

Translated by:



**THE RA HUMAN RIGHTS DEFENDER
AS AN INDEPENDANT NATIONAL PREVENTIVE MECHANISM**

REPORT

**OBSERVANCE OF THE RIGHTS AND LAWFUL INTERESTS OF A
PERSON IN PENITENTIARY
INSITUTIONS OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF
ARMENIA**

YEREVAN 2009

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Introduction

One of the main objectives of the ongoing reforms in the Republic of Armenia is the establishment of institutions complying with the universally recognized principles and norms of international law related to the protection of the rights and lawful interests of individuals. This, among other things, encompasses the prevention of torture and other cruel, inhuman or degrading treatment or punishment, and the setting of effective human rights guarantees. The issue acquires even greater significance in relation to places of detention.

A factor that adds value to the above mentioned process is the ratification of the relevant international legal acts by the Republic of Armenia, as a result of which the legal value system envisaged by these acts will become the main guideline for predetermining the further development of the RA legal system. Moreover, it also encompasses the reflection of the requirements prescribed by these acts in RA legislation and enforcement practice.

In this respect mention should be made of such international legal acts as the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, etc.

Of these acts, note should, in particular, be taken of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the UN General Assembly on 18 December 2002 (hereinafter referred to as the Protocol) and ratified by the RA National Assembly on 31 May 2006.

The Protocol envisages a system of regular visits to places of detention by independent international and national bodies to prevent torture and other cruel, inhuman or degrading treatment or punishment.

For this purpose, in addition to establishing a new international body – the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Protocol requires each State Party to establish a body or bodies (independent national mechanism) at national level to make visits to places of

detention to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Protocol requires that independent national mechanisms are endowed with broad competence and guarantees equal to those of the International Subcommittee on Prevention of Torture to enable them to make unimpeded visits to and examinations of places where people may be held in detention.

Moreover, the Protocol does not predetermine the form of national preventive mechanisms. According to the guidelines of the Association for the Prevention of Torture, an international non-governmental organization (residence in Geneva, Switzerland), each State Party has to set up a structure for the national preventive mechanism, which will be in greater accord with its political structure and geographic peculiarities, provided it includes independent experts from different spheres endowed with the relevant competence.¹

On the basis of the aforementioned, on 8 April 2008, the RA Law on the Human Rights Defender was supplemented with Article 6.1, whereby the Human Rights Defender (hereinafter referred to as the Defender) was recognized as Independent National Preventive Mechanism within the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It should be mentioned, that the European Commission's 2007 Progress Report on the Implementation of the European Neighbourhood Policy in Armenia was quite positive about the ratification of the Protocol and the activities of the National Mechanism prescribed by it under the Defender's responsibility².

In this capacity, the Defender's representatives made periodic visits to ten penitentiary institutions of the RA Ministry of Justice in April-October 2009, aiming to detect and prevent cases of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, detention conditions of both pretrial detainees and convicts were examined.

In particular, during the visits made issues such as overcrowding of penitentiary institutions, sanitary and hygienic situation, provision of food to pretrial detainees and convicts, health care services, contact with the outside world, etc. were identified. Gaps existing in RA domestic legal acts regulating the sphere under discussion, as a result of which the observance of rights and lawful interests of persons deprived of liberty becomes more vulnerable in practice, were also revealed.

¹ *Guide to Establishment and Designation of National Preventive Mechanisms*, Association for the Prevention of Torture, Geneva, 2006, http://www.ap.t.ch/component/option,com_docman/task,cat_view/gid,117/Itemid,59/lang,en/http://www.ap.t.ch/component/option,com_docman/task,cat_view/gid,117/Itemid,59/lang,en/

² http://ec.europa.eu/world/enp/pdf/progress2008/sec08_392_en.pdf

The identified issues have been subjected to both legal as well as sociological and psychological study, the results of which served as a basis for drawing the present report.

General Provisions

In the Republic of Armenia, all relations concerning the imposition of coercive measures on pre-trial detainees and convicts, the procedure and terms for serving them, the system of penitentiary institutions, as well as the observance of human rights and lawful interests of pre-trial detainees and convicts are subjected to certain legal regulation.

Among domestic legislative acts regulating the above questions, mention should be made of the RA Penitentiary Code, the RA Law on the Treatment of Arrestees and Pre-Trial Detainees, the RA Law on the Penitentiary Service. There are also a number of sub-legislative acts in this field – decisions of the RA Government and orders of the RA Minister of Justice, which aim to ensure the implementation of the mentioned legislative acts.

In the Republic of Armenia, pretrial detainees and convicts are held in penitentiary institutions under the RA Ministry of Justice.

In accordance with Article 7 of the RA Law on Penitentiary Service, penitentiary institutions include correctional institutions and pre-trial detention facilities.

The RA Penitentiary Code defines the procedure and conditions for executing criminal punishments and for applying and serving coercive measures of medical nature alongside criminal punishments, the conditions necessary for the correction of convicts, as well as the guarantees for the protection of their rights and freedoms.

Article 99 of the RA Penitentiary Code defines the types of correctional institutions envisaged for holding convicts, which, according to their degree of isolation, are classified into:

- 1) Open correctional institutions,
- 2) Semi-open correctional institutions;
- 3) Semi-closed correctional institutions;
- 4) Closed correctional institutions;

5) Medical correctional institutions.

Open correctional institutions are for holding persons sentenced to imprisonment for a certain period of time for negligent offences, while semi-open correctional institutions are for holding persons who have committed intentional petty, semi-grave and grave crimes. Semi-closed correctional institutions are for persons who have been sentenced to imprisonment for 10 or more years or for life for having committed especially grave crimes, as well as for especially dangerous recidivists (Paragraph 2 of Article 100 of the RA Penitentiary Code).

