rules 65 and 66.

<sup>105</sup> Imprisonment Code of Georgia, Article 64

<sup>106</sup> Special Report of the Public Defender of Georgia “The Impact of Prison Conditions on the Health of Prisoners,” 2018, P. 128; Can be accessed at:

<https://ombudsman.ge/res/docs/2019060318003373268.pdf>; the Report states that the length of the imprisonment is one of the risk-factors of worsening the health of the prisoner and long-term imprisonment, alongside with inadequate living conditions, negatively impacts the prisoners’ health.

<sup>107</sup> Vinter and others v. the United Kingdom, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22003-4429521-5325447%22%5D%7D>; <http://catalog.supremecourt.ge/blog/index.php/2014-05-22-16-39-43/115-2014-06-23-08-36-27>; also Öcalan v. Turkey; Laszlo Magyar v. Hungary; Murray v. the Netherlands

provides a realistic series of interventions for each prisoner leading towards that date.<sup>108</sup>

The minimum period required to be served before a prisoner may first benefit from conditional release varies from country to country, the lowest being 12 years and 15 years and the highest being 40 years<sup>109</sup>. According to the case law of the ECtHR, the minimum period shall not exceed 25 years of deprivation of liberty<sup>110</sup>. In Georgia, this minimum period is 20 years.

On November 26, 2019, the President of Georgia, with her Order N556 approved the new procedures for pardon, which significantly differs from the previous procedure. In accordance with the new procedure, instead of the pardon commission, the respective office within the President's Administration drafts the pardon case of the convicted person for the President to hear. This office is authorized to submit the case of that convicted person serving the life sentence to the President. In accordance with the new procedure, the minimum actual term served by life-sentenced prisoners was increased from 15 up to 20 years. Consequently, the pardon case of the life-sentenced prisoners may not be submitted to the President, unless the convict has served at least 20 years in the penitentiary facility.

When hearing the case of pardon, the following circumstances shall be advisable to be taken into account: the motives and objectives of the committed crime, the unlawful consequences of the offense, the background of the convicted, the family and economic conditions, the state of health, age, imprisonment term, the conviction record of serious and particularly serious crimes, the acts of previous pardons applied to the convict, the behavior after committing the crime, particularly the willingness to compensate the damage or reconcile with the victim; the opinion of the victim; the acknowledgment and confession of the committed crimes by the convicted person<sup>111</sup>.

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<sup>108</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Situation of Life-Sentenced Prisoners, Extract from the 25th General Report of the CPT, published in April, 2016 Paragraph 75. P. 5.

<sup>109</sup> Ibid, p. 1

<sup>110</sup> [https://www.echr.coe.int/Documents/FS\\_Life\\_sentences\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Life_sentences_ENG.pdf)

<sup>111</sup> Edict N 556 of the President of Georgia, November 26, 2019.

In accordance with the procedure for hearing the cases of and making the decisions on releasing on parole, where the convicted person sentenced to life imprisonment, has actually served 20 years of imprisonment, he/she may be released by the court on parole with a probation period of<sup>112</sup> 2 up to 7 years<sup>113</sup>. When making the decision, the court shall consider the character of the crime, the way in which the convicted person behaved during his/her service of the sentence, the fact of committing a crime by him/her in the past, the conviction record, the risk of repeated commission of a crime, the family conditions and the personality of the convicted person<sup>114</sup>.

The life-sentence of the convicted person may be changed to community service or to house arrest, provided he/she served 15 years of his term and the court believes there is no need to continue the same punishment against the convicted person. The court shall make the decision by taking into account the character of crime, the behavior of the convicted person throughout the imprisonment period, the facts of previous crimes committed by the convict, the conviction record, the risks of repeated crime, family conditions and personality of the convicted person. The life-imprisonment may change to house arrest for no less of five and no longer than ten years, and to the community service for the same terms as calculated in accordance with Article 62.3 of the Criminal Code of Georgia.

