



**HUMAN RIGHTS DEFENDER OF
THE REPUBLIC OF ARMENIA**



AD HOC PUBLIC REPORT

**ON THE RIGHTS TO RESPECT FOR PRIVATE AND
FAMILY LIFE AND FREEDOM OF COMMUNICATION
OF DETAINEES AND CONVICTED PERSONS
TRANSFERRED TO DISCIPLINARY CELL**



YEREVAN 2019



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Introduction

The human rights protection system consists of different components. The effectiveness of this system is based on how strongly each of these components is protected. The protection of the rights of persons deprived of liberty is of great significance in that system. The international law establishes high requirements in this field, on the one hand directed to ensuring the security of the places of detention of those persons, on the other hand, guaranteeing the rights and freedoms of those deprived of liberty. In the last case, the burden of the state increases with the force of its positive obligation.

This Ad Hoc Public Report refers to guaranteeing the rights of persons deprived of liberty, the detainees and the convicted persons, when they are transferred to a disciplinary cell. The legislation of this field in the Republic of Armenia states that, the transfer to a disciplinary cell, as a disciplinary sanction, applied against detainees or convicted persons by the decision of the head of institution, simultaneously he/she in any case, mechanically, irrespective of any circumstance, deprives them of contact with the outside world: visits, phone calls, correspondence, as well as making use of literature, news media, etc. Thus, it turns out that this measure of penalty has a nature of inflicting additional deprivations, which has nothing related to the purpose or reasons of the penalty. This, in its turn, makes those prohibitions an end in itself.

Consequently, when transferring a person to a disciplinary cell and applying the abovementioned deprivations on that basis, no exceptions are being discussed, individual approach is not provided. This means, that under the current regulations the transfer of a person to a disciplinary cell causes mandatory deprivation of the constitutional rights

without giving a possibility of discussing the issues of the expediency and proportionality of that deprivation. There is no discussion on the behavioral risk of the person deprived of liberty. In other words, in each case, when a person is transferred to a disciplinary cell, he is mechanically deprived of the contact with the outside world by the force of the current legislation of the absolute nature of prohibition. Therefore, this causes the disproportionate and mechanical deprivation of the rights to respect for private and family life imposed by the Constitution, as well as the right to freedom of correspondence, telephone talks and other forms of communication of the detainee and the convicted persons.

The results of the discussion of the complaints addressed to the Human Rights Defender of RA, as well as in the monitoring activities of the Defender based on his status as the National Preventive Mechanism, show that a similar problematic practice is functioning due to the described legislative regulations.

The mentioned issues are such in essence that they have a systemic nature and require same solutions. Based on that the Defender has submitted an application to the Constitutional Court, challenging the constitutionality of the relevant regulations on the basis of which the detainee or convicted person transferred to a disciplinary cell are mechanically deprived of correspondence, telephone talks and other forms of communication, meaning, the contact with the outside world. The incomppliance of those regulations with the international law was also justified.

I. The Rights to Respect for Private and Family Life and Freedom of Communication, and Their Restriction

The right to respect for private and family life as well as the right to freedom of communication are of fundamental importance and are enshrined in Articles 31 and 33 of the Constitution of RA. Particularly, Part 1 of Article 31 of the Constitution envisages that *everyone has the right to respect for his/her private and family life, honor and good reputation*. According to Part 1 of Article 33 *everyone has the right to freedom and confidentiality of correspondence, telephone talks and other forms of communication*.

The 2nd parts of the mentioned two articles define that the constitutional rights can be restricted only in cases stipulated by law, moreover, on condition that explicit grounds are available. In both cases they are the same: *national security, economic well-being of the country, prevention or uncovering of crimes, protection of public order, health and morality or the fundamental rights and freedoms of others*.

The right to family and private life is of paramount significance in the international law. In particular, according to Article 12 of the UN Universal Declaration of Human Rights, *no one can be subjected to an arbitrary interference with his private and family life, his home, an arbitrary infringement towards his correspondence or his honor and reputation. Everyone has the right to protection of the law from such interference or infringement.*¹

According to Article 17 of the UN Covenant on Civil and Political Rights, *no one can be subjected to a whim or unlawful interference with his private and family life, a whim or unlawful infringement towards the*

¹ See Article 12 of Universal Declaration of Human Rights of December 10, 1948, <http://www.un.org/en/universal-declaration-human-rights/>.

*respect for his flat or the secret of his correspondence, or unlawful infringement towards his honor and reputation. Everyone has the right to the protection of the law from such interference or infringement.*²

The right to respect for private and family life is defined also in Article 8 of the European Convention³ for the Protection of Human Rights and Fundamental Freedoms. The purpose of this right is to ensure the protection of individuals from the possible arbitrariness of the state bodies. In the context of the Convention, the right to respect for private and family life has four main directions of personal respect and the possibility of independent implementation of his/her rights: the private life, the family life, the flat and the communication.⁴

The constitutional regulations state that the rights to private and family life and communication are not absolute and in some cases their restriction can be considered lawful. However, that should not be an end in itself, mechanical, when the persons are deprived of those rights irrespective of the nature and degree of severity or danger of the violation committed. In other words, the restriction of the right should be necessary for implementation of the purpose defined by the Constitution, and the selected means should be within the frames of the foreseen grounds and proportionate, taking into account the significance of the restricted fundamental rights.