As to persons with regard to who the court has chosen pre-trial detention as a measure of coercion, the general principles, conditions and procedure for holding them in pre-trial detention, the rights of detainees, their obligations as well as the procedure for releasing them from custody and pre-trial detention are defined by the RA Law on the Treatment of Arrestees and Pre-Trial Detainees”.

The types of penitentiary institutions in the system of the RA Ministry of Justice, their capacity, as well as the living space per person are designated by Order 41-Ն of the RA Ministry of Justice, dated 27 May 2008.

According to this Order, the penitentiary institutions operating in the Republic of Armenia are Noubarashen, Erebouni, Vardashen, Convicts' Hospital, Yerevan-Kentron, Abovyan, Sevan, Artik, Kosh, Vanadzor, Hrazdan, Goris and Meghri.

Where types of correctional institutions are concerned, it should be noted that the visits made to penitentiary institutions show that the conditions for semi-closed correctional institutions are not provided in all the penitentiary institutions contrary to the RA Penitentiary Code. Convicts are held in conditions either designed for semi-open correctional institutions (Kosh, Sevan penitentiary institutions) or for semi-closed institutions (Noubarashen, Artik penitentiary institutions). For example, the convicts of the semi-closed correctional institutions of such penitentiary institutions as Kosh and Sevan inherited from the Soviet period and not reconstructed yet, are held in the so-called 'dormitory' conditions with up to 50 convicts in dwellings, which is more typical of the conditions designed for semi-open correctional institutions. Meanwhile, in accordance with Paragraph 1 of Article 105 of the RA Penitentiary Code, in semi-closed correctional institutions, convicts must be held in isolated cells designed for up to 6 persons. Besides, in the above mentioned institutions convicts have a possibility to move freely during daytime, as a result of which the legislative requirement that the convict may move three hours per day within the space of the correctional institution designed for it (RA Penitentiary Code, Article 105, part 2) has been breached.

The Problem of Overcrowding

All relations with regard to the accommodation of pretrial detainees and convicts are regulated by both international and domestic legal acts.

In particular, according to Rule 63 (3) and (4) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted on 30 August 1955, it is desirable that the number of prisoners held in an institution is not excessive in order to apply individual approach to them. In some countries, it is believed that the number of inmates of such institutions may not exceed 500. Open institutions should accommodate the least possible number of inmates. On the other hand, prisons should be of an adequate size to enable the provision of appropriate measures and services.³

A similar logic underlies the European Prison (Penitentiary) Rules, approved by the Recommendation No R (87)3 adopted by the Committee of Ministers of the Council of Europe on 12 February 1987. The Rules refer, in particular, to reasonable amount of space of the accommodation of a convict (Rule 15).

As early as 2006, the need for excluding overcrowding in places of detention and for maintaining the prescribed limit was mentioned in the Report submitted to the RA Government after the visit made to Armenia of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁴.

The above mentioned international law clauses relating to the accommodation of pre-trial detainees and convicts in penitentiary institutions are reflected in the RA legislation.

In particular, according to the RA Penitentiary Code, in open correctional institutions prisoners may be held in cells, designed for maximum 10 people, while in semi-open correctional institutions – in cells designed for maximum 6 people. In semi-closed correctional institutions convicts are held in accommodations designed for up to 6, while in closed correctional institutions - in isolated cells designed for up to 4 persons. In the latter case, the convict may even be held alone in the cell based upon a reasoned decision of the head of institution. In medical correctional institutions, convicts are held

³ This problem is of great significance in the comments of the Penal Reform International (<http://www.penalreform.org/making-standards-work-en.html>)

⁴ <http://www.cpt.coe.int/documents/arm/2007-47-inf-eng.pdf>

in the same conditions as those prescribed for semi-open institutions by the Penitentiary Code and other legal acts, except for the peculiarities prescribed for medical correctional institutions by the Penitentiary Code and other legal acts. In medical correctional institutions separate subdivisions, accommodations or cells may be created to hold prisoners in various levels of isolation (Articles 103-107 of the RA Penitentiary Code).

Article 73 of the RA Penitentiary Code stipulates that the amount of living space allocated to a convict may not be less than four square meters. A similar requirement is also stipulated by Article 20 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees, as well as paragraph 1 of the aforementioned Decree 41-Ն of the RA Ministry of Justice, dated 27 May 2008. Moreover, this Decree also stipulates the capacity of penitentiary institutions for both pre-trial detainees and convicts.

However, the visits made have shown that in practice these requirements are not always met. In particular, it turned out that the Noubarashen and Erebouni penitentiary institutions are overcrowded. Under the mentioned Decree of the RA Ministry of Justice, the capacity of the Noubarashen penitentiary institution was set at 840 persons, while as of May 2009 it actually accommodated 1060 people. The capacity of the Erebouni penitentiary institution is set at 391 persons, but in the same period the actual number of persons in that institution was 572. As to the Vardashen penitentiary institution, instead of the set 154 persons it actually accommodated 156.

For example, the condition created in the Noubarashen penitentiary institution clearly violate the rules on the living space allocated to each pre-trial detainee and convict. During the meeting with the pre-trial detainees and convicts of that institution, they said that 15-16 convicts are being held in cells envisaged for up to 8 persons. As a result, they have to sleep in turn.