The European Court of Human Rights considered the early conditional release as a necessary and important instrument in the context of life-sentenced prisoners and clarified that the State shall grant the opportunity of rehabilitation to the convicted people and in the case the goal is achieved, grant the perspective of being released<sup>115</sup>.

“Prison sentence which offers no possibility of release precludes one of the essential justifications of imprisonment itself, the possibility of rehabilitation. While punishment and public protection are important elements of a prison

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<sup>112</sup> The Criminal Code of Georgia, Article 72<sup>1</sup> and Article 73.7

<sup>113</sup> The Criminal Code of Georgia, Article 64.2

<sup>114</sup> The Criminal Code of Georgia, Article 72<sup>1</sup>

<sup>115</sup> ECtHR, information paper about the life imprisonment; *Marcello Viola v. Italy* (no. 2); *Petukhov v. Ukraine* (No. 2); *Harakchiev and Tolumov v. Bulgaria*; *Laszlo Magyar v. Hungary*; December, 2019, available at [https://www.echr.coe.int/Documents/FS\\_Life\\_sentences\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Life_sentences_ENG.pdf)



sentence, excluding from the outset any hope of rehabilitation and return to the community effectively dehumanizes the prisoner<sup>116</sup>”.

By now, the most famous ruling of the court was issued by the Grand Chamber on the case *Vinter and others v. the United Kingdom* and ruled that deprivation of the liberty by the State excluding the chance to obtain the freedom again humiliates the human dignity, and contradicts the Article 3 of the European Convention on Human Rights. The case law of the Strasbourg Court delivered three main conclusions: the legislation of the member states shall necessarily determine certain period of imprisonment after which their punishment measure may be revised; besides that the member states shall elaborate the procedure, based on which the verdicts will be revised; and finally – deprivation of liberty in prison shall be organized in the manner which enable the life-sentenced persons to get opportunity of eventual rehabilitation<sup>117</sup>.

The monitoring group found out that the main problem for the life-sentenced prisoners was the issue of early release. It was evident that the life-sentenced prisoners did not hope for the freedom at all, that can be evaluated as an alarming fact because it significantly damages the process of rehabilitation as one of the key measure and possibility to achieve the goal of the punishment.

➤ *INFLUENCE OF THE AMNESTY LAW FROM DECEMBER 28, 2012 ON THE LIFE-SENTENCED PRISONERS*

The Amnesty Law of December 28, 2012 was adopted based on the principles of humanism, in response to the public requirement on the restoration of justice, in due respect to the reasoning to reduce the number of prisoners and probationers and public security, under the conditions of adequate mechanisms of control and prevention of criminal situation by the State. In this light, the Parliament of Georgia declared an amnesty as a one-time, temporary and special measure.

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<sup>116</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Situation of life-sentenced prisoners, Extract from the 25th General Report of the CPT, published in 2016, p. 5

<sup>117</sup> See *Vinter and others v. The United Kingdom* GC], Nos. 66069/09, 130/10 and 3896/10, July 9, 2013

see European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, extract from the 25th General Report of the CPT *CPT/Inf (2016) 10*], April 2016

The Parliament of Georgia concluded that there were political prisoners and people persecuted on political grounds and declared the political amnesty. In accordance with Article 16 of the Law, the amnesty was universal, and all persons who were not convicted under Articles 1 to 15 of the Criminal Code had their imprisonment terms reduced by one fourth<sup>118</sup>.

Under the Amnesty Law, the people convicted under the Article 109 of the Criminal Code of Georgia had their imprisonment terms reduced by  $\frac{1}{4}$  but only those who had fixed terms of imprisonment. The people convicted for life term under the same Article 109 received the court decision reading that the reduction of the imprisonment term by  $\frac{1}{4}$  shall also apply to them in accordance with the Amnesty Law. But since they are life sentenced prisoners, the date of their release is not determined and the starting date, from where the imprisonment term shall be calculated and reduced by  $\frac{1}{4}$  is vague. So, they remain in life imprisonment.

