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**TITLE**

**Legal issues and gaps in penitentiary legislation and practice in Republic of  
Armenia concerning prisoner's and detained person's contact with the outside  
world**

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## INTRODUCTION

The main goal of the development of the Armenian criminal justice system is to bring its regulations in line with international agreements and legal acts on the treatment of persons serving sentences in places of deprivation of liberty.

The development of the penitentiary system is impossible without the reform of the penal enforcement legislation and its constituent institutions and norms, including norms concerning the communication of persons deprived of their liberty with the outside world. These norms aim to prevent or at least reduce the negative consequences associated with the physical isolation of persons deprived of their liberty from society.

Deprivation of liberty, as practice shows, often leads to the disintegration of the family and the interruption of the relationship between the persons deprived of their liberty and his/her former entourage. However, if the person deprived of his/her liberty manages to maintain contacts with the outside world during the whole term of punishment, it helps to encourage the re-socialization of the person<sup>1</sup>.

This research paper aims to identify the gaps and loopholes in legislative regulations and ways to improve them which in practice will lead to unrestricted communication of persons deprived of their liberty with the outside world in accordance to international standards.

Respect to private and family life is a fundamental right of each individual in a democratic society, which should be ensured by a developed state, regardless of age, sex, race, nationality, creed or status of a person and other criteria. Respect to private and family life is subject to a full protection. Private and family life is enshrined in Article 31 (1) of the Constitution, according to which everyone has his/her private and family life, the right to inviolability of the dignity and reputation<sup>2</sup>.

The right to private and family life has been enshrined in a number of international legal documents as well. Thus, in accordance with Article 8 of the European Convention on Human

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<sup>1</sup> Ноянова Ольга Евгеньевна, Понятие и социально-правовое значение общения осужденных с внешним миром в процессе отбывания лишения свободы, Москва 2000, стр 4.

<sup>2</sup> ՀՀ Սահմանադրություն, հոդված 31:

Rights, para. 1, Everyone has the right to respect for his private and family life, his home and his correspondence<sup>3</sup>.

The right to private and family life of persons deprived of liberty in any way implies the state's positive obligation to take the necessary measures, which are aimed at the realization of the rights of persons deprived of their liberty.

**We believe that** respect for the right to private and family life of the person sentenced to imprisonment is a serious guarantee for re-socialization.

In order to ensure prisoners re-socialization certain requirements are necessary, concerning the conditions of serving the punishment, which will be sufficient for persons deprived of their liberty not to lose skills and rules of behavior previously acquired in the society.

It will contribute to the normalization of life and labor of persons deprived of their liberty, strengthening family and social ties.

The practical scientific innovation of the Master paper research lies in the fact that its results can be further used in the improvement of the penal legislation and legal acts which regulate the procedure for its application. The results can also be used in the practical activities of institutions that carry out punishment in the form of deprivation of liberty and conducting further research on the issues of execution of punishment in the form of deprivation of liberty and comparative law.

The research paper consists of Introduction, 2 Chapters, Conclusion and bibliography. In the first Chapter we are going to discuss methods of realization of the right of prisoner's and detained person's to contact with the outside world, in particular, legal regulations of Penal code of Republic of Armenia and the Law of RA on Keeping Arrested and Detained Persons. We are also going to discuss the components of Article 8 of European Convention of Human Rights, the importance of fulfilling its positive obligations under European Convention by the State, the importance of re-socialization and the role and significance of communication of persons deprived of their liberty with the outside world. In the second Chapter we are going to discuss legislative changes aimed to improve legal acts which enshrine the right to the contact with the outside world, in particular, terms and conditions of providing short-term meetings, short-term meetings of foreigners and the frequency of meetings of women deprived of their liberty with close relatives, the issue of no long-term meetings prescribed for detained persons, short-term leaves provided to persons deprived of their liberty and issues concerning transfer of a prisoner from one penitentiary institution of the same type to another for serving the rest of the punishment.

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<sup>3</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), Article 8.

## **CHAPTER 1: METHODS OF REALIZATION OF THE RIGHT OF PRISONER'S AND DETAINED PERSON'S TO CONTACT WITH THE OUTSIDE WORLD IN PENITENTIARY LEGISLATION OF REPUBLIC OF ARMENIA.**

One of the important aspects of the execution of punishment is the organization of communication of persons deprived of their liberty with the outside world for the purpose of successful social adaptation for the forthcoming release. It is necessary to determine the role and significance of communication of persons deprived of their liberty with the outside world in the process of execution of punishment.

Penal Code of Republic of Armenia was adopted on 24 of December 2004 and entered into force on 10th February 2005. The Objectives of the Penal Code of the Republic of Armenia is to establish the terms and conditions of execution of criminal penalties and terms and conditions to apply enforcement measures of medical nature connected to the execution of punishment, providing conditions necessary for correction of the prisoners (re-socialization) and protection of their rights and freedoms.

For implementation of tasks of the current Code, the Penal Code of the Republic of Armenia stipulates the basis of execution of the punishment, the principles of the penal legislation, the legal status of the persons deprived of their liberty, the guarantees of providing their rights and freedoms, execution of types of punishments, the conditions of probation in case of early conditional release, control during period of supervision and also the release from punishment<sup>4</sup>.

According to Article 8 of the European Convention on Human Rights Everyone has the right to respect for his private and family life, his home and his correspondence.<sup>5</sup>

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<sup>4</sup> Penal Code of RA, 2005, article 2.