In accommodations of the Erebouni semi-open correctional penitentiary institution, depending on the dwelling's space, 20-40 convicts are being held at the same time. In this case too, the requirement of Paragraph 1 of Article 104 of the RA Penitentiary Code, according to which in semi-open correctional institutions convicts must be held in accommodations designed for up to 6 persons, is apparently not met.

Sanitary Hygienic Conditions

Both international and RA domestic legal acts contain requirements regarding the maintenance of sanitary hygienic conditions in Penitentiary Institutions (PI).

In particular, pursuant to Rule 15 of the European Prison (Penitentiary) Rules, the accommodation provided for prisoners shall meet the sanitary hygienic requirements, due regard being paid to climatic conditions, including ventilation, lighting and heating. Pursuant to Rules 17 and 19, the sanitary facilities and arrangements for access to them shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in clean and decent conditions. All institutions shall be properly maintained and kept clean at all times. Rule 21 states that for reasons of health and in order that prisoners may maintain a dignified appearance and preserve their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Similar clauses are stipulated also by the Standard Minimum Rules for the Treatment of Prisoners.

The above mentioned international requirements regarding the maintenance of sanitary hygienic conditions in places of detention are reflected in RA domestic legislation.

Thus, according to Paragraph 2 of Article 54 of the RA Penitentiary Code, the prisoner shall be provided with adequate sanitary hygienic conditions necessary for health protection under the standards determined for servicemen. Pursuant to Article 73 of the same Code, the living space per prisoner in a correctional institution shall correspond to the construction and sanitary hygienic criteria set for general living spaces, as well as shall guarantee his/her health protection.

As provided by Article 83 of the RA Penitentiary Code, the administration of the correctional institution takes the responsibility for not carrying out or inappropriately carrying out the sanitary hygienic and anti-epidemic measures towards the prisoner's health protection.

Article 20 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees requires provision of appropriate sanitary hygienic conditions for prisoners. Article 21 of the same Law stipulates, ‘...The administration of places of pre-trial detention shall ensure that the sanitary hygienic and anti-epidemic requirements aiming at maintaining the health of pre-trial detainees are met. ...pre-trial detainees shall have the opportunity to satisfy their sanitary and hygienic needs in conditions that do not humiliate their human dignity.’

Article 88 of the RA Government Decree 1543-N on Approving the Internal Regulations for Places of Holding Pre-Trial Detainees and Correctional Institutions of the RA Ministry of Justice’s Penitentiary System (hereinafter the Regulation), dated 3 August 2006 states that even personal search shall be conducted in compliance with the principle of not flouting the person’s honour and dignity.

Another important legal act that regulates this sphere is the Decision 413-N of the RA Government, dated 10 April 2003, which defines the quantities and utilization terms of bed and hygienic accessories of persons kept in Penitentiary Institutions of the RA Ministry of Justice.

Despite the aforementioned, almost all Penitentiary Institutions of the RA Ministry of Justice visited were in unacceptable sanitary hygienic conditions.

In particular, the dining halls, bathrooms, laundries, toilets and other utilities and necessities of these PIs (except for Hrazdan PI) are in a bad sanitary hygienic state and need capital refurbishment.

There is a need for refurbishment also in some of the cells at the Noubarashen and Vardashen PIs, all cells at the Sevan PI, as well as the building for holding juvenile convicts at the Abovyan PI.

Unacceptable sanitary hygienic conditions were recorded also at punishment cells of penitentiary institutions. Among them, the Noubarashen and Hrazdan PIs should be distinguished. Their punishment cells are in semi-cellar floors, as a result of which they are quite damp, access to natural light is extremely insufficient. The bathroom units being not separated also favor the existence of insufficient sanitary hygienic conditions. Though the punishment cells at the Sevan PI are located in a separate building, they lack sufficient access to natural light; all punishment cells are in anti-sanitary and anti-hygienic conditions.

This condition of the punishment cells, first of all, does not meet the international standards. In particular, Rule 21 of the Standard Minimum Rules for the Treatment of Prisoners, as well as Rule 37 of the European Prison (Penitentiary) Rules strictly prohibit detaining the prisoner in a solitary cell without artificial lighting as an effective means of coercion for disciplinary offences. And Rule 38.1 of the European Prison (Penitentiary) Rules allows the detention of the prisoner in a disciplinary solitary cell

hazardous to physical or psychological health only if after examination the medical officer certifies in writing that the prisoner is fit to sustain it.

All penitentiary institutions have wooden floors, except for the Noubarashen PI. Besides, as for necessary sanitary hygienic conditions needed for health protection, it is negative that because of poor quality construction of the Vardashen PI, cracks have formed in between the floor boards, which, according to prisoners, allow various insects and scorpions entering the cells.

From sanitary hygienic perspective, negative should be evaluated also the fact that, according to our investigations, many penitentiary institutions (e.g. the Noubarashen and Goris PIs) do not have good quality ventilation systems, which arises the discontent of pre-trial detainees and convicts. By the way, the Penal Reform International (PRI) and Partners' 2009 report on Life imprisonment and conditions of serving the sentence in the South Caucasus countries mentioned about the insufficient ventilation conditions of the Nubarashen PI.⁵

As for hygiene protection, separate problems are related to pre-trial detainees and convicts following the religion of Islam. For example, foreign national Muslim prisoners serving the sentence in the Vardashen PI (particularly in closed and semi-closed correctional institutions), following their religious beliefs, wash themselves after using the toilet, which is negatively perceived by Christian inmates and often creates conflicts.