The prisoners, who were in prison before 2012, stated that the Amnesty Law should have affected them too but it did not, because of this they feel injustice and inequality and believe that they are victims of discrimination.

At the same time, it is noteworthy that life-sentenced prisoners who were serving their terms including before 2012, stated that before 2012 they were victims of beating, torture, inhuman and degrading treatment on daily basis. They were often ruthlessly beaten for no reason for what they lived under permanent fear as they expected a special force guard to enter their cells any time and beat them up. Consequently, up to the date they suffer from psychological problems and health injuries. The goals of the Amnesty Law of 2012 meaning to mitigate the punishment terms for the prisoners, who were victims of torture and inhuman treatment, were not achieved in relation to them.

Moreover, the life-sentenced prisoners refer to relatively liberal criminal justice since 2012 as the courts no longer sentence offenders to life imprisonments even for violent crimes. It is also important that the majority of the prisoners are not familiar with the criteria of the law allowing the possibilities to be released and this causes the feelings of injustice.

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<sup>118</sup> The December 28, 2012 Law on Amnesty:  
<https://matsne.gov.ge/ka/document/view/1819020?publication=0>.

## **Recommendations to the Special Penitentiary Service of the Ministry of Justice and the prison administration**

- In relation to life-sentenced prisoners the case management methodology shall be introduced as provided for by Order N502 of the Minister of Justice; assessment of the individual risks and needs shall be carried out and the individual sentence plan shall be developed in first instance for the life-sentenced prisoners, who have already served 15 years of their imprisonment terms or will soon serve such terms;
- In the evaluation reports and individual plans the information relevant to these factors shall be reflected, according to which the court will pass decisions on the early conditional release of the life-sentenced convicted prisoners.

### ➤ *PLACEMENT OF THE LIFE-SENTENCED PRISONERS TO SEMI-OPEN PRISON FACILITIES*

The monitoring coincided with the process when several life-sentenced prisoners were moved from Gldani penitentiary facility N8 which is a closed prison facility to Rustavi prison N17; the prisoners and the prison director informed the monitoring group about this. Among those life-sentenced prisoners was the person, who was beneficiary of the Human Rights Center's legal aid program in the past years. The transfer of the life prisoners was a novelty in terms of the risk-assessment. Up to the date, life-sentenced prisoners were not allowed to serve their terms in a semi-open prison facility. Such a new approach is important for the realization of the principles of non-segregation of the life-sentenced prisoners, and that of the progression<sup>119</sup>.

In the course of monitoring, some prisoners restrained from moving to semi-open facilities because of expected conflicts with the representatives of the criminal subculture. Further, it is important to consider the issue of safety of the life-

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<sup>119</sup> Recommendation Rec (2003)23 of the Committee of Ministers of the CoE to member states on the management by prison administrations of life sentence and other long-term prisoners; general principles; 7. Non-segregation principle: Consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence; they should have possibility to communicate with other prisoners based on the risk assessment, when all relevant factors will be taken into account; 8. Progression principle: Individual planning for the management of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system based on their individual approach to the programs, personnel and other prisoners.

sentenced prisoners in the semi-open facilities before the decision on their transfer is made. This implies the threats coming from other prisoners because of informal rules of the criminal subculture that may be connected with the crimes committed by the life-sentenced persons.

#### **RECOMMENDATIONS TO THE SPECIAL PENITENTIARY SERVICE**

- To continue transfer of the life sentence prisoners to semi-open prison facilities based on the individual assessment, which will be based upon the new model of the case management.

#### ➤ *LIVING CONDITIONS AND CONTACT WITH THE EXTERNAL WORLD*

Lifelong and other high-risk convicted prisoners shall have possibilities, in due respect of security measures, to interact with other convicted prisoners and/or with each other, both during walking in the open air, and during the recreation and sport-entertaining activities.