The Constitution also fixes those criteria, with the availability of which only the restriction of the right can be considered lawful and corresponding to the Constitution.

² See Article 17 of Covenant on Civil and Political Rights of December 16, 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³ Hereinafter Convention.

⁴ See the Manual published in 2012 “On the Protection of the Right to Respect for Private and Family Life according to the European Convention on Human Rights”, page 10, https://www.echr.coe.int/LibraryDocs/Roagna2012_EN.pdf.

Thus, in connection with the proportionality of restriction of a person's rights the Article 78 of the Constitution should be quoted, according to which *the means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective prescribed by the Constitution. The means chosen for restriction must be commensurate to the significance of the basic right or freedom being restricted.* According to this article, to achieve the objective defined by the Constitution there can be used only such means that are suitable and necessary for achieving the objective and that the means chosen and the objective pursued should be in equivalent correlation with each other.

The mean is suitable for achieving the objective pursued in case if it can, at least, contribute to achieving that objective. It is necessary to interfere in the fundamental right only in case if the objective pursued cannot be achieved in another equally effective, way, which will restrict less the legal advantage protected by concerned fundamental right. Besides, the interference should be adequate or moderate, that is, the intensity of interference should not be inadequate to the significance and weight of the fundamental right to be restricted.⁵

In this regard, the following legal propositions of the Constitutional Court of RA are remarkable. The Decisions DCC-1256 of February 23, 2016 and DCC-1293 of July 12, 2016 of the Constitutional Court of RA emphasize that *the means chosen for restriction of the fundamental rights and freedoms should not destroy the reasonable balance between the objective pursued and the means used for achieving the objective.*

It is also remarkable that *in connection with Article 78 of the Constitution of RA the Court of Cassation has recorded: "It follows from*

⁵ See Edited Constitution of the Republic of Armenia of 2015, Vardan Poghosyan, Nora Sargsyan. Yerevan, Tigran Mets, 2016, p. 82.

the content of the principle of proportionality that the means chosen for the right should be:

- suitable and necessary to achieve the objective pursued;*
- be in the equivalent correlation with the objective pursued.*

According to the criterion of “suitability”, the means is considered suitable if it gives an opportunity to achieve the objective pursued. Meanwhile, in case of the criterion of “necessity”, the means is considered necessary if the objective pursued by law cannot be achieved with equally suitable and milder means, except the means chosen.

As to the equivalent correlation of the means applied and the objective pursued, it means that the depth of the boundaries of interference should not be inadequate to the axiological significance and weight of the fundamental right to be restricted. Otherwise, a fair balance should be between the means applied and the objective pursued; to achieve the objective pursued the means applied should not be too strict, bypassing the reasonable possibilities to achieve the same objective by other means requiring minimal efforts”.⁶

Based on the above, it should be emphasized that, in this case, to restrict the constitutional rights under discussion, availability of connection between the alleged violation, committed by a detainee or a convicted person, and the restriction of particular right should be a mandatory condition. Particularly, the restriction of the right should not be an end in itself, but be tended to implementation of the particular objective, which could be possible exclusively through restriction of the concerned right.

⁶ See Accordingly Points 15 and 16 of the Decisions 647/0056/11/17 and U7/0088/01/12 of March 20, 2018 of the Court of Cassation.

II. Peculiarities of Realization of Rights to Respect for Private and Family Life of Detainees and Convicted Persons and to Freedom of Communication

Realization of rights to respect for family and private life, as well as the rights to communication, is especially of great significance in places of deprivation of liberty. The legislation of RA envisages that the detainees and the convicted persons have the right to contact with outside world: telephone calls, visits, correspondence, use of literature and news media.

In particular, Point 9 of Part 1 of Article 12 of the Penitentiary Code⁷ of RA defines that *the convicted person has the right to communicate with outside world, including carrying on a correspondence, having visits, making use of telephone communication, literature and possible mass media*. According to Point 9 of Part 1 of Article 13 of the Law⁸ of RA “On Keeping of Arrested and Detained Persons”, *the arrested or detained person has the right to communicate with the outside world*.

In places of deprivation of liberty, including penitentiary institutions, the contact of the person with the outside world is displayed in realization of rights to respect for private and family life, as well as to freedom of correspondence, telephone conversations and other forms of communication. In this context, it should be mentioned that the individual plan is the cornerstone of the resocialization of the person as realization of the main objective of the punishment, within the frames of which the risks and needs of the person deprived of liberty as well as employment, occupation, education and **contact with the family and the outside world**, in terms of medical service should be discussed.

⁷ Hereinafter Code.

⁸ Hereinafter Law.

This basic principle on execution of punishment has been established in Europe and worldwide.⁹ It has been also recorded in the case-law judgments of the European Court.¹⁰ Therefore, providing a person deprived of liberty with contact with the outside world and promoting its implementation is essential just from the point of view of realization of its ultimate objective of resocialization.