It is worth mentioning that the existing unacceptable sanitary hygienic conditions in penitentiary institutions are often conditioned by the behavior of pre-trial detainees or convicts. Not only do the latter make no attempt at improving them, but, on the contrary, contribute to its creation, whereas pre-trial detainees and convicts also carry the responsibility of maintaining the sanitary hygienic condition. Thus, Rule 20 of the European Prison (Penitentiary) Rules compels prisoners to follow the requirements of personal hygiene. When listing the behavior rules of pre-trial detainees and convicts the Regulation provides for rota to be established for maintenance of sanitary hygienic rules in prisoners' cells (Article 21).

⁵ <http://www.penalreform.org/pri-report-on-treatment-and-conditions-of-prisoners-serving-life-in-south-cau.html>:

Food

Rule 25.1 of the European Prison (Penitentiary) Rules requires that the food in places of arrest and detention be suitably prepared.

Pursuant to Rule 20 of the Standard Minimum Rules for the Treatment of Prisoners, every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.

These requirements assume the employment of people responsible for food preparation at penitentiary institutions that have appropriate qualifications. Moreover, kitchen and cooking conditions of all institutions shall comply with modern conditions and health care requirements.

Issues related to the provision of sufficient food to prisoners during the period of serving the sentence are regulated by article 76 of the RA Penitentiary Code, which states, '1. While serving the sentence the prisoner shall get sufficient food necessary for the regular functioning of his body, the daily average portions and the ratio of which are defined by the RA Government. 2. It shall be prohibited to reduce the food quality and nutritive value for any reason, including as a means of punishment. 3. Convicted pregnant women, nursing mothers, juveniles or sick arrestees and pre-trial detainees shall get additional food, the portions and the ratio of which are defined by the RA Government. 4. Convicts must get drinking water.'

Besides, similar requirements defined for pre-trial detainees, Article 19 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees states, '...Pre-trial detainees shall have the right to obtain food and other necessary and not forbidden items at their own expense. The rules for obtaining food and necessities are defined in internal regulations. ...If pre-trial detainees refuse to take the food, the head of the place of detention or his deputy must find out the reasons and report to the body conducting the criminal proceedings, as well as to controlling and supervising bodies. Refusal to take food shall not suspend the transfer of pre-trial detainees to other institutions and their

participation in court procedures. If necessary, pre-trial detainees may be escorted by medical personnel during the transfer.'

The daily average portions and rations of persons held in the Penitentiary Institutions of the RA Ministry of Justice are defined by the RA Government Decree 413-N dated 10 April 2003.

According to the information obtained through observations and from detainees, the food provided by penitentiary institutions is homogenous and not diversified. Though the list of rations endorsed by the decree of the Government of Armenia includes fruit, no fruit was ever seen during the visits.

From those observed, only in the Hrazdan and Yerevan-Center PIs is pre-trial detainees' and convicts' food prepared by civilian cooks, and the persons detained in those PIs are satisfied with the food quality. In all other institutions the cooks are convicts that have no special training and work experience. That is why the majority of convicts are not satisfied with the quality of the served food. While visiting the above mentioned institutions' dining halls it was observed, that the convicts who work in the kitchen prepare their food separately.

The part about Armenia⁶ in PRI and partners 2009 report also mentions the shortcomings of the Penitentiary Institutions of the RA Ministry of Justice, particularly of the Noubarashen PI, where the food is homogenous and not diversified, has insufficient quality, and the prices of products at the shop of the penitentiary institution are unaffordable.

There is also a problem concerning prisoners that refuse certain food because of their religious beliefs. For example, there are Iranians kept in the Vardashen PI, whose religion does not allow them using pork in their meals and on those days when the food is prepared from pork, they refuse to eat it.

In spite of that, Rule 25.1 of the European Prison (Penitentiary) Rules states that where food is concerned, the administration of places of detention of convicts shall consider their religious and cultural peculiarities. Rule 6 of the Standard Minimum Rules for the Treatment of Prisoners also requires respect towards religious beliefs and moral precepts of the group to which a prisoner belongs.

As regards RA legislation, the RA Law on the Treatment of Arrestees and Pre-Trial Detainees, the RA Penitentiary Code as well as the Regulation provide for an opportunity for pre-trial detainees and convicts only to profess their religion (organize religious ceremonies, worship, read spiritual literature, etc.) Concerning food issues, the above mentioned legal acts do not include any requirement, which practically results in the above complications.

⁶ <http://www.penalreform.org/pri-report-on-treatment-and-conditions-of-prisoners-serving-life-in-south-cau.html>:

Health Care Services

Issues related to the health care services of persons deprived of their liberty are of high importance in international documents: both the Standard Minimum Rules for the Treatment of Prisoners and the European Prison (Penitentiary) Rules provide for a wide range of guarantees in this regard.

In particular, Rule 22 of the Standard Minimum Rules for the Treatment of Prisoners states, that 'where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.' According to Rules 24 and 25 of the same Rules, when a prisoner enters into the penitentiary institution and later in case of necessity, all prisoners shall pass a mandatory medical examination of their physical and mental health. The medical practitioner is responsible for taking care of prisoners' physical and mental health, and he/she must accept or visit the patients every day, both those who complain of their illness, as well as those who need special care.

Article 12 of the RA Penitentiary Code alongside the main rights of the convict also mentions the right of the latter to health protection, including the right to get sufficient food and medical service. Besides, the same Code provides guarantees for the realization of the mentioned rights.

Pursuant to Article 13 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees, the pre-trial detainee has a right to health protection, including the right to sufficient food, urgent medical aid, as well as the right to examination at his own expense by a medical practitioner chosen by the detainee.