<sup>5</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

The content of private life, family life, home or correspondence are dynamic as their meaning is capable of evolving and they have the potential to embrace a wide variety of matters, some of which are connected with one another and some of which overlap.<sup>6</sup>

European Court of Human Rights stated that, private life is a broad concept which is incapable of exhaustive definition.<sup>7</sup> The concept is clearly wider than the right to privacy, however, and it concerns a sphere within which everyone can freely pursue the development and fulfillment of his personality. In 1992, the Court said that it would be too restrictive to limit the notion of private life to an “inner circle” in which the individual may live his own personal life as he chooses and to exclude there from entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings *Thus, private life necessarily includes the right to develop relationships with other persons and the outside world.*<sup>8</sup>

The concept of family life has evolved steadily in the lifetime of the European Convention and it continues to develop so as to take account of social and legal change. Similar to the concept of private life, therefore, the European Court of Human Rights maintains a flexible approach to the interpretation of family life, bearing in mind the diversity of modern family arrangements, the implications of divorce and medical advance. According to the wording of the provision, family life is located squarely within the private sphere, where it is entitled to function free from arbitrary state interference<sup>9</sup>.

In general, home, within the meaning of Article 8, is where one lives on a settled basis and it may be the case, therefore, that all living places constitute a home within the meaning of Article 8 para. 1<sup>10</sup>.

While the meaning of correspondence clearly includes materials which cross by post, the European Court of Human Rights has also found the concept to include telephone communications<sup>11</sup> and telexes<sup>12</sup>. As the literal meaning of home has been expanded in this way, it is anticipated that the concept will continue to be interpreted so as to keep pace with developments in technology which may bring other methods of communication within its sphere of protection<sup>13</sup>.

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<sup>6</sup> A guide to the implementation of Article 8 of the European Convention on Human Rights, page 10.

<sup>7</sup> Costello-Roberts v. the United Kingdom, judgment of 25 March 1993, para. 36.

<sup>8</sup> Niemietz v. Germany, judgment of 16 December 1992.

<sup>9</sup> A guide to the implementation of Article 8 of the European Convention on Human Rights, page 15.

<sup>10</sup> A guide to the implementation of Article 8 of the European Convention on Human Rights, page 19.

<sup>11</sup> Klass v. Germany, judgment of 6 Sep. 1978, para. 41.

<sup>12</sup> Campbell Christie v. the United Kingdom, 27 June 1994, DR 78A, p. 119

<sup>13</sup> A guide to the implementation of Article 8 of the European Convention on Human Rights, page 20.

*Thus, in order to fulfill its positive obligations to respect article 8 of European Convention of Human Rights in the scope of persons deprived of their liberty the State has passed a number of legal regulations, for instance:*

A prisoner has the right to communicate with the outside world, including maintaining correspondence, have visits, enjoy telephone communication, literature and available mass media, to receive and send parcels and packages etc. Similar provisions are provided by the law of RA on Keeping Arrested and Detained Persons<sup>14</sup>.

The administration of the penitentiary institution creates the appropriate conditions to ensure the contact of the prisoner with family and the outside world. To that end, rooms for short and long meeting, possible means of communication, possibilities for the use of media are established penitentiary institutions. Again, same provisions are provided by the law of RA on keeping arrested and detained persons.

A short visit with close relatives or other persons shall be provided at least once during the months, up to four hours, unless otherwise provided by law. Long-term visits are only provided with persons who have the right to live together with persons deprived of liberty and with close relatives at least once during two month up to three days. Long-term visits are also provided with persons who are not married to the person deprived of his/her liberty, but have a child with the prisoner. At the request of the persons deprived of their liberty, long-term visit, except for cases stipulated by law, may be replaced by short-visits. At least three short and one long term visit per year is provided to persons sentenced to life imprisonment or sentenced to imprisonment for a certain time period for a grave crime. This restriction shall be eliminated, if the person deprived of his/her liberty has actually served the term of the punishment set by the Criminal Code of Republic of Armenia prescribed for the early conditional release. The procedure for granting short-term and long-term visits shall be defined by internal regulations of correctional institutions.

The person deprived of his/her liberty is allowed to get and at his own expense send parcels or packages, without limitation send and receive money transfers, as well as to maintain correspondence at his own expense, without the limitation of the number of letters and telegrams. The procedure of sending and receiving parcels, packages and letters, as well as the procedure to handing them to the persons deprived of their liberty are determined by the internal regulations of correctional institutions<sup>15</sup>.

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<sup>14</sup> Penal Code of RA, 2005, article 12, Law of RA on Keeping Arrested and Detained Persons, 2002, article 13.

<sup>15</sup> The government decision of 2006 number 1543 on “The internal regulation of penitentiary institutions and places for keeping detained persons”

The procedure and the amount of using communication means, including telephone, by the persons deprived of their liberty are established by internal regulations of correctional institutions.

Correspondence is performed through the correctional facility and, without examining the contents of the correspondence, is a subject to external examination, to exclude the transfer of prohibited objects or substances. In the absence of the persons deprived of their liberty letters are sent to the new location.

The administration of the correctional institution creates conditions for excess to newspapers, magazines and other literature.

Persons deprived of their liberty are photographed, videotaped, and interviewed according to the procedure established by the internal regulations of correctional institutions after the consent of the persons deprived of their liberty. The consent may be given in a written form<sup>16</sup>.

Private appointments with legal representatives and close relatives for detained and arrested persons and also appointments with mass media for detained persons and other persons are provided by the decision of the head of the detention facility.

