Non-Official Translation

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF

THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF PART 4 OF ARTICLE 36 OF THE RA LAW ON TREATMENT OF DETAINEES OR PERSONS IN CUSTODY, PART 2 OF ARTICLE 59 AND PART 1 OF ARTICLE 98 OF THE PENITENTIARY CODE OF THE REPUBLIC OF ARMENIA, AS WELL AS THE SECOND SENTENCE OF THE FIRST PARAGRAPH OF CLAUSE 231 OF THE PRISON RULES APPROVED BY THE DECISION N 1543-N OF 3 AUGUST 2006 ON APPROVING THE PRISON RULES OF DETENTION FACILITIES AND CORRECTIONAL INSTITUTIONS OF THE PENITENTIARY SERVICE OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE HUMAN RIGHTS DEFENDER

Yerevan February 5, 2019

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan (Rapporteur), A. Dilanyan, F. Tokhyan, A. Khachatryan, H. Nazaryan, A. Petrosyan,

with the participation (in the framework of the written procedure)**:**

the applicant: A. Tatoyan, Human Rights Defender,

party engaged as a respondent in the case: A. Kocharyan, official representative of the RA National Assembly, Chief of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff,

party engaged as a respondent in the case: the Government,

pursuant to Clause 1 of Article 168, Clause 10 of Part 1 of Article 169 of the Constitution, and Article 68 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of Part 4 of Article 36 of the RA Law on Treatment of Detainees or Persons in Custody, Part 2 of Article 59 and Part 1 of Article 98 of the Penitentiary Code of the Republic of Armenia, as well as the second sentence of the first paragraph of Clause 231 of the Prison Rules approved by the Decision N 1543-N of 3 August 2006 on Approving the Prison Rules of Detention Facilities and Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the Human Rights Defender.

The RA Law on Treatment of Detainees or Persons in Custody (hereinafter referred to as the Law) was adopted by the National Assembly on 6 February 2002, signed by the President of the Republic on 7 March 2002, and entered into force on 1 April 2002.

Part 4 of Article 36 of the Law, titled “Specifics of Detention in a Punishment Cell of Persons in Custody”, which was supplemented by the Law HO-16-N of 4 April 2008 and the Law HO-191-N of 21 December 2015, prescribes: “During the detention in a punishment cell, the persons in custody shall be prohibited from correspondence, visits, except for the cases provided by law and the access to a lawyer or defense counsel, purchase of additional food and basic necessities, receiving parcels and deliveries, sending and receiving cash remittances, watching TV, and playing board games”.

The RA Penitentiary Code (hereinafter referred to as the Code) was adopted by the National Assembly on 24 December 2004, signed by the President of the Republic on 18 January 2005, and entered into force on 10 February 2005.

Part 2 of Article 59 of the Code, titled “Sanctions applied to a convict”, prescribes: “During the detention in a punishment cell, a convict shall be prohibited from receiving and sending cash remittances, reading books and the means of mass media, and prohibited from working”.

Part 1 of Article 98 of the same Code, titled “Detention Conditions for a convict in a punishment cell”, prescribes: “During the detention in a punishment cell, convicts shall be prohibited from visits, except for the cases provided by law, using the telephone, receiving and sending cash remittances, deliveries and parcels, correspondence, sending and receiving letters, reading books and the means of mass media, and prohibited from working, and participating in civil-law transactions”.

Decision N 1543-N on Adopting the Prison Rules of Detention Facilities and Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia (hereinafter referred to as the Decision) was adopted by the Government on 3 August 2006, signed by the RA Prime Minister on 1 November 2006, and entered into force on 2 December 2006.