The monitoring group examined the walking spaces, where the life-sentenced prisoners spend time in the open air. The roofless cells are absolutely empty except one cell, where there is a tennis-table and so-called table football station. The prison officers are with the prisoners, while they are playing tennis and table football and supervise their behavior. According to the life-sentenced convicted persons, they are allowed to be in the open air for two-hours.

The right to be in the open air granted by the law to these convicted prisoners would be practically meaningless as the walking yard does not give them a chance to relax or do exercises, or interact with other people. It is also noteworthy that having a tennis-table in the walking space is a step forward but one table is not enough for all prisoners to have equal chances to play on it. Considering the fact that the life-sentenced prisoners have very limited contact with the external world, and the legislation prohibits them to interact with other convicted individuals (besides the cell-mates), it is evident that they are in full isolation for a long period of time that contradicts the international standards and at some extent it can be assessed as ill-treatment.

The prisoners have a computer in the cell, with the so-called joy-sticks mostly to play on it. They also have MP3 player. They can adjust a memory stick to the

computer and MP3 player to see photos or audio-video files on them. The prisoners are allowed to use memory sticks and the family members send the memory sticks to them. Mostly, the prisoners have photos and videos of their families on them.

The prisoners have TV and radio sets in the cell. If there are two or more inmates in the cell (in the cells for the lifelong prisoners there is one, two, or even five inmates), then they have two and more TV-sets. The prisoners said not many channels are transmitted on TV and fewer entertaining and informative channels are available. At the same time, they can purchase the channel-transmission devices that is costly. Those who have desire and financial sources, can watch other channels with the support of that device.

The monitoring revealed that several prisoners (among them life-sentenced prisoners) are placed in the cells with so-called "eyes" under permanent video surveillance. The prisoners reported that they do not have due information why they are under permanent surveillance. The surveillance with the electronic device for uncertain period of time violates the principles of necessity and proportionality, particularly where the measure is applied without any assessment, including that of feasibility of electronic surveillance when determining the risks.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- To inform the prisoners about their surveillance with the electronic devices

**8.3 Foreign prisoners**

In accordance with the information provided by the administration of Gldani penitentiary facility N8, in the course of the monitoring, 161 citizens of foreign countries served their terms in the facility; among them 25 were citizens of Turkey, 21 – Russia, 15 – Azerbaijan, 13 – Ukraine, 13 – Iran, 11 – Armenia, 10 – India and 7 had dual citizenships. Besides them, the citizens of the following countries were in the facility: the USA, Belarus, Brazil, Bulgaria, Egypt, Turkmenistan, Jordan, Israel, Lebanon, Morocco, Moldavia, Nigeria, the Netherlands, Pakistan, Palestine, South Africa, Tajikistan, Kazakhstan and Kyrgyzstan.

➤ *CONTACT WITH THE EXTERNAL WORLD AND POSSIBILITIES OF SOCIALIZATION*

The foreign citizen prisoners serving their terms in Gldani penitentiary facility N8 have very limited contact with the external world and the family members. Significant gaps in the legislation and practice hinder the foreign prisoners to enjoy those minimum rights, which they have in accordance with the international human rights standards. Pursuant to the Standard Minimum Rules for the Treatment of Prisoners<sup>120</sup>, prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals by corresponding in writing and using, where available, telephone communication and by receiving visits. Further, the prisoners who are foreign nationals shall be allowed reasonable possibilities to contact the diplomatic and consular representatives of the State to which they belong<sup>121</sup>. The monitoring of Prison N8 revealed that significant gaps in the legislation and practice hinder the foreign prisoners to enjoy these rights, and the gaps are reviewed below.