A detained person shall be provided to at least two visits during the month to close relatives, representatives of mass media or other persons up to three hours.<sup>17</sup>

Persons deprived of their liberty, with the exception of particularly dangerous recidivism or particularly grave crime, may be granted a short-term leave for exceptional personal circumstances (death of a close relative or a life-threatening illness, natural disaster, which caused considerable material damage upon the persons deprived of their liberty or his/her family), as well as social rehabilitation. Persons deprived of their liberty with disabled children or children at the orphanage next to the correctional institution may be granted short-term leave, for the purpose of placing the child in an orphanage or to place a child in the care of a close relative.

Short-term leaves shall be granted for up to seven days, excluding the time required for the return, which may not exceed three days. Social rehabilitation of persons deprived of their liberty serving sentences in open correctional institution may be granted a short leave of up to one month, excluding the time required for the return, which may not exceed three days. Persons deprived of their liberty serving in semi-open, semi-closed or closed correctional institutions are granted short-term leave for no more than twice during the year.

Negatively characterized prisoner is granted a short-term leave only if accompanied by a representative or representatives of the correctional facility<sup>18</sup>.

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<sup>16</sup> Penal Code of RA, 2005, article 92, Law of RA on keeping arrested and detained persons, 2002, article 17.

<sup>17</sup> Law of RA on keeping arrested and detained persons, 2002, article 15.

<sup>18</sup> Penal Code of RA, 2005, article 92, Law of RA on keeping arrested and detained persons, 2002, article 80.



Detainees, except charged for particularly grave crime, may be granted short-term leaves in cases of life-threatening illness or death of a close relative, detainee or his family caused considerable material damage in case of natural disaster.

Juvenile detainees are granted a short-term leaves must be accompanied by relatives or other persons.

Short-term leaves shall be of up to seven days, excluding the time necessary for the journey back and forth. Short-term leaves are granted by the decision of the investigative body<sup>19</sup>.

*At the same time with the above mentioned regulations, legal issues and gaps (which will be discussed in Chapter 2) can be detected in penitentiary legislation as a result of which the state will fail to fulfill its positive obligation under the Article 8 of European Convention of Human rights. The failure will also lead to the distortion of the process of re-socialization.*

As applied to public interests, one must take into account that deprivation of liberty is a contradictory phenomenon. Providing protection of some social relations, it inevitably adversely affects others<sup>20</sup>.

Therefore, punishments related to deprivation of liberty, the execution and serving of which occurs with the separation of the persons deprived of their liberty from the habitual environment, entail weakening, and sometimes the loss of socially useful links, a significant limitation of social roles. The deprivation of liberty often leads to the disintegration of the family and the interruption of the relationship between the persons deprived of their liberty and their former entourage. However, if a person deprived of his liberty manages to maintain contact with the outside world during the whole term of punishment, it will help him to find a place in society after his release. Thus, one of the important aspects of the execution of punishment is the organization of communication of prisoners sentenced to imprisonment with the outside world with a view to successful social adaptation and their preparation for the forthcoming release.

Proceeding from the foregoing, it seems necessary to determine the role and significance of communication of persons deprived of their liberty with the outside world in the process of execution of punishment.

All elements of the penitentiary system are regulated by law, otherwise the content is mediated through the form. Among these elements is the communication of persons deprived of their liberty with the outside world. The more precise the right as a form reflects the essence, regularities

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<sup>19</sup> Law of RA on keeping arrested and detained persons, 2002, article 17.

<sup>20</sup> Осипов П.П. Теоретические основы построения и применения уголовно-правовых санкций. Л., 1976. С. 58.

and features of life activity of persons deprived of their liberty in the conditions of criminal punishment, the more the system will perform its goals and tasks effectively<sup>21</sup>.

In the process of serving his sentence, the person deprived of the liberty interacts mainly with the administration of the penitentiary institution and with the nearest social environment, which also includes persons deprived of their liberty, and to a lesser extent, the social environment in which he or she rotated before the crime (family, relatives, social environment: friends, colleagues, as well as representatives of public associations, which includes representatives of human rights organizations, churches and other public institutions: television, the press, etc.)<sup>22</sup>.

The scope of socially useful connections of persons deprived of their liberty with the outside world is limited in the process of serving their sentences of deprivation of liberty, and with long terms of serving sentences such ties are gradually weakening and can be interrupted altogether, therefore, one of the important aspects of the execution of punishment is the organization of communication of persons deprived of their liberty with the external environment, which allows them to return to society full-fledged law-abiding citizens.

Communication of persons deprived of their liberty with the outside world is expressed in the following forms, which are fixed by the criminal executive legislation: visits, receiving and sending parcels and packages, correspondence, receiving and sending remittances, telephone conversations, short-term leave from correctional facilities, listening to the radio. This also includes visits to a lawyer.

Taking into account the goals of communication pursued by prisoners sentenced to deprivation of liberty, the above forms can be conditionally divided into the following groups:

- 1) personal connections - these include visits of persons deprived of their liberty with relatives and other persons, short-term leaves from correctional facilities,
- 2) receiving or providing material support - this includes receiving and sending parcels and packages, remittances;
- 3) spiritual communication, which includes correspondence, telephone conversations, listening to radio programs, purchasing and storing books<sup>23</sup>.

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<sup>21</sup> Стурова М.П. О соотношении права, управления, педагогики, психологии в процессе исполнения уголовного наказания // В сб.: Труды Академии МВД СССР. Правовые и организационные основы исполнения уголовных наказаний. М., 1991. С. 139.

<sup>22</sup> Шмаров И.В. Предупреждение преступлений среди освобожденных от наказания. М., 1974. С.49.