The significance of the resocialization of the persons deprived of liberty and the role of the penitentiary system in it have been also touched upon in the UN Covenant on Civil and Political Rights. In particular, according to the first sentence of Part 3 of Article 10 of the Covenant, *the penitentiary system should establish such an attitude towards the persons deprived of liberty, the primary objective of which should be their correction and resocialization.*¹¹

The significance of the contact of the convicted person with the outside world is also emphasized in the Rules of the UN, the Recommendations of the Council of Europe, the European Court case-laws, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹² and other documents.

Particularly, according to Point 1 of Rule 58 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), *the persons deprived of liberty should be allowed, under necessary supervision, to communicate, with periodic intervals, with their families*

⁹ See paragraph 10 of the special opinion of the Judges Puntos de Albuquerque and Turkovich of the European Court on the case of Khoroshenko v. Russia of June 30, 2015, <http://hudoc.echr.coe.int/eng?i=001-156006>.

¹⁰ See paragraph 4 of the special opinion of the Judges Puntos de Albuquerque and Turkovich of the European Court on the case of Khoroshenko v. Russia of June 30, 2015, <http://hudoc.echr.coe.int/eng?i=001-156006>.

¹¹ See Part 3 of Article 10 of the UN Convention on Civil and Political Rights of December 16, 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹² Hereinafter CPT.

*and friends by correspondence and, if possible, by telecommunication, electrical, digital and other means, as well as receive visitors.*¹³

In its case-law judgments, the European Court has repeatedly recorded the significance of the right to respect for private and family life, especially when it is referred to persons deprived of liberty. For example, in the judgment on Khoroshenko vs. Russia of June 30, 2015 it is recorded, that *detention like any other means of deprivation of a person of liberty, results in the restriction of his/her private and family life. However, an important part of the right of the convicted person to respect for his/her family life is the providing him/her with contact with his close relatives by the staff, as well as supporting*¹⁴ *to provision, if required.*

The significance of providing the persons deprived of liberty with contact with the family and the outside world and their resocialization within its frames has been also emphasized in Rule 24.1 of Recommendation No (2006) 2 “On the European Prison Rules” of the Council of Europe Committee of Ministers, according to which *the persons deprived of liberty should be allowed, as often as possible, to communicate with their families, other persons and representatives of external organizations by correspondences, telephonies or other means of communication, as well as to meet with the listed persons.* Rule 24.4 defines that *the visits should be arranged in such a way that the persons deprived of liberty are allowed to maintain and develop them in the possibly appropriate way.* Moreover, Rule 24.5 envisages that *the staff of the penitentiary institution should support the persons deprived of liberty*

¹³ See Point 1 of Rule 58 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁴ See Point 106 of the judgment of June 30, 2015 of the European Court on the case Khoroshenko v. Russia (appeal No 41418/04), <http://hudoc.echr.coe.int/eng?i=001-156006>.

*to maintain proper communication with the outside world and grant them adequate, sufficient support for its implementation.*¹⁵

Moreover, according to comments on Rule No. 24 of the Recommendation, *the deprivation of liberty should not entail the deprivation of contact with the outside world. On the contrary, all the persons deprived of liberty should have a certain contact, and the administration of the penitentiary institution should ensure such conditions so that they have an opportunity to implement it in the best possible manner.*¹⁶

According to Paragraph 51 of the CPT 2nd General Report, *the sufficient contact with the outside world is of great significance for the persons deprived of liberty. First of all, the person deprived of liberty should be granted the possibility to maintain relationship with his family and close relatives. A leading principle should be the support of contact with the outside world.*¹⁷

The above-stated international and domestic regulations testify to the fact that the contact with the outside world by its various manifestations: visits, telephone calls, use of literature and news media, correspondence, etc., is of great importance. Moreover, provision of support by the staff of the place of deprivation of liberty is significant within the frames of the implementation of the mentioned reasons among the others, as it is considered one of the principal ways of resocialization of the person kept there.

¹⁵ See Rules 24.1, 24.4 and 24.5 of Recommendation No. (2006) 2 “On the European Prison Rules” of the Council of Europe Committee of Ministers, <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

¹⁶ See Comments on the Rule 24.1, of Recommendation No. (2006) 2 “On the European Prison Rules” of the Council of Europe Committee of Ministers, <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

¹⁷ See paragraph 51 of the CPT 2nd General Report on activities (Includes the period from January 1 to December 31, 1992), <https://rm.coe.int/1680696a3f>.

See page 26 on the CPT criteria, <http://static.echr.am/pdf/02d62f9426f1725ecb9525f656d0e6b3.pdf>.

III. Lawfulness of Deprivation of the Respect for Private and Family Life and Freedom of Communication of Detainees and Convicted Persons Transferred to Disciplinary Cell

Transfer to the disciplinary cell, in itself, entails the deprivation of the right to private and family life, freedom of communication. The Penitentiary Code of RA envisages penalties for detainees and convicted persons for violation of the internal rules and regulations or non-performance of their duties. Particularly, Part 1 of Article 35 of the Law envisages that for infringement of internal regulations, nonperformance or improper performance of their duties the following means of penalties can be applied to the detainees: issuing a reprimand and transfer to disciplinary cell for a period of up to ten days, and in case of juveniles - up to five days.