There are health care posts in all penitentiary institutions in order to organize health care services for pre-trial detainees and convicts. Besides, the penitentiary institution "Hospital for Convicts" to which prisoners are transferred, if their treatment cannot be organized in the penitentiary institution's health care post, operates in the penitentiary system,.

Considering that the doctors working in penitentiary institutions are PI staff members subordinate to the institution administration, problems arise in connection with the independence and impartiality of the health care staff. This problem is especially acute when the staff use force against a prisoner, or in case it becomes necessary to transfer him/her to civil clinics.

The health care staffing of penitentiary institutions varies considerably depending on the institution size (the Yerevan-Center PI has 2 positions for health care staff, while the Noubarashen PI has 26). Almost all institutions have vacancies. Finding the right specialists to fill vacancies is another serious problem for penitentiary institutions (e.g. there are very few general physicians). Or, only one of the positions for the medical post is occupied at the Sevan PI - the position of doctor's junior assistant (feldsher), the positions of the other 6 medical practitioners are vacant. In order to organize the medical treatment of persons kept in that institution, doctors from the Hospital for Convicts come once a week for a few hours.

This is so in spite of the fact, that Rule 26.1 of European Prison (Penitentiary) Rules requires that at least one qualified general practitioner shall be available at every institution . Moreover, Rule 22 of the Standard Minimum Rules for the Treatment of Prisoners states that the services of at least one qualified medical officer who should have some knowledge of psychiatry shall be available at every institution. And Rule 25 provides for daily visits of the medical officer to sick prisoners.

Pursuant to Article 21 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees, places of detention must have at least one medical officer of general specialization.

It is worth mentioning, that the part about Armenia in PRI and partners report mentions, in particular, the complaints of life prisoners at the Noubarashen PI on the fact that there is lack of pharmaceutical supplies and medical equipment in the Institution; there is no specialist medical treatment⁷ .

In such conditions, it is, of course, impossible to talk about the provision of quality medical services to pre-trial detainees and convicts, as stipulated by the mentioned acts.

⁷ <http://www.penalreform.org/pri-report-on-treatment-and-conditions-of-prisoners-serving-life-in-south-cau.html>:

Contacts with Family Members and the Outside World

The issues related to the maintenance of contact with the outside world are paid special attention to in the relevant international documents.

In particular, Rule 37 of the Standard Minimum Rules for the Treatment of Prisoners states, as a general provision, that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Similar requirements are included in Rule 43.1 of the European Prison (Penitentiary) Rules.

The contacts of convicts with their family members and the outside world are regulated by Article 92 of the RA Penitentiary Code, and the contacts of arrestees and pre-trial detainees with their family members and the outside world, by Article 17 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees. According to these Articles, the administration of places of detention shall create appropriate conditions to ensure that arrestees and detainees contact with their family members and the outside world. For this purpose, short-term visit rooms, centers for using possible means of communication, possible conditions for using mass media shall be created, and also long-term visit rooms for convicts.

In fact, the sizes of visit rooms (both short-term and long-term), their furnishings are not subject to any regulation in the RA, as a result of which the visit rooms of all penitentiary institutions are different. In this regard, it is worth mentioning that in the short-term visit room of the Noubarashen PI, prisoners and their relatives are separated by a glass partition and can only communicate by telephone, which excludes their direct interaction. Besides, there are general and so called 'first-class' rooms in the same penitentiary institution; the latter is available mainly to 'criminal authorities (underworld leaders).'

Paragraph 2 of Article 92 of the RA Penitentiary Code states, 'A long-term visit with only close relatives with the right to stay together is granted at least once in two months with the duration of up to three days. A long-term visit is allowed with a person not married with the convict but having a child from him/her.' Meanwhile, the convicts at the

Yerevan-Center PI do not have access to long-term visits because of the lack of suitable facilities.

Pursuant to Article 143 of the Regulation 'The meetings with close relatives or other persons take place under the supervision of administration of the place of detention or the correctional institution except for the cases stipulated by the Law and long-term visits.' The supervision in all institutions is carried out only visually, without hearing the conversations. The only exception is the Yerevan-Kentron PI where the short-term visits are organized in a small room and a controller is directly present during the visits to hear all conversations. This occurs in spite of the fact, that there is an inspection hole on the door to the visit room, through which the whole room is well seen.

This form of supervision, as explained by the Yerevan-Kentron PI administration, is carried out with the purpose of preventing the transfer of prohibited items by outside people⁸. Anyway, these types of arguments cannot be justified, as Chapter 10 of the Regulation, entitled Search, Examination and Confiscation states that civilians and persons deprived of their liberty undergo a mandatory search before and after the visit, in order to prevent the penetration of prohibited items, objects and food.

All penitentiary institutions are provided with card phones, and the possibility of their usage is determined by Article 180 of the Regulation. Pursuant to Article 182, pre-trial detainees or convicts are provided the possibility to use the telephone according to the schedule determined by the head of the penitentiary or correctional institution. That is, the Regulation does not provide precise terms for that. As a result of such regulation the convicts and detainees of the Yerevan-Center PI (60 people), rarely use the telephone-once in 10 days.

Thus, in order to avoid similar situations, this issue should be stipulated by the Regulation.

⁸ In general, regarding the Yerevan-Kentron PI, it is worth mentioning that although legally it is under the supervision of the RA Ministry of Justice, it is in fact an isolator of the RA National Security Service. The institution is located in the administrative building of the National Security Service, does not have its separate entrance, its own pass control office; the permission to enter the institution is given by the National Security Service. This was also mentioned in the reports of the Group of Public Observers who carried out public monitoring of the Penitentiary Institutions and Bodies of the RA Ministry of Justice.