The second sentence of the first paragraph of Clause 231 of the Prison Rules approved by the said Decision (hereinafter referred to as Prison Rules), which was supplemented by the Decision N 87-N of the RA Government dated 4 February 2016, prescribes: “During the detention in a punishment cell, a person remanded in custody or a convict shall be prohibited from correspondence, visits (except for the access to a lawyer or defense counsel), using the telephone, purchase of additional food and basic necessities – except for cases prescribed by the legislation of the Republic of Armenia, receiving deliveries and parcels, playing board games, reading newspapers, books, magazines and other literature”.

The case was initiated on the basis of the application of the Human Rights Defender submitted to the Constitutional Court on 26 September 2018.

Having examined the application and the attached documents, the written explanation of the applicant and the respondent, and other documents of the case, as well as having analyzed the relevant provisions of the challenged legal acts, the Constitutional Court **ESTABLISHES:**

1. Positions of the applicant

The applicant finds that Part 4 of Article 36 of the RA Law on Treatment of Detainees or Persons in Custody, Part 2 of Article 59 and Part 1 of Article 98 of the Penitentiary Code of the Republic of Armenia, as well as the second sentence of the first paragraph of Clause 231 of the Prison Rules approved by the Decision N 1543-N of 3 August 2006 on Approving the Prison Rules of Detention Facilities and Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia are not in conformity with Part 1 of Article 31, Part 1 of Article 33, Articles 78 and 81 of the RA Constitution insofar as in the case when detention in a punishment cell is imposed as a sanction on a person remanded in custody or a convict, the person is automatically and

disproportionately deprived of the right to inviolability of private and family life, as well as the right to freedom of communications, because of the general ban that does not stipulate exceptions.

The applicant considers that in the case when detention in a punishment cell is imposed as a sanction on a person remanded in custody or a convict based on the decision of the head of the correctional institution, and also regardless of any circumstances, the person is deprived of the communication with the outside world, and as a result, this measure subjects the person to additional hardship which is unrelated to the purpose or reason of the sanction.

According to the applicant, under the challenged legal regulations, placing a person in a punishment cell on case-by-case basis, as well as without discussing issues of expediency and proportionality, leads to a mandatory and disproportionate restriction of the right to inviolability of his/her private and family life.

Following own research, the applicant concludes that detention of a person deprived of liberty in a punishment cell and his/her social isolation may trigger depression, which in turn may lead to various problematic situations such as self-harm.

According to the applicant, the sanction should be applied in each case by ensuring the individual approach and proportionality in respect with the committed violation and sanction, taking into account the nature of the specific violation and the degree of behavioral risk of the person deprived of liberty. The applicant considers it unacceptable that in case of detention in a punishment cell based on a decision of the head of the correctional institution, he/she is deprived of the possibility to exercise her/his constitutional rights without any justification for this deprivation.

Having analyzed the constitutional legal and international legal content of the rights to inviolability of the private and family life and freedom of communications, the applicant concludes that for the restriction of these rights a nexus between the violation committed by a person in custody or a convict and the restriction of a specific right is required.

In the applicant’s opinion, it follows from the norms of international law and other domestic legal regulations regarding the conditions of treatment of persons deprived of liberty that visits, using the telephone, reading books and the means of mass media, correspondence, etc. are of great significance for the communication of persons deprived of liberty with the outside world, and is considered as one of the main contributors of social reintegration for these persons.

Referring to a number of international legal documents and the case law of the European Court of Human Rights (hereinafter - the ECtHR), the applicant concluded that, despite the significance of the communication of persons deprived of liberty with the outside world, it is not absolute and its restriction, and in some cases deprivation is also considered legitimate, but they must be considered as last resort, should be targeted and **applied in extreme cases**, and the nature of the committed violation must be taken into account, that is, they must be proportionate and justified. In addition, the applicant “considers it unacceptable to leave persons deprived of liberty without activities or communication with the outside world for a long period”.

The applicant considers it controversial that when a person in custody or a convict, detained in a punishment cell, are deprived of the communication with the outside world regardless of the reason for the detention, which may adversely affect the mental health of the person, and in the penitentiary system and the system of arranging the deprivation of liberty, in general, the necessary procedure for the psychological support does not exist, and the mechanisms are vague.