It is problematic for the foreign prisoners to make international phone calls, have video meetings, communicate with the prison personnel and send correspondence to the family members. During the pandemic, the contact with the external world, the means of communication and information are even more limited as the work of social workers was in the facility. The interviewed foreign prisoners reported that during the pandemic, social workers are no longer available who assisted the foreign prisoners in communication with the various state institutions, international organizations or consulates. Therefore, they are deprived of the possibility to have such communications. The foreign prisoners in the penitentiary facility do not have a real access to the services of interpreters because the interpreters do not come to the facility regularly (except for the translation services provided during the court proceedings). The interpreters did not work in the facility on a regular basis before the pandemic either. There are no other specialized personnel available in the facility who could inform the foreign prisoners about their rights in the language they understand and help them in sending the letters to various state institutions, international organizations, consulates or family members. Currently, as the interviewed foreign prisoners said, they hand their letters and complaints to the prison

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<sup>120</sup> Nelson Mandela's Rules, Rule 58

<sup>121</sup> Ibid, Rule 62.1

officers. However, they are not informed whether their letters reach the addressees through such means.

Like previous years<sup>122</sup>, the linguistic barrier remains a significant problem for the foreign prisoners. They have problem of communication with the prison personnel majority of who do not speak international languages properly, for example English. This problem became particularly acute during the pandemic. At the time being, most prison staff working in the facility are the officers of the departments of legal regime and security who work in a special regime. As the foreign prisoners reported, the majority of the staff does not speak English or Russian languages (however, the prison director stated that knowledge of foreign language was one of the criteria when selecting new employees through the competition). Foreign prisoners noted that they wish to learn Georgian language to have communication with the prison staff and other prisoners but there are no language courses available in the facility. As reported by the prison administration, they ask the convicted persons working in the housekeeping service of the prison, who know foreign languages, to assist them in the communication with the foreign prisoners.

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Foreign prisoners experience problems when it comes to making international phone calls. Only three days per week are allowed for this purpose in the facility: Tuesday, Saturday and Sunday. In accordance with the Regulations of the penitentiary facility N8<sup>123</sup>, foreign prisoners may make three phone calls per month, the duration of a call is 15 minutes that makes total 45 minutes per month. In order to make the phone calls from the facility, both Georgian and foreign prisoners shall wait for their turn in the common queue (according to the cells). There are not enough telephones in the facility (for example, there are more than 100 inmates on the second floor of the third Block of Prison N8 and there is only one phone device there). Consequently, if the day intended for the international calls does not coincide with the day when a particular cell can make a call, a foreign prisoner would not be able to exercise this right or alternatively

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<sup>122</sup> The Special Report of the NPM of the Public Defender of Georgia (Report on the Monitoring Visits to Establishments No 2, 8, 14, 15) reads that the linguistic barrier is a particularly serious problem that foreign nationals face in a penitentiary establishment. As a result, they face various problems while enjoying their rights or other services.

<https://ombudsman.ge/res/docs/2020011016215984597.pdf>

<sup>123</sup> Article 41. Phone calls

when his turn comes, the date might not coincide with the date intended for international calls<sup>124</sup>. Another problem is that time difference between Georgia and foreign countries is not taken into account when scheduling the phone calls or queues.

It is of utmost importance to solve this problem for the foreign prisoners. Considering the strict prison regime, restricted possibilities of communication with the outside world and family and the fact that foreign prisoners are deprived other possibilities to communicate with their family members (such as meeting and video meeting), calling on the phone and contacting their family members in this way is extremely important for foreign prisoners. The law<sup>125</sup> envisages the possibility to substitute the short visit by a telephone conversation upon the substantiated formal written request to the prison director<sup>126</sup>.

Several prisoners stated that because of the mentioned problem they had not contacted their family members for several months already; some of them could not call the families even in the cases their family members passed away. The communication is particularly problematic for the foreign prisoners with family members and relatives abroad, and respectively, they wish to call only abroad. This acute problem raised by the foreign prisoners was discussed during the meeting with the prison director on the last day of the monitoring. The interviewed prisoners stated that the practice of making phone calls is discriminatory because throughout the days after the list of the cells on the queue ends, only Georgian prisoners are allowed to make calls in the remaining time. In order to resolve this problem, the administration can re-schedule the cells so that

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<sup>124</sup> The problem is mentioned in the 2019 Special Report of the Public Defender/Preventive National Mechanism, p. 57; according to the report, in 2019, there were only two days allocated for international calls in Prison N8 45-46. Interviewed foreign prisoners paid particular attention to the need to solve this problem, because it is very important for them to call their family members as they have restricted contact with the external world and the families due to the strict regime they are subject; furthermore, they are deprived of the possibility to enjoy other means of communications allowed by the law (visits, video meetings).