Other conditions

The visits to the penitentiary institutions of the RA Ministry of Justice have revealed other violations as well.

Thus, Rule 11.3 of the European Prison Rules stipulates that pre-trial detainees shall be held separately from convicted prisoners. Rule 8 of the Standard Minimum Rules for the Treatment of Prisoners contains the same requirements.

Rule 94 of the European Prison Rules also stipulates that except where there are circumstances that make it undesirable, pre-trial detainees shall be given the opportunity of having separate rooms.

RA current legislation also takes differentiated approach to the detention conditions of pre-trial detainees and convicts, i.e. the norms of the RA Penitentiary Code are applied to those persons who have been sentenced by court judgement and the provisions of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees are applied to those on whom pre-trial detention has been imposed as a measure of restraint.

However, in practice there have been cases where conditions meant for pre-trial detainees have been applied to convicts. For example, observations have revealed that the convict A. A. serving his sentence in the semi-open correctional institution of the Vardashen penitentiary institution was kept with pre-trial detainees and the conditions meant for the latter (of walks, phone calls, etc.) were applied to him.

Investigations have revealed that due to ambiguous legislative control, in practice there can be problems relating to keeping pre-trial detainees separately from each other.

Thus, Paragraph 1(4) of Article 68 of the RA Penitentiary Code stipulates that detained employees or former employees of courts, law enforcement agencies, customs and tax authorities, servicemen or former servicemen of the commissioned staff of compulsory or contractual military service, military servicemen or former military servicemen of the interior forces shall be kept in places of detention separately from others.

According to Paragraph 2(5) of Article 31 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees, detained employees or former employees of courts, law

enforcement agencies, customs and tax authorities, as well as military servicemen or former military servicemen of the interior forces shall be kept in places of detention separately from others.

As we can see, in contrast to the Penitentiary Code, the RA Law on the Treatment of Arrestees and Pre-Trial Detainees does not set any requirements for separate keeping of detained servicemen or former servicemen of the RA armed forces.

Hence, in view of the necessity to eliminate the said discrepancy, we consider it necessary to provide for a similar provision about servicemen of the RA armed forces in the RA Law on the Treatment of Arrestees and Pre-Trial Detainees.

The visits have revealed cases of violation of the requirements for the organization of walks of pre-trial detainees and convicts and acceptance of their propositions, applications and complaints.

In particular, in this connection, Paragraph 62 of the Regulation stipulates, 'A pre-trial detainee or a convict serving a sentence in a closed or semi-closed correctional institution can refuse to go out for a walk at his will. The fact of refusal of a detainee or a convict to go out for a walk shall be recorded in an appropriate register.'

According to Paragraph 173 of the Regulation, 'Taking the recommendations, applications and complaints from the pre-trial detainee or convict, the representative of the administration of the place of detention or correctional institution makes a note in the appropriate register about accepting them, which is signed by the pre-trial detainee or convict.'

Inspections reveal that the requirements of the quoted paragraphs of the Regulation are absolutely not met in the Yerevan-Kentron penitentiary institution: the said registers are not available here at all, which is evidenced by the complaints of prisoners.

Both Rule 26 of the Standard Minimum Rules for the Treatment of Prisoners and Rule 15 of the European Prison (Penitentiary) Rules stipulate requirements about heating in prisons.

In contrast to that, RA current legislation does not provide for requirements about the heating of penitentiary institutions.

The visits to penitentiary institutions have revealed that with the exception of the Hrazdan, Artik and Yerevan-Kentron penitentiary institutions, others do not have central heating systems: the cells and accommodations are heated with electric stoves, which do not provide enough heat. The other buildings of these institutions are not heated in winter, which creates certain difficulties. Furthermore, convicts acquire the electric stoves by their own resources. It is noteworthy that, for example, in spite of the

availability of a central heating system in the Artik penitentiary institution, the cafeteria dining room of the said institution is not heated.

The Standard Minimum Rules for the Treatment of Prisoners set requirements for the availability of libraries in places of detention and the rights of prisoners in that connection. In particular, Rule 40 of the said Rules stipulates that, 'Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.' Rule 42 provides for an opportunity for the prisoners to have books of religious character.

According to Rule 82 of the European Prison (Penitentiary) Rules, every institution shall have a library for the use of all categories of prisoners, adequately stocked with a wide range of both recreational and instructional books. Wherever possible, the prison library should be organised in co-operation with community library services. This point too stipulates that prisoners shall be encouraged to make full use of the library.

The RA Penitentiary Code stipulates that a penitentiary institution shall have a library and a reading hall (Paragraph 4 of Article 91) and guarantees the right of the convicts to make use of the library (Paragraph 1(9) of Article 12).

Article 17 of the RA Law on the Treatment of Arrestees and Pre-Trial Detainees stipulates that the administration of places of detention shall create appropriate conditions for detainees to use newspapers, magazines and other literature. Article 25 stipulates that libraries shall be established in places of detention, as well as guarantees the opportunity to make use of religious literature.

The Regulation contains similar requirements.

In spite of all this, no national legal act of the Republic of Armenia sets requirements for the nature of the literature in penitentiary institutions, its periodic update, and the terms of usage and return by detainees and convicts.