As for the raised issue, the applicant refers to a number of relevant legal regulations in other countries and concludes that they exclude the automatic, an end in itself, arbitrary or disproportionate restriction

of various manifestations of communication with the outside world because of the detention in a punishment cell.

2. Positions of the National Assembly engaged as a respondent

In the opinion of the respondent, the challenged provisions contradict the requirements of the Constitution insofar as in the case the detention in a punishment cell is imposed as a sanction on a person in custody or a convict, the person is automatically and disproportionately deprived of the right to inviolability of the private and family life and freedom of communications due to the general ban that does not stipulate exceptions.

The respondent notes that although the restriction of the rights to inviolability of the private and family life and the freedom of communications is a serious interference in the person's privacy, nevertheless, such an interference is possible in the cases and in the manner prescribed by law, and shall be motivated by objective necessity, namely, preventing or solving crimes, protecting the public order, health and morals, or the fundamental rights and freedoms of others.

The respondent considers it evident that according to the challenged legislative provisions, together with the detention in a punishment cell imposed as a sanction on a person in custody or a convict by a decision of the head of the correctional institution, regardless of any circumstances, in case of being deprived of the communication with the outside world, in particular, visits, using the telephone, correspondence, using the means of mass media, etc., the person is deprived of her/his constitutional rights without any clear justification.

The respondent is convinced that in the case when a person in custody or a convict are placed in a punishment cell due to the ban of absolute nature, depriving him/her of the above-mentioned rights without reasonable, proportionate and clear objectives leads to the disproportionate restriction of the rights of the person, guaranteed by Articles 31 and 33 of the Constitution.

3. Positions of the Government engaged as a respondent

The Government believes that the legislator has identified those cases when the competent authority considers the issue of applying liability measures in relation to a person deprived of liberty. These include the cases when the person deprived of liberty violated the procedures and conditions for serving the sentence established by the Prison Rules, and the person deprived of liberty failed to fulfill his/her responsibilities or performed them in an inappropriate manner.

According to the Government's explanation, Clause 223 of the Prison Rules clearly establishes the cases of holding the persons in custody or the convicts in a punishment cell, and in the case of applying liability measures in relation to a person deprived of liberty, the competent authority has discretion for choosing a disciplinary sanction, that is, no disciplinary sanction is envisaged that may be imposed in the event of any disciplinary violation.

The Government considers that in the event of imposing detention in a punishment cell as a disciplinary sanction, the competent authority must also determine the duration of the sanction and based on survey it can be argued that in practice the duration of sanction in many cases does not exceed the maximum term up to 15 days.

According to the Government, the core goal of imposing a disciplinary sanction is to instil confidence in the inevitability of responsibility for the committed infringement in a person deprived of liberty and thereby induce her/his law-abiding behavior. The challenged legal provisions affect the constitutionally recognized rights of a person to the inviolability of private and family life, and freedom of communications, which are not absolute and may be restricted in cases provided by law. If the application of the disciplinary sanction under discussion does not restrict certain rights and freedoms, imposing detention in a punishment cell as a disciplinary sanction will become an end in itself.

The Government notes that the State guarantees the right of a person to communication with the outside world even in the case when detention in a punishment cell as a disciplinary sanction in full extent has been imposed on a person, since the person retains the right to receive short-term and long-term visits with close relatives and others. According to the Government, "even if it is acknowledged that the mentioned disciplinary sanction for the maximum term up to 15 days has been imposed on a person, the person during the remaining 15 (16) days of the month shall have the opportunity to exercise his right to communication with the outside world".

The respondent also highlights the circumstance that a person deprived of liberty may appeal against the decision of the competent authority on the imposition of a disciplinary sanction, and as to keeping in isolation, which leads to a deterioration in the mental state of the persons, the respondent believes that it is not necessarily that the psychological factor causes the disorders indicated by the applicant, since the person, who is placed in a punishment cell, is under constant medical supervision, as well as the psychologist rather actively works with her/him.