It is noteworthy that, according to the legal regulations of Part 4 of Article 36 of the Penitentiary Code, during period of detention in disciplinary cell the detainees are prohibited from correspondence, visits, except the cases stipulated by law and the visits with the lawyer or the defender, obtaining additional food, living essentials, receiving parcels, making and receiving money transfers, watching TV, and using table game. It is also noteworthy that Part 2 of Article 35 also envisages that the penalties are applied based on decision of the head of the place of detention.

Referring to the penalties for the convicted persons, it should be mentioned that in the cases defined by law the same penalties can be applied to them as well. Particularly, Part 1 of Article 59 of the Penitentiary Code envisages that for violation of the order and conditions of serving the sentence defined by the internal regulations, the following penalties, according to established procedure, can be

applied to the convicted person: reprimand and transfer to disciplinary cell for the period of up to ten days.

Similar restrictions are also foreseen for the convicted persons transferred to a disciplinary cell. Thus, according to Part 2 of Article 59 of the Penitentiary Code, the convicted persons are prohibited from money transfers, use of literature and mass media and work during detention in the disciplinary cell. Moreover, Part 1 of Article 98 of the Penitentiary Code also defines that in case of the application of transfer to a disciplinary cell, as a measure of penalty, deprivation of certain rights of the convicted person is envisaged. In particular, during detention in the disciplinary cell the convicted person is prohibited from visits, except the cases stipulated by law, use of telephone communication, money transfers, receiving and sending parcels, carrying on correspondence, using literature and mass media, work, participation in civil deals. It is also worth to mention that according to Part 2 of Article 97 of the Penitentiary Code all the penalties are applied in writing, by the decision of the head of the correctional institution or by the person performing his duties.

The 2nd sentence of Paragraph 1 of Point 231 of the Appendix of Decree¹⁸ N 1543-N of August 3, 2006 “On Approval of the Internal Rules and Regulations of the Places of Keeping the Detainees and Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia” of the Government of RA. According to it, during detention in the disciplinary cell the detainee or the convicted person is prohibited from correspondence, visits (except the visits of the lawyer or the defender), telephone conversations, obtaining additional food and living essentials, except the cases defined by the

¹⁸ Hereinafter Decree.

legislation of the Republic of Armenia, receipt of parcels, use of table games, newspapers, books, magazines and other literature.

Based on the above-stated legal regulations of the Penitentiary Code, the Law, and the Decree and their comparative study, it can be concluded that, applying the transfer of the detainee or the convicted person to a disciplinary cell as a means of penalty based on decision of the head of the institution, simultaneously, **in any case, automatically, regardless of any circumstance**, deprives him/her of contact with the outside world, visits, phone calls, correspondence, as well as the use of literature, news media, etc. **Under such conditions of regulations, it turns out that this penalty has a nature of inflicting additional deprivations that have nothing related to the objectives or reasons of the penalty. This, in its turn, makes these prohibitions an end in itself.**

The studies conducted in this regard show that, according to the international criteria, the restriction of contact of the persons deprived of liberty with the outside world should be substantiated, proceed from particular objective and be proportionate. The significance of its being substantiated and proportionate consists in preventing the arbitrary or mechanical restrictions of contact of the persons deprived of liberty with the outside world. In particular, in accordance with Paragraph 51 of the CPT 2nd General Report, *any restriction of contact with the outside world should be exclusively based on reasonable considerations of security or insufficient means.*¹⁹

Furthermore, conditioned with the significance of the rights under discussion approved by the positions in the CPT Reports, additional

¹⁹ See paragraph 51 of the CPT 2nd General Report on activities (Includes the period from January 1 to December 31, 1992), <https://rm.coe.int/1680696a3f>. See also page 26 on the CPT criteria, <http://static.echr.am/pdf/02d62f9426f1725ecb9525f656d0e6b3.pdf>.

restriction or deprivation of the respect for private and family life, as well as the right to freedom of correspondence, telephone conversations and other forms of communication envisages the binding approval by the court. For example, in Paragraph 117 of the CPT 2010 Report on France, *the Committee reaffirms the position that according to the European Prison Rules, the detainees should have the opportunity to communicate with their family members and other persons, like the convicted persons, except the cases when the court has envisaged a special prohibition²⁰ for a concrete period of time within the frames of an individual case.*

In Paragraph 58 of the 2004 Report on Iceland, *the CPT finds it necessary to record the concrete reasons in writing which substantiate the restriction of contact of the detainees with the outside world mentioning that the latter should be notified about them.* Moreover, it has been suggested again *that the review procedure²¹ by the court should function (...).*

Paragraph 108 of the 2010 CPT Report on Georgia has recorded that *any prohibition of visits, phone calls, or contacts should be substantiated by inquest needs, there should be the confirmation by a body not affiliated with the investigation of the case and it should be applied for a concrete period of time, indicating the reasons. That given person and his lawyer²² should be notified on the decision of prohibition.*

From the abovementioned positions of the CPT, one can conclude that conditioned with the significance of the rights under discussion,

²⁰ See Paragraph 117 of the 2010 CPT Report on France. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?docuementId=0900001680696082>.

²¹ See Paragraph 58 of the 2004 CPT Report on Iceland, <https://rm.coe.int/1680696c17>.