<sup>23</sup> Ноянова Ольга Евгеньевна, Понятие и социально-правовое значение общения осужденных с внешним миром в процессе отбывания лишения свободы, Москва 2000, стр. 38.

Communication of persons deprived of liberty with the outside world belongs to the sphere of their subjective rights and legitimate interests and is one of the means of corrective influence applied to them in the process of execution of deprivation of liberty.

Permanent visits give persons deprived of their liberty the opportunity to maintain contact with relatives and other close people, help overcome feelings of alienation and doom, and allow the healthy communication of persons deprived of their liberty with society. The loss of useful social ties generates a spiritual isolation of the individual, which can lead to social isolation from society. There is alienation of individual from the dominant goals and values, the divergence of the individual with this society in the assessment of significant goals and beliefs in this society.<sup>24</sup> It follows that the loss of such links can lead to the establishment of antisocial links<sup>25</sup>, to creating a new system of value orientations that will make it difficult to correct persons deprived of their liberty<sup>26</sup>.

The regulation of socially useful links has a great influence on the effectiveness of the process of re-socialization of prisoners sentenced to deprivation of liberty. As you know, criminal punishment related to deprivation of liberty inevitably narrows socially useful connections and the sphere of communication of persons deprived of their liberty (they are separated from the family, the work collective, which could positively influence them). At the same time, the isolation of prisoners deprives them of their ties with persons under whose influence the social and moral deformation of their personality has occurred. Therefore, inadequate control over the socially useful connections of persons deprived of their liberty can lead to the emergence of conditions for the commission of recidivist crimes, which in most cases are related to the resumption of previous ones or the establishment of new contacts in the institution executing punishment, or by undesirable links in the sphere of life and leisure<sup>27</sup>.

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<sup>24</sup> Кон И.С. Социология личности. М., 1967. С.258.

<sup>25</sup> Сухов А.Н. Психология криминогенного общения в среде осужденных. Автореф. дис. ... докт. психол. наук. Л., 1991. С.18.

<sup>26</sup> Васильев А.А., Маслихин А.В., Фефелов В.А. Режим в исправительно-трудовых учреждениях. Рязань, 1978.

<sup>27</sup> Хомколов В.П. Оперативнорозыскные аппараты органов внутренних дел и ресоциализация преступников // В сб. : Стручков Н.А. и проблемы совершенствования деятельности органов, исполняющих наказания. Уфа, 1993. С.137.

## **CHAPTER 2: LEGISLATIVE CHANGES AIMED TO IMPROVE LEGAL ACTS WHICH ENSHRINE THE RIGHT TO THE CONTACT WITH THE OUTSIDE WORLD.**

As it is mentioned in Chapter 1, a means of a contact to the outside world is the right of persons deprived of their liberty to short meetings. The research of Penal Code of Republic of Armenia, The law of Republic of Armenia on Keeping Arrested and Detained Persons, and the government decision of 2006 number 1543 on “The internal regulation of penitentiary institutions and places for keeping detained persons” gave the opportunity to come to the conclusion that not all aspects of short meetings are regulated by these legal acts. The number and the contingent of persons eligible to be present during the meeting, the number of meeting during a certain period, the time of

holding a meeting are included in the regulations of the above mentioned acts but the terms and conditions of providing such meetings are not regulated. In some places of deprivation short meetings are provided with a glass partition (a glass wall) and a phone.

According to the report of 2016 of Human Rights Defender of Republic of Armenia as National Preventive Mechanism complaints have been received that in "Nubarashen" penitentiary institution during short-term meetings persons deprived of their liberty were separated with a glass partition and communicated by a phone. As a result of conducted examination the partitions were removed from the short-term visit rooms of "Nubarashen" penitentiary institution and a reconstruction is planned which will create favorable conditions for providing meetings to persons deprived of their liberty. However, This problem still remains unsolved in several penitentiary institutions and places for keeping arrested and detained persons.<sup>28</sup>

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has mentioned in the report on the visit to Austria carried out by the CPT from 22 September to 1 October 2014 that it is a matter of concern that remand prisoners (including juveniles) in the establishments visited could usually only receive closed visits (i.e. through a glass partition). The CPT accepts that, in exceptional cases, it may be justified, for security-related reasons, to prevent physical contact between prisoners and their visitors. However, open visits should be the rule and closed visits the exception. The Committee recommends that remand prisoners be, as a rule, able to receive visits from their family members without physical separation; visits with a partition should be the exception and applied in individual cases where there is a clear security concern (point 86)<sup>29</sup>.

As mentioned in the report on the visit to Armenia carried out by the CPT from 5 to 15 October 2015 the CPT reiterates its long-standing recommendation that short-term visiting facilities be modified in all prisons so as to enable prisoners to receive visits under reasonably open conditions. Visits under closed conditions should be exceptional, only if there is a well founded and reasoned decision following individual assessment of the potential risk posed by a particular prisoner or visitor (para. 108)<sup>30</sup>.

According to the position of European Court of Human Rights (ECHR), in the case of *Moiseyev v. Russia* (*see, Judgment of 9 October 2008, Application no. 62936/00, § 258*) in the subsequent period the applicant's family was allowed to visit him no more often than twice a month,

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<sup>28</sup> Հայաստանի Հանրապետության մարդու իրավունքների պաշտպանի՝ որպես կանխարգելման ազգային մեխանիզմի 2016 թվականի գործունեության վերաբերյալ տարեկան զեկույց, էջ 45:

<sup>29</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680653ec7>

<sup>30</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bf46f>

each visit lasting up to one hour. During the visits the applicant was separated from his relatives by a glass partition and talked to them through an interphone. A warden was present.