Under such conditions of self-regulation, the availability of libraries in all penitentiary institutions is formal. In particular, there is almost no modern literature there and the libraries are equipped with outdated books, which are of next to no interest and are there simply for being there. The libraries of all the institutions have poor choice and most of the books date back to Soviet times. There is no literature in the libraries on the rights of convicts or detainees or human rights in general and the mechanisms of their protection. Whereas specially selected literature would have a most important role in socialization and in influencing the value system of the convicts. According to the librarians of the penitentiary institutions, part of the detainees and convicts read the literature due to no alternative and the others stop attending the library. This unsolved issue is a result of the disregard by the competent authorities.

These facts put the social rehabilitation of the persons deprived of their liberty in jeopardy. The atmosphere of inaction in almost all the penitentiary institutions contributes to it. The free time is filled with games organized by the detainees and the convicts, which only contributes to the proliferation of the 'criminal culture' and internal mechanisms of control in penitentiary institutions. Later, going at large, these people are not only not ready to integrate into the society but also, on the contrary, bring the 'criminal subculture' obtained and reproduced in the institution into the society and, as a rule, immediately commit a new crime to go back to the penitentiary institution (according to the very persons who have lost their liberty, they cannot imagine what they will engage in after they are released).

It should be noted in this connection that there is usually a low professional level of socio-psychological service in the penitentiary institutions. For example, the social worker of the Yerevan-Kentron penitentiary institution is a mathematician by profession. In the majority of the penitentiary institutions the positions of social workers and psychologists are vacant; these high-risk and low-pay positions are of no interest for specialists; as a result, the pre-trial detainees and convicts often do not receive adequate professional support, and there is no professional activity along the lines of returning them as full members of the society.

A phenomenon has been registered in penitentiary institutions when people of different economic-financial standing, often extremely wealthy and extremely poor, are kept in the same cell. Extremely poor people cannot expect support from their relatives who are socially deprived as well, whereas part of the wealthy convicts whose relatives are well-off have a source of income, , due to which they have the opportunity to satisfy their needs in places of detention. Accordingly, in all such cases there is a hierarchy of detainees and convicts with appropriate rights and obligations. According to the officers of penitentiary institutions, they often lodge extremely wealthy and extremely poor people in the same cell on purpose, so that the former can support his roommate with food and other goods from outside. Apart from the positive side, this phenomenon also has a negative implication, since the socially deprived people appear to be directly dependant on the others, and these are able to control and exploit them. Thus, discrimination on economic grounds present in the society is introduced into the penitentiary institution.

Psychological problems

The psychological research carried out in penitentiary institutions of the RA Ministry of Justice has revealed a number of psychological problems.

In particular, clear and adequate organization and delivery of psychological services in penitentiary institutions is imperative for the psychological rehabilitation of the persons deprived of their liberty. These persons are in need of psychological support and psychotherapeutic work. This is accounted for by the sociopsychological atmosphere in penitentiary institutions. A person lives, perceives the world and treats phenomena under the influence of the socio-psychological atmosphere surrounding him. A person cannot be expected to exhibit lawful behaviour without changing the socio-psychological atmosphere that feeds his feelings, beliefs, intentions, etc. That is why it is important to combine the means of legal and psychological influence. The coercive measures applied in penitentiary institutions must be combined with meticulous psychological work, i.e. formation of the perception of the necessity of coercion, etc.

The research has revealed that the persons deprived of their liberty avoid directly complaining about the administrations of penitentiary institutions, fearing the consequences. Alongside with that, there is an unavoidable polarity of relations between the administration and the detainees and convicts, which results in the first place from the low level of trust in penitentiary officers, as well as the 'internal code of conduct' in penitentiary institutions, according to which cooperation with the administration 'is not encouraged.'

The majority of the persons in penitentiary institutions tend to not accept the fairness of the judicial act adopted against them: they either do not accept their guilt or do not agree with the sentence. In our opinion, these are the reasons behind the presence of 'internal justice' or certain 'internal codes' in penitentiary institutions due to the negative attitude towards justice, which, unfortunately, are oftentimes more efficient than norms stipulated by the law. The administration of the penitentiary institution, perceived as representative of the 'unjust law,' which is at the same time authorized to take coercive measures, is often not able to perform educational functions. This reduces the chances of correction of persons deprived of their liberty and of reduction of the probability of their reappearing in the institution. The presence of the so-called 'internal rule of non-complaint' also proceeds from this negative attitude towards justice. If we take into account the peculiarity of special psychological contagion of the places of detention,

when phenomena, ideas, etc. mechanically spread to everyone and form a special perception of phenomena and corresponding emotional attitude, we can explain the mistrust towards legal agents and human rights organizations: 'You will leave and nothing will change, and we still have to live here.'

The research has revealed that persons deprived of their liberty have certain problems of adaptation (especially if it's the first conviction). In this connection, we suggest that the frequency of psychological work carried out with these people be raised and new methodological approaches be developed, which will raise the efficiency of the work and contribute to the solution of the problem of psychological rehabilitation.

During the visits there have been meetings with penitentiary officers of the penitentiary institutions, with a view to learning about the peculiarities of their work and getting acquainted with the problems they face. They have voiced complaints concerning poor social conditions and the unfair pay received for the work done. Thus, alongside with conditions in which the persons deprived of their liberty are kept and alongside with the protection of their rights, attention should also be paid to the issues of the officers of penitentiary institutions, since the visits of the representatives of different structures and organizations for the purposes of the protection of the rights of detainees and convicts cause certain dissatisfaction with penitentiary officers, which can create additional tension in their relations (there has been a lot of complaint on the part of the penitentiary officers that no one appreciates their work, and competent authorities are not interested in their rights, whereas the rights of the 'criminals' are protected by a great number of organizations).