²² See Paragraph 108 of the 2010 CPT Report on Georgia <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?docuementId=09000016806961dc>.

their restriction or deprivation should be conditioned with the interests of the investigation, aimed at reaching the lawful objective, as well as should envisage the binding approval by the court.

The international documents also establish specific criteria for the disciplinary penalties applicable to the persons deprived of liberty, including the restriction of their right to contact with the outside world in case of transfer to a disciplinary cell. In particular, according to Point 3 of Rule 43 of the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), ***penalties or restriction means should not include the prohibition of family communication. Family communication can be restricted only for a limited period of time, and be conditioned²³ exclusively with the necessity of ensuring security and order.***

The European Court has also touched upon the significance of the family life of the persons deprived of liberty in case-law judgments within the frames of Article 8 of the Convention on the Right to Respect for Private and Family Life. In particular, it was mentioned that *“private life” is a broad concept and has no limited interpretation: it may depend on the circumstances, refer to the ethical and physical integrity of a person.* Further, the European Court has also defined that *these circumstances also refer to the situation²⁴ of the deprivation of liberty.* Moreover, according to the position of the European Court, *the same article envisages not only the protection of the family communication*

²³ See Point 3 of Rule 43 of the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

²⁴ See Point 63 of the judgment of December 16, 1997 of the European Court on the case of Renee v. Finland (Appeal No 152/1996/771/972), <http://hudoc.echr.coe.int/eng?i=001-58123>.

but also personal development, establishment and development²⁵ of relations with other persons and the outside world. Moreover, the connection of the family members with each other is considered the fundamental component²⁶ of the family life. Consequently, the European Court has affirmed that the significant objective of Article 8 is to protect individuals from the arbitrary interferences²⁷ of the public bodies.

According to the factual information, provided by the applicant, on the case of *El Masri vs. the former Yugoslav Republic of Macedonia*, *he had been detained for more than four months in the solitary confinement cell, seeing only the security officers, investigators, he was out of communication with the family who had no information about his whereabouts.* In this respect, the European Court has considered the case within the frames of Article 8 of the Convention and has registered a violation²⁸ of the right of a person.

According to Rule 24.2 of the Recommendation No. (2006) 2 “On the European Prison Rules” of Council of Europe Committee of Ministers, *communication and visits can be subjected to restrictions or monitoring if it is necessary for the continuing criminal proceedings, observation of public order, safety and security, crime prevention and for the purpose of ensuring the requirements foreseen for the protection*

²⁵ See Points 61 and 65 of the judgment of April 29, 2002 of the European Court on the case of *Pretty v. the United Kingdom* (Appeal No. 2346/02), <http://hudoc.echr.coe.int/eng?i=001-60448>.

²⁶ See Point 59 of the judgment of March 24, 1988 of the European Court on the case of *Olsson v. Sweden* (No 1) (Appeal No 10465/83), <http://hudoc.echr.coe.int/eng?i=001-57548>.

²⁷ See Point 31 of the judgment of October 27, 1994, of the European Court on the case of *Cru and others v. Holland* (Appeal No 18535/91), <http://hudoc.echr.coe.int/eng?i=001-57904>.

²⁸ See Points 245, 246 and 250 of the judgment of December 13, 2012 of the European Court on the case of *El Masri v. Holland* (Appeal No 39630/09), <http://hudoc.echr.coe.int/eng?i=001-115621>.

of victims of crimes, however, such restrictions, including the special restrictions defined by the judicial power should envisage an acceptable minimum level of contact. Moreover, Point 60.4 of the same issue defines that **punishment should not include a complete prohibition²⁹ of contact with the family.**

Point 22 of the 2014 CPT Report on Armenia recorded that **the Committee reaffirms its recommendation that the Armenian authorities should take necessary steps to ensure that all the persons deprived of liberty (such as those sentenced to life imprisonment as well as the others) are not deprived of family communication during detention in a disciplinary cell, and that any restrictions of family communication, as a penalty means, is applied only in case when the violation refers to that communication.**³⁰

Moreover, according to Rule 99 on the Contact with the Outside World of the same Recommendation, in case, **when there is no requirement of the court to foresee a specific prohibition for a specified period of time within the frames of a particular case, then the detainees should communicate with the family members and other persons in the same way like the convicted persons. They can also have additional visits and access to the additional types of communication. They should have access to books, newspapers and other news media.**³¹

According to Subparagraph (b) of Point 61 of the 2011 CPT No 26 General Report, **the convicted persons, who have been transferred**

²⁹ See Rules 24.2 and 60.4 of Recommendation No (2006) 2 “On the European Prison Rules” of the Council of Europe Committee of Ministers, <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

³⁰ See Point 22 of the 2014 CPT Report on Armenia, https://www.ecoi.net/en/file/local/1255079/1226_1422964689_2015-10-inf-eng.pdf.

³¹ See Rules 24.2 and 60.4 of Recommendation No (2006) 2 “On the European Prison Rules” of the Council of Europe Committee of Ministers, <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

to a solitary confinement as a means of disciplinary penalty, should not be completely deprived of their family communication and each restriction of that communication should be applied only in cases when the violation refers to such a communication. Moreover, the situation is also problematic when the persons deprived of liberty are often deprived of contact with the outside world for several weeks or even months (no phone calls or visits). The CPT notes that it is unacceptable to leave the persons deprived of liberty without events or contact³² with the outside world for a long period of time.