In any event, the Court reiterates that, although physical separation of a detainee from his visitors may be justified by security considerations in certain cases the measure cannot be considered necessary in the absence of any established security risk (*see Ciorap v. Moldova, Judgment of 19 June 2007, Application no. 12066/02, § 117*). As the Court has found above, in the present case there were no security considerations warranting the application of such restrictions. In addition, the Court notes that the applicant was denied any physical contact with his visitors for the entire duration of his detention, that is, for more than three and a half years. The effect of such a long period of time, which must have taken a heavy toll on the applicant and his family, is a further factor weighing in favor of a finding that the contested measure was disproportionate. The Court finds that in the absence of any demonstrated need for such far-reaching restrictions on the applicant's right to respect for family life, the measures at issue cannot be justified under the second paragraph of Article 8 of European Convention (see above, para. 258).

Thus, the Court found that there had been a violation of Article 8 on account of the physical separation of the applicant from his family by a glass partition (see above, para. 259).<sup>31</sup>

*Prohibition of physical contact between prisoners and their visitors may be justified in exceptional cases and only for security-related reasons. However, visits without physical restraints should be the rule and visits with a partition the exception. The prisoners should, as a rule, be able to receive visits from their family members without physical separation; visits with a partition should be the exception and applied in individual cases where there is a justified security concern.*

*Summarizing, it should be noted that numerous steps should be taken in this regard, in particular, to give legal regulations for providing meetings taking into account international criteria, to transform the visiting rooms, dismantle the glass partitions, providing for the possibility of direct contact between persons deprived of their liberty and the visitors.*

Another concern is related to short-term meetings of foreigners and the frequency of meetings of women deprived of their liberty with close relatives, especially their children. These aspects are not regulated in penitentiary legislation.

According to the report of 2016 of Human Rights Defender of Republic of Armenia as National Preventive Mechanism in "Abovyan" penitentiary institution of Ministry of Justice (where women prisoners are kept) complaints have been received concerning the discomfort of the rooms for short-term visits, particularly, the rooms were not heated and it was cold there, at the same time there

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<sup>31</sup> [http://hudoc.echr.coe.int/eng#{"itemid":\["001-88780"\]}](http://hudoc.echr.coe.int/eng#{)

were no means of separation from other persons deprived of their liberty during the provided visits. The prisoners also noted that their relative have to wait up to 4-5 hours until the visit is provided.

As mentioned in the same report persons deprived of their liberty in "Abovyan" penitentiary institution have also complained about the conditions of long-term visits as well, particularly, unsatisfactory sanitary conditions, which is why they refuse to accept long-term visits<sup>32</sup>.

The Standard Minimum Rules for the Treatment of Prisoners<sup>33</sup> apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.

When someone is deprived of his or her liberty, family connections often take on a heightened importance. Family members can play a vital emotional and material support role to detainees in difficult times. Contact with family whilst in detention represents a link between the detainee and the outside world and can often serve as a safeguard. The family will keep track of where their loved ones are detained and look out for their general rights, interests and wellbeing.

Family visits are a right and not a privilege, and upholding the right to family is more than just about allowing the act of visits to occur. There are many elements that must be considered – for example, material conditions for visits, and consideration for vulnerability of detainees and persons with particular needs.

The majority of those in detention will at some stage be released into the community. If the bonds between detainees and their families can be sustained throughout incarceration, the chances of successful reintegration into society are much greater<sup>34</sup>.

The human rights of women and of their children must always be dominant; principles of equivalence and of appropriateness of facility and health care must be recognized. The needs of any child involved must be dominant.

Many women prisoners have children for whom they were the primary or sole care before they were imprisoned. When they are admitted to prison, the family often breaks up, resulting in

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<sup>32</sup> Հայաստանի Հանրապետության մարդու իրավունքների պաշտպանի՝ որպես կանխարգելման ազգային մեխանիզմի 2016 թվականի գործունեության վերաբերյալ տարեկան զեկույց, էջ 42:

<sup>33</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>, Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 of the Economic and Social Council.

<sup>34</sup> [http://www.apr.ch/detention-focus/en/detention\\_issues/38/?vg=-1](http://www.apr.ch/detention-focus/en/detention_issues/38/?vg=-1), APT.

many children themselves being institutionalized.<sup>35</sup> Extra efforts must be made to preserve family ties, especially if they have young children who do not accompany them in prison. Regular visits by family members must be facilitated and encouraged, as they are an essential part of keeping family links. The imaginative ways of keeping family ties intact in some countries should be known better and should be considered in places in which the current prison systems for women remain as they are. The stopping of family contact as a punishment must be prohibited in all systems<sup>36</sup>.

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration. Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children. Women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions which are at long distances from their homes. After children (who have been living in prison with their mother) are separated from their mothers and placed with family or relatives or other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interest of the children and when public safety is not compromised.<sup>37</sup>

As for foreigners, they often can't use their right for meetings and the reason can, for example, be the distance. The necessity of regulation of short meetings for foreigners is justified by the need to regulate a number of problems that have emerged during the activity of the Penitentiary Service.

The legislation of Republic of Armenia establishes a number of rights and opportunities to maintain the contact of persons deprived of their liberty with the outside world by entitling the rights to visits, telephone calls, correspondence etc.

At the same time, it turns out that in such terms problem occurs for persons deprived of their liberty who do not have opportunity to often visits and phone calls as their relatives are abroad and because of expensive telephone tariffs.