<sup>125</sup> Upon a written application of an accused person, a short visit may be substituted by a telephone conversation (Imprisonment Code, Article 17.11); Following a formal written request of a convicted person, the right to a short visit may be substituted by a telephone conversation (Imprisonment Code, Article 17.12)

<sup>126</sup> Order N117 of the Minister of Penitentiary and Probations (August 27, 2015) approving the Regulations of the Penitentiary Facility N8 (articles 45 and 46)



the turns of the cells, where only foreign prisoners are placed coincided with the days allocated for the international calls.

Another problem is that, as the interviews with the foreign prisoners revealed, some Georgian prisoners use their phone cards. Sometimes it happens voluntarily but the foreign prisoners informed the monitoring group members that there were facts when the phone cards were allegedly seized from them in coercion.

The foreign citizens are deprived of the right to realize their right to video-meetings because the existing legislation<sup>127</sup> allows the video-meetings only within the territory of Georgia. In accordance with the Imprisonment Code<sup>128</sup>, during the video meetings, the family members of convicted persons must be in a territorial entity of the National Probation Agency. It is not allowed to organize the video-meetings remotely between Georgia and foreign countries. The family members of the foreign prisoners mostly do not live in Georgia. Therefore, the foreign prisoners are deprived to enjoy this right. In their 2019 Special Report<sup>129</sup>, the Public Defender/National Preventive Mechanism referred to the positive international practice where video meetings are organized to facilitate communication between the convicts and their relatives without the necessity to physically move them. To support the re-socialization of the foreign prisoners it is essential to create the possibility to organize remote video-meetings with their family members living abroad through the visual control of the screen.

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Foreign prisoners cannot get information from TV-Channels or magazines and newspapers. There are few foreign-language, English literature and magazines-newspapers in the library. English-language TV channels are not transmitted either. The foreign prisoners reported that in the past, one English language channel (initially Euro News and later BBC news) was transmitted in the penitentiary facility. However, in the recent months, the transmission of the English language channels stopped because they were shifted to the Russian-language broadcasting. The prison administration stated that it is not within their competence to solve this problem and it is connected with the changes on the satellite.

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<sup>127</sup> Imprisonment Code, Order of the Minister

<sup>128</sup> Imprisonment Code, Article 17<sup>1</sup> Para. 3

<sup>129</sup> The Special Report of the Public Defender of Georgia/ the National Preventive Mechanism; the Report on Monitoring Visits to Penitentiary Establishments nos. 2, 8, 14 and 15, P. 46

Foreign prisoners stated that it is essential for them to have at least one English language channel in the penitentiary facility so that they could have chance to receive information in the language they understand particularly under the conditions where the sources of communication and information is limited in the strict-regime penitentiary facility. It is important to have one TV-channel in the language the foreign prisoners understand because when there are no opportunities for rehabilitation-resocialization, sport or other entertaining activities, they will at least have access to one entertainment activity. The administration clarified that they receive only free channels from the satellite and they cannot change the channels. Several prisoners said they are ready to pay monthly fees for the channel. Considering the multinational population of N8 prison, it is not enough to have channels in few foreign languages and channels poor in topics (there are only 2-3 channels in Azerbaijani, Turkish and Russian languages).

Foreign prisoners have problems in sending letters by mail to their family members because, as they reported, the Georgian Post cannot set the price for certain post stamps: the rates for the postal services to several remote countries, like South Africa, are not set yet.