The issue of mechanical restriction of the fundamental rights of the person in case of the transfer to a disciplinary cell was touched upon in the comments of the Recommendation (2006)2 “On the European Prison Rules” of the Council of Europe Committee of Ministers. In particular, in accordance with their first Rule, *in case of deprivation of liberty there inevitably arise issues on human rights. The 1st Rule emphasizes this truth from the point of view of necessity for respect towards the persons deprived of liberty. Humanity towards them requires such a respect.* The 2nd Rule of the same issue of the document defines that, *this Rule by supplementing the 1st Rule defines that, **of course, the deprivation of the right of the persons to freedom does not suppose that the persons deprived of liberty are mechanically deprived of their political, civil, social, economic and cultural rights.** In case of deprivation of liberty, undeniably, the rights of the individuals are restricted, but such additional restrictions should be as less as possible. These Rules completely indicate some steps that can reduce the negative consequences of the deprivation of liberty. Each additional restriction should be prescribed by law and should be applied only in case when it is significant for establishing order, ensuring*

³² See Subparagraph (b) of Point 61 of the 2011 CPT No 26 General Report, <https://rm.coe.int/16806cccc6>.

security in the penitentiary institution. It is obvious from the international regulations introduced above that the restriction of the rights to family and private life, communication of the persons deprived of liberty should be substantiated and proportionate. The mechanical restriction of the right is unacceptable, regardless of the nature and the degree of danger of violation.

With regard to the issue discussed, the penitentiary legislation regulations of different countries on the extent of restriction of the right of the person in the result of transfer to a disciplinary cell were studied. The analysis has shown that in the legislative field related to the sphere some of the countries have envisaged a separate provision, prohibiting the restriction of contact with the outside world in case of transfer to a disciplinary cell. Particularly, Chapter 15 of the Finnish Penitentiary Act No 767/2005 is dedicated to the order and discipline in the penitentiary institution. According to the last subparagraph of Paragraph 4 of this Chapter envisaging penalties towards the persons deprived of liberty, ***the deprivation of rights should not result in the restriction of contact of the person deprived of liberty with the outside world.*** Subparagraph 1 of Paragraph 8 of the same Chapter referring to disciplinary cell envisages that *the right of the person deprived of liberty to contact with the outside world and have a walk can be restricted only when they endanger the security³³ of the person deprived of liberty or the others.*

Point 6 of Part 1 of Article 74 of Act No 15/2016 of Iceland on Execution of Sentences envisages the transfer to the disciplinary cell for

³³ See Paragraph 4 and Subparagraph 1 of paragraph 8 of Chapter 15 of the Finnish Penitentiary Act No. 767/2005, http://www.vankeinhoito.fi/material/attachments/rise/saannokset-osanliitteet/6IOn6IKW7/Vankeuslaki_Imprisonment_Act.pdf.

15 days as a means of penalty. However, ***the mentioned does not entail any restriction³⁴of contact with the outside world.***

According to Article R57-7-33 of the Criminal Procedure Code of France, amongst others, there are separate penalty means, such as *prohibition on receiving support from outside world for a maximum term of up to two months, deprivation of cultural, sport or recreational events for maximum of one month and transfer to a disciplinary cell.* Moreover, in accordance with Subparagraphs 2 and 3 of Article R57-7-45 of the Code, ***the transfer to the disciplinary cell does not entail any restriction of the written communication of persons deprived of liberty and the latter retain their right to make telephone calls during the penalty application.***³⁵

Point 5 of Part 2 of Article 146 of the Act on the Penitentiary Punishments of Croatia envisages the transfer to the disciplinary cell as a means of penalty. According to Part 6 of Article 139 of the same Act, *the person deprived of liberty detained in the disciplinary cell can use personal effects, read daily news and books, exchange letters, and listen to the radio.*³⁶

According to Article 152 of the Law on Execution of Criminal Punishment of Serbia *during transfer to the disciplinary cell, as an*

³⁴ See Point 6 of Part 1 of Article 74 of Act No. 15/2016 of Iceland on Execution of Sentences, <http://www.fangelsi.is/media/skjol/Execution-of-Sentences-Act-No-15-23-March-2016.pdf>.

³⁵ Article R57-7-33 and Subparagraphs 2 and 3 of Article R57-7-45 of the Criminal Procedure Code of France, https://www.legifrance.gouv.fr/affichCode.do;jsessionid=EA480BEC6B7AB59CCAECB7685A1E3B9E.tplgfr36s_3?idSectionTA=LEGISCTA000023349619&cidTexte=LEGITEX T000006071154&dateTexte=20180719.

³⁶ See Point 5 of Part 2 of Article 146 and Part 6 of Article 139 of the Act on the Penitentiary Punishments of Croatia,

[http://pak.hr/cke/propisi.%20zakoni/en/Executionof%20PrisonSentenceAct/Execution.p
df.](http://pak.hr/cke/propisi.%20zakoni/en/Executionof%20PrisonSentenceAct/Execution.pdf)

*application of the penalty means, the person can **read and write** as well as has an opportunity of making use of an hour-long daily walks.*³⁷

The study of the regulations approved by the abovementioned countries in connection with the raised issue shows that they exclude the mechanical, end in itself, arbitrary or disproportionate restriction of the various aspects of contact with the outside world based on transfer to the disciplinary cell.