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<sup>35</sup> Kiev Covenant,  
[https://www.unodc.org/documents/hiv-aids/WHO\\_EURO\\_UNODC\\_2009\\_Womens\\_health\\_in\\_prison\\_correcting\\_gender\\_inequity-EN.pdf](https://www.unodc.org/documents/hiv-aids/WHO_EURO_UNODC_2009_Womens_health_in_prison_correcting_gender_inequity-EN.pdf), point 3.

<sup>36</sup>Kiev Covenant,  
[https://www.unodc.org/documents/hiv-aids/WHO\\_EURO\\_UNODC\\_2009\\_Womens\\_health\\_in\\_prison\\_correcting\\_gender\\_inequity-EN.pdf](https://www.unodc.org/documents/hiv-aids/WHO_EURO_UNODC_2009_Womens_health_in_prison_correcting_gender_inequity-EN.pdf), point 3.1.

<sup>37</sup> [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf), rules: 23, 26, 43, 52.3.



Contact with the outside world and family is necessary condition for rehabilitation and reintegration of persons deprived of their liberty which also contributes to the promotion of law-abiding behavior and strengthening healthy lifestyle.

A solution to this problem can be the organization of short meetings for foreigners by the use of up to date technologies. Such regulations are proposed by Article 105 of the Polish Penal Code according to which persons deprived of liberty are eligible to use *other means of communication* except visits, correspondence, telephone communication, sending and receiving parcels, packages and remittances<sup>38</sup>. According to article 17<sup>1</sup> of Penal Code of Republic of Georgia video-conferences are arranged for convicts<sup>39</sup>.

The importance and relevance of the regulations are also justified by Recommendation CM/Rec (2012)12 of the Committee of Ministers to member States concerning foreign prisoners (Adopted by the Committee of Ministers on 10 October 2012 at the 1152<sup>nd</sup> meeting of the Ministers' Deputies), according to which rules for making and receiving telephone calls and other forms of communication shall be applied flexibly to ensure that foreign prisoners who are communicating with persons abroad have equivalent access to such forms of communication as other prisoners<sup>40</sup>.

It is mentioned in the comments of the above mentioned document that in situations where high travel costs prevent regular, if any, visits, it may be possible to facilitate or improve contact using technology, such as videoconferences. However, the use of video links technology should not constitute the answer to all practical difficulties; ordinary visits, in particular contact visits, should always be preferable.<sup>41</sup>

In addition, the authorities are enjoined to assist prisoners with the cost of communication (see, rule 22.4). As foreign prisoners often do not have work, and therefore may not have money to buy stamps or phone cards, the CPT has recommended that states ensure access to communications, and if they are externally provided, that they are reasonably priced<sup>42</sup>.

Association for the Prevention of Torture has stated that detaining authorities should also be open to the opportunities presented by other new technologies such as Skype calls as a means for detainees to connect with the outside world<sup>43</sup>.

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<sup>38</sup> Pennal code of Republic of Poland, article 105.

<sup>39</sup> [http://www.moc.gov.ge/pdf/law/text\\_14182882142.pdf](http://www.moc.gov.ge/pdf/law/text_14182882142.pdf), article 17<sup>1</sup>.

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[http://pip-eu.coe.int/documents/3983922/6970334/CMRec+\(2012\)+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f](http://pip-eu.coe.int/documents/3983922/6970334/CMRec+(2012)+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f), rule 22.3

<sup>41</sup> [http://www.coe.int/t/dghl/standardsetting/prisons/Rec\(2012\)12Commentary\\_E.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/Rec(2012)12Commentary_E.pdf)

<sup>42</sup> CPT visit to Bulgaria 2008, CPT/Inf(2010)29, paras 79-80; CPT visit to Hungary 2003, CPT/Inf(2004)18, para 52.

<sup>43</sup> Association for the Prevention of Torture, Detention Focus (Correspondence/Phone/Internet), [http://www.ap.t.ch/detention-focus/en/detention\\_issues/39/](http://www.ap.t.ch/detention-focus/en/detention_issues/39/)

*So taking into account Kiev covenant and Bangkok rules measures should be taken to make it possible for women deprived of their liberty to enjoy the rights for more frequent meetings with close relatives especially with their children. As for foreigners legal provisions to organize short meetings for foreigners by the use of up to date technologies must be enforced.*

*The proposed regulations will secure the requirements of different international documents as well as make it possible to create additional opportunities for persons deprived of their liberty in order to organize the connection with the family and the outside world.*

Detained persons are provided with at least 2 meetings during a month up to 3 hours with close relatives, representatives of mass media or other persons<sup>44</sup>.

It is obvious from the above mentioned regulation that no long meetings are provided for detained persons.

The term of the detainment of the accused at the time of a pre-trial criminal case may be extended up to 1 year, in exclusive cases due to the complexity of the case. Maximum period of detention during the criminal proceeding of the case in court is not limited<sup>45</sup>.

According to para. 99 of Recommendation (2006)2 of the Committee of Ministers to member states on the European Prison Rules unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners: a) shall receive visits and be allowed to communicate with family and other persons *in the same way as convicted prisoners*; b) may receive additional visits and have additional access to other forms of communication; and c) shall have access to books, newspapers and other news media.