As a result of the mentioned problems, the foreign prisoners feel isolated and marginalized and lack socialization. These factors aggravate their psychological conditions. Foreign prisoners have limited access to the means to tackle with the stress and mental health problems. Psychologists working in the facility do not speak English or other foreign languages fluently. The foreign prisoners do not have real possibilities to spend time in the open air and do physical exercises either<sup>130</sup>.

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<sup>130</sup> See more details about this problem in the sub-chapter “Right to walking and doing exercises.”

**PROPOSAL TO THE PARLIAMENT OF GEORGIA:**

- To amend the Order of the Minister of Justice on Adoption of Rule on Usage of Video Meetings and to enable those foreign citizen prisoners, whose family members live abroad and consequently they cannot enjoy short and long conjugal meetings, to have video-meetings with them.

**RECOMMENDATIONS TO THE MINISTER OF JUSTICE OF GEORGIA:**

- In the selection process of the employees of legal regime and security departments, officers, social workers and psychologists via competition, preference must be given to the candidates who know foreign languages among the candidates with equal professional skills;
- To add a position of interpreter in the personnel of the penitentiary facility, who would work full time in the facility and facilitate the communication between the foreign prisoners and the prison personnel, whenever necessary. At least one specialist of the international language – English must be in the penitentiary establishment permanently;
- The libraries of the penitentiary facilities must be supplied with the foreign language literature.

**PROPOSAL TO THE PRISON ADMINISTRATION**

- To ensure that the foreign prisoners can make international calls from the penitentiary facility N8 without any delays; for this purpose, the queue for phone calls/schedule of phone conversations to be arranged so that the turn for the cells, where only foreign prisoners live, coincided with the dates allocated for the international calls.
- To commence Georgian language courses for the foreign prisoners;
- To ensure transmission of at least one TV-channel in English language in Gldani penitentiary facility N8; as for other languages, the social service shall find out in which languages the TV-channels are in most demand and based on the received results, ensure availability of the TV-channels on various languages;
- To ensure that foreign prisoners are able to send the letters to their family members abroad.

➤ *DIFFERENT CONDITIONS/PRACTICE OF DISCRIMINATIVE TREATMENT*

In accordance with the information provided by the foreign prisoners, Georgian prisoners have better conditions and the prison personnel respond to their requests in more timely manner and more effectively while the same requests of the foreign prisoners, often are left without attention that is not always caused by the linguistic barrier. “If a Georgian prisoner says – “I need a doctor,” the doctor enters the facility next day. If the foreign prisoner requests the same, the doctor visits him one or two months later,” – said one of the foreign prisoners. “They do not care about the foreigners,” one of the foreign prisoners told the monitoring group members in poor Georgian. The foreign prisoners also recalled the facts, when the cells of the Georgian prisoners were treated with disinsection, but the same was not done in their cells though the bugs create serious problems in their cells and induce skin diseases.

As one of the foreign prisoners said, “Georgian prisoners enjoy privileges. They are treated differently in terms of phone calls too: ethnic Georgian prisoners do not have any restrictions on phone calls in terms of time, while the foreign prisoners often cannot enjoy the right to make phone calls because of flawed system of international calls<sup>131</sup>. Also, as the prisoners said, the so-called “Karmushka” (small window in the door of the cell) of the Georgian prisoners’ cell is always open, while the same window is mostly closed for the foreign prisoners.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- The prison administration must study alleged facts of discriminative treatment of the foreign prisoners and react to them; equal treatment shall be ensured pursuant to the Law of Georgia on the Elimination of All Forms of Discrimination.

➤ *DISTRIBUTION AND PLACEMENT IN THE CELLS*

During the interviews, the monitoring group inquired about the cellmates of the respondents, about the issues of the number and nationality of the cellmates, language they speak and issues related to compatibility.

<sup>131</sup>See chapter “Contact with the External World”

Like previous years<sup>132</sup>, there are instances in Prison N8 when the linguistic needs of foreign prisoners are not taken into account when placing them to cells. Specifically, there were cases when the foreign prisoners are placed in the cells where their cellmates do not understand their language. Lack of possibility to inter-communicate with fellow-prisoners may cause tension and conflicts between them. It is essential to take the linguistic needs of the prisoners into account when placing them in the cells in order to prevent future conflicts, to promote the prisoners' socialization and to improve their psychological conditions. Further, it is desirable to place the prisoners with common religious and cultural backgrounds together in the same cell.