The study has also shown that there are countries by the penitentiary legislation of which the restrictions of the various aspects of contact of the convicted person or the detainee with the outside world are considered a separate means of penalty. For example, Issue 103 of Chapter 13 on the Disciplinary Action of the Act “Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty” of Germany, envisages their types. Subparagraph 9 of Paragraph 1 of the same Issue defines *the transfer to the disciplinary cell as a means of disciplinary penalty*. However, it is noteworthy that, apart from the mentioned, Subparagraph 8 of the same Point envisages ***the restriction of contact with persons outside the institution as a separate means of penalty***.

Point 3 of Part 1 of Article 74 of Act No 15/2016 of Iceland on Execution of Sentences envisages *a separate disciplinary penalty, that is, deprivation of additional equipment requiring special permits, as well as reduction of visits, phone calls and communication*. Article 46 of the same Act envisages *restrictions of specific visits*. Its grounds, in particular, are aimed at ensuring the order and security, preventing the

³⁷ See Article 152 of the Law on Execution of Criminal Punishment of Serbia, <https://www.mpravde.gov.rs/en/tekst/1701/criminal-matter.php>.

³⁸ See Sub-points 8 and 9 of Point 1 of Issue 103 of Chapter 13 on the Disciplinary Action of the Act “Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty” of Germany, http://www.gesetze-im-internet.de/englisch_stvollzg/index.html#gl_p0483.

crime or having a reason to suspect that the visit will be abused³⁹ in a way.

The study of the legislation of the mentioned countries shows that, first, such a division foresees an opportunity for a competent state body or an official to apply, in certain cases, proportionate and targeted disciplinary penalty. Secondly, the principle of the presented regulations, the division of disciplinary penalties also theoretically excludes the mechanical restriction of the rights of persons deprived of liberty in the penitentiary institution in case of applying a concrete penalty.

It is also noteworthy that the study of the experience of different countries on the issue under consideration also shows that there are countries (e.g. Bosnia and Herzegovina⁴⁰), in the respective legal acts of which no regulation is separated on that the transfer to the disciplinary cell in itself entails a deprivation of contact with the outside world, nevertheless, no provision is available either that requires the mechanical restriction of rights in such cases. Consequently, under the circumstances, a general rule concerning the contact of the persons deprived of liberty with the outside world functions.

Taking into consideration the above-stated approach of the international experience on the problem under consideration, the issue should be also considered from the point of view of Article 81 of the Constitution of RA. According to the Article, while *interpreting the provisions on the fundamental rights and freedoms fixed in the Constitution, the practice of the bodies acting on the basis of*

³⁹ See Point 3 of Part 1 of Article 74 and Article 46 of Act No 15/2016 of Iceland on Execution of Sentences, <http://www.fangelsi.is/media/skjol/Execution-of-Sentences-Act-No-15--23-March-2016.pdf>.

⁴⁰ See Law “On the Execution of Criminal Sanctions, Detention and Other Measures” of Bosnia and Herzegovina, <http://www.refworld.org/docid/5b349bf24.html>.

international treaties on human rights ratified by the Republic of Armenia is taken into consideration. The restrictions of the fundamental rights and freedoms cannot exceed the restrictions established by the international treaties of the Republic of Armenia. Accordingly, when interpreting the constitutional right to family life and communication, attention should be paid to the referred criteria established by the international organizations, as well as acting on the basis of the international fundamental documents.

Based on the analysis made, it should be recorded that the restriction of contact of the persons deprived of liberty with the outside world and deprivation, in some cases, is considered lawful by the referential international and domestic regulations. However, this should be observed as a last resort, be targeted and applied in extreme cases. The restriction of the rights under consideration should be also conditioned by the nature of the violation committed by the person, be proportional and substantiated. The mentioned are the mandatory conditions of restriction of the constitutional rights under consideration, which are tended to excluding unproportioned or arbitrary restrictions of the rights of the person in one way or the other.

IV. Social Isolation of the Detainees and Convicted Persons Transferred to a Disciplinary Cell and Possible Consequences on the Mental Health of the Person

As it has been already mentioned, the current regulations envisage absolute deprivation of contact with the outside world for the detainees and the convicted persons transferred to a disciplinary cell. So, it refers to the complete isolation of the person, moreover, it is carried out under such conditions that it turns out it is an end in itself and is intended to inflict additional deprivation to the person. During his/her detention there the isolation of the person can entail a state of mental depression.

Touching upon the raised issue, it should be emphasized that in the result of discussion of the complaints addressed to the Human Rights Defender, private interviews carried out by the staff representatives, as well as the monitoring conducted in the status of the National Preventive Mechanism, cases were recorded when depression was observed in the detainees and convicted persons kept in the isolation. Although no active symptoms of mental disorder were found in the persons deprived of liberty during the private talks carried out, nevertheless, the mood disorder, social deprivation to different extent and the lack of plans for the future, observed in most of them, are of concern.