As it is mentioned in the Penal Code of Republic of Armenia convicted persons are provided with short visits with close relatives or other persons at least once during the month, up to four hours, unless otherwise provided by law. *Long term visits are only provided with persons who have the right to live together with convicts and with close relatives at least once during two months up to three days. Long-term visits are also provided with persons who are not married to the convict, but have a child with the prisoner. At the request of the convict's, long-term visit, except for cases stipulated by law, may be replaced by short-visits. At least three short and one long term visit per year is provided to persons sentenced to life imprisonment or sentenced to imprisonment for a certain time period for a grave crime. This restriction shall be eliminated, if the convict has actually served the term of the punishment set by the Criminal Code of Republic of Armenia for early conditional release. The*

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<sup>44</sup> Law of RA on keeping arrested and detained persons, 2002, article 15

<sup>45</sup> Criminal procedure code of Republic of Armenia 1998, article 138

procedure for granting short-term and long-term visits shall be defined by internal regulations of correctional institutions<sup>46</sup>.

On July 9, 2013, the European Court of Human Rights reads the *Varnas v. Lithuania* judgment (*Varnas v. Lithuania*, Judgment of 9 July 2013, application no. 42615/06, § 121, 122, 123), which found the violation of the applicant's right - Thomas Varnas not to be discriminated in enjoying the right to respect for his personal and family life because he was not allowed to have long-term visits with his wife when he was in the detention center.

In the ruling in the case of Thomas Varnas ECHR, firstly, pointed out that the refusal to provide long-term visits with his wife is an interference with the right to respect for personal and family life. Of course, such an intervention is not itself a violation. However, in relation to this case it does not matter under what conditions an interference with the right to respect for private and family life can be a violation, because it is about the right provided by article 14 of the Convention not to be discriminated against the enjoyment of another right guaranteed by the Convention or the Protocol thereto. And the conclusion about interference in the right to respect for private and family life means that one can talk about discrimination in the enjoyment of this right.

The Court considered that the particularly long period of the applicant's pre-trial detention (two years at the moment when the applicant had first asked for a conjugal visit) reduced his family life to a degree that could not be justified by the inherent limitations involved in detention. In this context the Court also notes that the prison authorities' refusal to grant the applicant a conjugal visit had been based not only on theoretical security considerations, but equally on the lack of appropriate facilities, a reason which cannot withstand the Court's scrutiny. It therefore finds that by having restricted the applicant from receiving conjugal visits when detained on remand the authorities failed to provide a reasonable and objective justification for the difference in treatment and thus acted in a discriminatory manner.

There has therefore been a violation of Article 14 in conjunction with Article 8 of the Convention<sup>47</sup>.

At the same time we can discuss a situation when there can be a serious leak of information which can impede a full, proper and objective pre-trial investigation. To this end the legislative body has given a regulation, according to which in the interest of the investigation telephone communication and visits of detained persons with a legal representative, close relatives, representatives of mass media and other persons can be restricted by a decision of the investigative

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<sup>46</sup> Penal Code of RA, 2005, article 92.

<sup>47</sup> [http://hudoc.echr.coe.int/eng#{"itemid":\["001-122173"\]}](http://hudoc.echr.coe.int/eng#{), para. 121, 122, 123

body, except cases prescribed by law, by giving written notice to the administration of the detention facility<sup>48</sup>.

*Meanwhile, giving the opportunity to the investigative body to restrict the telephone communication and visits of detained persons, the legislative body doesn't give any criteria, including time limits, when this decision is applicable, which, we believe, is a subject of a separate research.*

*Thus it can be stated that a detained person can be deprived of his/her liberty for one, two or more years without the right to long meeting. So long-term visits for detained persons must be regulated under penitentiary legislation as well.*

Study of the practice shows that there are complaints concerning short-term leaves provided to persons deprived of their liberty, which is due to legislative regulations where the gravity of the crime is taken into account when providing short-term leaves instead of the individual risk assessment of a person.

According to penitentiary legislation convicts, with the exception of particularly *dangerous recidivism or particularly grave crime*, may be granted a short-term leave for exceptional personal circumstances (death of a close relative or a life-threatening illness, natural disaster, which caused considerable material damage upon the convict or his family), as well as social rehabilitation<sup>49</sup>.

There is a similar provision in the Law of RA on keeping arrested and detained persons, according to which detainees, *except charged for particularly grave crime*, may be granted short-term leaves in cases of life-threatening illness or death of a close relative, detainee or his family caused considerable material damage in case of natural disaster<sup>50</sup>.

The CPT has stressed that a system under which the extent of a prisoner's contact with the outside world is determined as part of the sentence imposed (and by the regime under which he/she serves his/her sentence) is fundamentally flawed. In the Committee's view, all categories of prisoners, irrespective of the sentence and regime, should be entitled to the equivalent treatment<sup>51</sup>.

As mentioned in ECHR case law, the prisoners should be released to attend the funeral of a close relative in those cases when there is no risk that the prisoner will escape. Humanitarian reasons for short-term leave may include family matters, such as the birth of a child<sup>52</sup>.

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<sup>48</sup> of RA on keeping arrested and detained persons, 2002, article 15, 17.

<sup>49</sup> Penal Code of republic of Armenia, article 80.

<sup>50</sup> Law of RA on keeping arrested and detained persons, 2002, article 17.

<sup>51</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bf46f>, point 107.

<sup>52</sup> [http://hudoc.echr.coe.int/eng#{"fulltext":\["26761/95"\],"documentcollectionid":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-60733"\]}](http://hudoc.echr.coe.int/eng#{)

*The circumstances which exclude the issuance of short-term leaves to detained and convicted persons in exceptional personal circumstances (charged or sentenced for particularly grave crime) are in contradictory with the above mentioned ECHR and CPT position. All categories of prisoners, irrespective of the sentence and regime, should be entitled to the equivalent treatment.*

Persons deprived of their liberty throughout the term of their sentence, as a rule, serve the punishment in one penitentiary institution.