The monitoring group was informed that three citizens of Iran were placed in the cell with a US citizen without preliminary consultations with him. Moreover, there was a case, when the prison administration tried to place the individuals, who had conflict in the past, together in one cell that was prevented after the active protest of the prisoners. One of the prisoners said that he had to be on 15-day hunger-strike to compel the prison administration to move him into the cell where the persons of his nationality lived.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- The linguistic needs of the prisoners, as well as their religious and cultural specificities shall be taken into account when placing the prisoners in the cells.

➤ *COMMUNICATION WITH THE DIPLOMATIC AND CONSULAR REPRESENTATIONS*

Alien prisoners are often deprived of the right to receive information about their basic rights. Such information vacuum, at some extent, may be eradicated by the representatives of the consulates, who are authorized and have competence to provide the prisoners from their countries of origin with this information. There were cases, when foreign prisoners did not have information about the possibility of and respective agreement on the transfer of prisoners between their country of origin and Georgia. The foreign prisoners wished to meet the representatives of

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<sup>132</sup> See the Special Report of the NPM of the Public Defender on visits to the prison facilities N2, N8, N14 and N15, 2019. P. 44, Can be accessed at: <https://ombudsman.ge/res/docs/2020011016215984597.pdf>

their consulates and receive information from them about these and other significant issues in relation with their rights.

There were cases when as a result of the visits of the representatives of the consulate, the prison administration became more attentive to the foreign prisoners and satisfied their requests. Similar facts took place before the pandemic. However, during the pandemic, representatives of the consulates have not visited the prisoners.

Both the prisoners and the prison administration request the representatives of the consulates to provide the prisoners from their countries with the necessary assistance, for example with literature in their native language, religious items, clothes, etc.

**RECOMMENDATION TO THE MINISTRY OF JUSTICE AND THE SPECIAL PENITENTIARY SERVICE:**

- To maintain more active and effective communication with the representatives of those diplomatic missions, whose citizens serve imprisonment terms in the Georgian penitentiary system in order to provide them with the necessary support.

➤ *EXTRADITION AND TRANSFER OF CONVICTS TO OTHER COUNTRIES TO SERVE THE TERM OF IMPRISONMENT*

In the course of monitoring, the convicted person from the Netherlands was extradited to his country of origin. The foreign prisoners inquired about the possibilities of extradition and serving the rest of imprisonment terms in their home countries. They were informed that because of the restrictions related with the global pandemic, the respective procedures were suspended; besides that, agreements regarding international legal cooperation under the international law were not signed with some countries (e.g. South Africa).

The prison administration said that the extradition/transfer processes are planned eventually and it depends on the restoration of air or land communications with those countries.

➤ *PROVISION OF CLOTHING*

In accordance with the Georgian legislation , if an accused/convicted person does not have his/her personal clothes, the administration shall provide him/her with special uniforms according to the season, which shall not be degrading to human dignity. The penitentiary establishment provides the foreign prisoners with the second-hand clothes only once that is not enough.

The foreign prisoners are deprived of the possibility to receive clothes from their family members because it is impossible to send parcels to them from abroad. The clothes of all sizes are not available in the prison shop. During the interviews, the monitors observed that some prisoners were wearing clothes, not fitting their size. The prisoners said the other prisoners had given them those clothes or the lawyer had sent it to them by parcel.

The prison administration stated that the foreign prisoners have lawyers in Georgia mostly for the purposes of assisting them in the solution of similar problems.

**RECOMMENDATIONS TO THE PRISON ADMINISTRATION:**

- The prison administration shall ensure stock of clothes according to the seasons as it is envisaged under the national legislation, which will be distributed among the prisoners whenever necessary.