At the same time, depending on the psychological peculiarities of the persons deprived of liberty and the availability of the former mental health problems their social isolation can cause mental disorders such as depression, hallucinatory, delusional disorders, and so on. This situation is exposed, especially, in the detainees who, after entering the penitentiary institution, are not completely adapted to the environment and are in a serious mental condition. In practice, there are also cases

when the persons deprived of liberty being in isolation even do not want to talk to a psychologist or a social worker.

A thorough analysis on the practical and legislative problems⁴¹ of psychological assistance provided in the penitentiary institutions finds its place in the annual report on the 2017 activities of Human Rights Defender of the Republic of Armenia acting as National Preventive Mechanism. Merely the deprivation of liberty in the penitentiary institutions, as it is, can cause psychological problems, and the professional ineffective assistance can entail negative consequences for a person. Today, there are issues related to the psychological support in the penitentiary system and in the system on arrangement of the deprivation of liberty, in general.

No necessary procedure on providing a psychological support is available, the mechanisms, particularly, related to persons transferred to a disciplinary cell, are not distinct. Results-oriented psychological programs almost are not implemented with the persons deprived of liberty of high risk, or having symptoms not excluding the criminal sanity or inclination to self-injury or suicide.

Summarizing the above-stated, it should be emphasized that the mentioned practical and staff problems negatively affect the persons in the disciplinary cell, therefore, being socially isolated and in the result of it having mental problems, by that worsening the situation.

The analysis of the international experience related to the mentioned problem also shows the danger of worsening of the mental state of the persons transferred to a disciplinary cell and, in the result of it, being in

⁴¹ See p.p. 46, 47 and 48 of the annual report on the 2017 activities of the Human Rights Defender of the Republic of Armenia as the National Preventive Mechanism, <http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf>.

a social isolation. In particular, in accordance with Rule 44 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), *by saying isolation it should be understood keeping the persons deprived of liberty in isolation for 22 hours and more a day without a sufficient human contact, and a long-term isolation should be understood as isolation of the person deprived of liberty for a period of time exceeding 15 days.*⁴²

At the same time, it should be emphasized that the transfer of food by the penitentiary officer or the observation of the cell for control cannot be considered a sufficient human contact. At the same time, non-regular and non-systematized work of the social-psychological employees of the penitentiary institution, walks cannot ensure a sufficient human contact of the persons deprived of liberty in the absence of purposeful educational, sports, employment and other programs.

Referring to the issue of the sufficient human contact of persons deprived of liberty, the European Court has mentioned that *an hour-long open-air training is even more aggravate the state of the person kept in non-freedom, who spends the rest part of the day in the cell without freedom of movement.* The Court found that *two long-term and six short-term visits of the family members per year, non-frequent meetings with the lawyer outside the cell, conversations with other convicted persons during an hour-long walk, and the rare contacts with the staff of the place of deprivation of liberty could not have a significant positive impact on the person kept in a cell for 23 hours per day under the conditions of isolation.* The Court has come to the conclusion that *the long period of keeping isolated in non-freedom can*

⁴² See Rule 44 of the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

have a harmful influence on the mental health of a person, exceeding the permissible limits of detention and being an inhuman attitude⁴³ humiliating the honor and dignity of the person.

According to the Istanbul Declaration of December 9, 2007 on the isolated imprisonment and its consequences, *the isolation can entail psychological and, sometimes, psychiatric problems. A wide range of symptoms has been recorded, beginning from insomnia and uncertainty to the hallucinations and psychosis. The negative effects on the health of the person can appear after a few days of isolation, and the risk impending the health increases day by day.*⁴⁴

The mentioned practical problems and the cited international legal regulations testify that the situations are problematic when the detainee or the convicted person being transferred to the disciplinary cell, regardless of the basis, is deprived of the contact with the outside world as it can adversely impact on the mental health of the person.

⁴³ See Points 69, 70, 72, 73 and 76 of judgement of October 4, 2013 of the European Court on the case of *Rsakhanov v. Azerbaijan* (Appeal No 4242/07), <http://hudoc.echr.coe.int/eng?i=001-122262>.

⁴⁴ See page 14 of the Guide on «Security and Personal Dignity Balance for Preventive Monitoring» of the Torture Prevention Association and International Prison Reform, https://www.penalreform.org/wp-content/uploads/2013/11/security-dignity-v8-final_for-web.pdf.

Conclusion

Thus, the Human Rights Defender records that as a result of keeping the person in a disciplinary cell, in case of restriction of the rights discussed in this report it is mandatory to ensure proportionality of violation committed by the person and the penalty or restriction of the right to be applied. The means of penalty under discussion should be applied strictly proportionally to the violation committed in each case, as well as an individual approach should be ensured. It is necessary to take into account the circumstances of the particular violation and the risk of the behavior of the person deprived of liberty. The substantiation of the respective decision should be ensured as well.

Nevertheless, the means of the penalty to be applied should have a preventive purpose as well as proceed from the necessity of ensuring the security of penitentiary institution. These institutions are specific both in terms of rights as well as the security, so they require special work approaches.

The appeal of the Human Rights Defender to the Constitutional Court, as a step directed to the contribution of the solution of the systemic problem, is conditioned with the substantiations mentioned in this report.