Transfer of a prisoner from one penitentiary institution of the same type to another for serving the rest of the punishment is permitted only because of the illness of a prisoner, reorganization or liquidation of the penitentiary institution, to ensure personal safety of a convict, as well as other extraordinary circumstances that hinder the further stay of a convict in penitentiary institution<sup>53</sup>.

It is worth to mention, that the basis for the transfer in the above mentioned regulation is not mentioned the necessity of ensuring the communication with close relatives.

According to point 17.1 of Recommendation (2006)2 of the Committee of Ministers to member states on the European Prison Rules prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

It is stated in principal 20 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment that if a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

In its recent judgment in the case of Khodorkovskiy and Lebedev v. Russia (judgment of 25 July 2013, application nos. 11082/06 and 13772/05, § 838), the Court concluded that the applicants' allocation to a remote prison (located several thousand kilometres from the city where their family lived) constituted an interference with their Article 8 rights. The Court had regard, in particular, to the long distances involved, the geographical situation of the colonies concerned and the transport system, which rendered a trip from the applicants' home city to their colonies a long and exhausting endeavour, especially for their young children. As a result, the applicants received fewer visits from their families<sup>54</sup>.

In the secondnd General Report on the CPT's activities covering the period 1 January to 31 December 1991 it was stated that It is very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of

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<sup>53</sup> Penal Code of RA, 2005, article 69

<sup>54</sup> [http://hudoc.echr.coe.int/eng#{"itemid":\["001-147326"\]}](http://hudoc.echr.coe.int/eng#{), point 79,  
[http://hudoc.echr.coe.int/eng#{"itemid":\["001-122697"\]}](http://hudoc.echr.coe.int/eng#{), point 838

contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations<sup>55</sup>.

The right to private and family life of persons deprived of liberty in any way implies the state's positive obligation to take the necessary measures, which are aimed at the realization of the rights of persons deprived of their liberty.

Respect for the right to private and family life of the person punished is a serious guarantee for re-socialization.

It will contribute to the normalization of life and labor of convicts, strengthening family and social ties.

*Taking into account the above mentioned, transfer of a prisoner from one penitentiary institution of the same type to another for serving the rest of the punishment should also be permitted in certain cases when it is necessary to ensure the communication with close relatives.*

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<sup>55</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680696a3f>, point 51

## CONCLUSION

The execution of punishment in the form of deprivation of liberty is aimed at achieving the goal of correction of persons deprived of liberty, carried out in conditions of their isolation from law-abiding citizens. This is impossible without the correct organization of their communication with the outside world, since it is one of the most important means of re-socialization of a person in the process of countering the influence of the negative subculture that has developed in places of deprivation of liberty.

International legal standards in the field of execution of criminal penalties set standards relating to the organization of communication of prisoners sentenced to imprisonment with the outside world into a separate group of norms, as reflected in the Standard Minimum Rules for the Treatment of Prisoners.

The Republic of Armenia is obliged to implement generally recognized international norms in legislation and practice, and first of all provisions relating to human and civil rights and freedoms, including in penal legislation and penitentiary practice.

The study examines the problems concerning prisoner's and detained person's contact with the outside world.

The communication of persons deprived of their liberty with the outside world is the creation, strengthening and maintenance of their socially useful links with society, which is one of the means of corrective action, re-socialization and prevention of relapse, applied to convicts in the process of execution of deprivation of liberty, expressed in the form of subjective rights and legitimate interests of convicts and detained persons as part of their special legal status. The legal regulation of the communication of prisoners sentenced to deprivation of liberty with the outside world, its organization and implementation are stages of the process of communication.

To improve the establishment and maintenance of communication of persons deprived of their liberty and the outside world, the following amendments in the penitentiary legislation of the Republic of Armenia are proposed:

1. *Prohibition of physical contact between prisoners and their visitors may be justified in exceptional cases and only for security-related reasons. However, visits without physical restraints should be the rule and visits with a partition the exception. The prisoners should, as a rule, be able to receive visits from their family members without physical separation; visits with a partition should be the exception and applied in individual cases where there is a justified security concern.*

*Summarizing, it should be noted that numerous steps should be taken in this regard, in particular, to give legal regulations for providing meetings taking into account international criteria, to transform the visiting rooms, dismantle the glass partitions, providing for the possibility of direct contact between persons deprived of their liberty and the visitors.*

2. *Taking into account Kiev covenant and Bangkok rules measures should be taken to make it possible for women deprived of their liberty to enjoy the rights for more frequent meetings with close relatives especially with their children. As for foreigners legal provisions to organize short meetings for foreigners by the use of up to date technologies must be enforced.*

*The proposed regulations will secure the requirements of different international documents as well as make it possible to create additional opportunities for persons deprived of their liberty in order to organize the connection with the family and the outside world.*

3. *Detained person can be deprived of his/her liberty for one, two or more years without the right to long meeting. So long-term visits for detained persons must be regulated under penitentiary legislation as well.*

4. *The circumstances which exclude the issuance of short-term leaves to detained and convicted persons in exceptional personal circumstances (charged or sentenced for particularly grave crime) are in contradictory with the above mentioned ECHR and CPT position. All categories of prisoners, irrespective of the sentence and regime, should be entitled to the equivalent treatment.*

5. *Transfer of a prisoner from one penitentiary institution of the same type to another for serving the rest of the punishment should also be permitted in certain cases when it is necessary to ensure the communication with close relatives.*

Thus, the carried research has shown the need for further development and improvement of communication of prisoners deprived of their liberty with the outside world.



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