The persons deprived of their liberty often complained indirectly of the abuse of powers by penitentiary officers, sometimes not being aware that the officers are authorized by the law to take such actions. There have been complaints that the officers of penitentiary institutions have a generalized negative attitude towards the convicts, which results in the 'death of the individual' within a penitentiary institution. Such a generalized approach does not give an opportunity to examine exceptions, which creates tension and feeds conflicts and, more importantly, forms a stereotypical workstyle (where penitentiary officers express their attitude towards detainees or convicts with affective evaluation – 'these bastards', which results in forming a corresponding work strategy and performing their duties under the influence of this stereotype). Of course it is difficult to take differentiated approach in such institutions, especially given the limited resources; we do however suggest taking an individual approach as much as possible (especially towards people convicted for the first time, who are not yet full carriers of criminal behaviour).

The Vardashen penitentiary institution is of certain interest from the psychological point of view. Here the majority of the persons deprived of their liberty have higher education and relatively high legal consciousness. In this regard it is considerably different from the other penitentiary institutions. Here there is no extreme split of relations between the administration and the detainees or convicts. The so-called 'code of conduct outside the law' is almost not applied. Adaptation issues in connection with the 'change of roles' are

more complicated here. It should be noted, however, that even this group of persons deprived of their liberty is not well informed about their rights. Here there are complaints relating to previously occupied service jobs, merits for the state and, more importantly, 'not being appreciated' by the state. This creates certain psychological tension. Oftentimes the court judgement is perceived as a 'labelling of good reputation.' There is an almost universal opinion that the laws in the penitentiary institutions, the work carried out with detainees and convicts, the conditions and the psychological atmosphere not only fail to contribute to the correction of the person but also to the proliferation and deepening of criminal psychology.

During the legal advisory and psychological work carried out in penitentiary institutions certain behavioural changes have been recorded in detainees and convicts (as a result of not only giving legal explanations to highly emotional complaints but also explaining the essence of the issue by persuasion, the emotional tension was alleviated and an opportunity for objective assessment of the situation was created), which enables to argue once more that legal measures perform their regulatory function more efficiently if they are given psychological properties. Hence, we suggest bearing in mind that while drawing up and adopting legal acts the psychological factor must be taken into account, i.e. how the norms included in the acts will be perceived by those they are directed to, since prediction of the psychological response of addressees will raise their efficiency.

During the research carried out in penitentiary institutions we have noted anxiety in detainees and convicts relating to their status. Limitation of freedom combined with the limitation of other rights against the background of uncertainty, and constant awareness of the possibility of application of coercive measures provided for by the Regulation, intensify the anxiety and have a negative influence on their psychology. The requirements of the 'tacit' code of conduct of the institutions, which often contradict legal regulators, add to it. In particular, the privileges given to the so-called 'mafia bosses' in penitentiary institutions are obvious. For example, there has been a case in the Artik penitentiary institution when the door to the cell of one of the convicts (a 'mafia boss') was permanently open, and the convicts in that cell had the right to move freely; one of the convicts of that cell was constantly following the expert group during almost the whole tour. They also had the privilege of better food, living conditions (by their own means, of course), clothes, etc. as well as privileges in communication with the administration of the institution, which the other convicts were deprived of, plus additional power outside the law – the tacit right to dictate their terms and to exercise coercive measures. Non-officially this is accounted for by the fact that such a mechanism contributes to ensuring the internal controllability of the penitentiary institution. However, we can argue that from the psychological point of view such phenomena constitute grave danger for the whole system and contribute to the intensification of 'criminal' concepts and behaviour. There have been such latent developments in penitentiary institutions when the administration utilizes the punitive controls of the above mentioned non-formal leaders (the bosses) to punish the convicts. In such cases, by provocation or tacit consent an official, without directly resorting to violence, gets an opportunity to solve internal issues using non-formal relations.

Whereas article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines that the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The emergence of anxiety in penitentiary institutions has specific preconditions for formation and peculiarities of manifestation. Limitation of freedom on the one hand and the other psychological factors relating to serving the sentence on the other hand appear as a specific psychological background for the emergence of an internal conflict. That is first of all a reflection of internal drives and desires and the restrictions for their realization. The meetings with persons deprived of their liberty allow us to argue that these people are characterized by the loss of the feeling of 'having a support', which is escalated by uncertainty (especially in detainees) and mistrust towards law enforcement and judicial authorities (and sometimes even towards state structures in general) and this almost eliminates the probability of satisfying one of the most important human needs – the need for security. This, in turn, paves the way for losing orientation and natural drives and lowers the level of self-confidence in the surrounding world. Such psychological issues which have not been solved while serving the sentence can later develop in 'freedom', while integrating into social life, and manifest in illegal behaviour.

Conclusion

The issues brought to light by the research about protection of rights and lawful interests of the persons kept in penitentiary institutions of the RA Ministry of Justice can be categorized into three main groups:

1. Issues which are not solved in practice due to the absence of material and technical resources, despite the fact that they are legally regulated to a certain degree (refurbishment of cells and isolation wards of penitentiary institutions, establishment of heating systems in the institutions, elimination of overcrowding, provision of variety in food, etc). The low salary of penitentiary officers should be mentioned here;

2. Violations in law enforcement practice are often accounted for by gaps and shortcomings in RA legislation and inadequate legal regulation of separate issues. Thus, the issue of further development and improvement of the legislation regulating this field of social relations is also pressing;

3. Issues which rise while taking coercive measures relating to deprivation of liberty and are accounted for by the penitentiary officers not performing their duties to the fullest (strict compliance with the requirements characteristic of certain types of correctional institutions, elimination of discrimination of detainees and convicts, etc).