The Government argues that the restrictions at issue are necessary for the achievement of the predetermined objective and do not automatically and disproportionately deprive a person remanded in custody or a convict of the rights to inviolability of private and family life, and freedom of communications.

4. Circumstances to be clarified within the framework of the case

In order to determine the constitutionality of the norms challenged in the present case, the Constitutional Court considers it necessary, in particular, to address the following issues:

- Do the challenged norms restrict the constitutional rights of a person remanded in custody or a convict to inviolability of private and family life (Article 31 of the Constitution) and freedom of communications (Article 33 of the Constitution)?

- Does the prohibition on visits, correspondence, using the telephone, reading books and the means of mass media for a person in custody or a convict in a punishment cell seek a legitimate objective prescribed by the Constitution?

- Is such a restriction of rights eligible and necessary in a democratic society to achieve the goal prescribed by the Constitution, and is it commensurate with the significance of the restricted rights (Article 78 of the Constitution)?

- Do the restrictions prescribed by the international treaties of the Republic of Armenia (Part 2 of Article 81 of the Constitution) exceed the restrictions of fundamental rights and freedoms of a person stipulated by the challenged legal provisions?

5. Legal analysis and positions of the Constitutional Court

5. 1. According to Part 2 of Article 11 of the Code, during the enforcement of a sentence, the rights and freedoms of a convict may be restricted upon a judgment of a court, under this Code and other laws, meanwhile according to Part 4 of this Article, the procedure for exercising the rights, freedoms, and performing the responsibilities of a convict shall be prescribed by this Code and the prison rules of correctional institutions. In addition, in the exercise of her/his rights, freedoms, and in the performance of her/his responsibilities, a convict shall not violate the procedure and terms for serving the sentence, as well as shall not infringe upon the rights or legitimate interests of others.

According to Part 3 of Article 10 of the Law and Part 3 of Article 72 of the Code, the Prison Rules of Detention Facilities and Correctional Institutions shall be approved by the Government.

The administration of the penitentiary institution is obliged to introduce the persons remanded in custody and convicts both their rights and duties in full as prescribed in Article 13 of the Law and Article 12 of the Code. Introducing the persons in custody and convicts their rights and duties, as well as the prison rules of the correctional institution, is necessary to be informed about the permissible boundaries so that they are aware of the permissible limits of their behavior and further be capable to demonstrate appropriate behavior.

Article 13 of the Code prescribes the responsibilities of convicts, and in case of failure to fulfill their responsibilities, provides that the latter shall be subjected to liability prescribed by law. This approach shall also extend on cases of failure to fulfill the lawful requirements of the administration of the bodies and institutions executing sentences.

According to Article 59 of the Code, for violating the order and terms for serving the sentence prescribed by the prison rules, penalties, such as **reprimand** and **detention in a punishment cell** for the term up to ten days, may be applied. In accordance with Article 35 of the Law, the same penalties may be prescribed for persons in custody for the identical violations.

Reprimand, strict reprimand and detention in a punishment cell for the term up to fifteen days, or the term up to ten days in case of juvenile convicts (Article 95 of the Code) are the penalties applied to persons sentenced to deprivation of liberty. It is prohibited to impose more than one sanction for one offence (Part 1 of Article 97 of the Code, Part 3 of Article 35 of the Law).

According to Part 2 of Article 95 and Part 3 of Article 59 of the Code, penalties shall be imposed in the cases and according to the procedure prescribed by the prison rules.

5.2. The Code, the Law and the Prison Rules prescribe similar regulations in connection with the detention of convicts in a punishment cell.

Thus, according to Article 35 of the Law, **reprimand** and **detention in a punishment cell** for the term up to ten days may be applied as sanctions to a person in custody for a violation of the prison rules, failure to perform her/his responsibilities or improper performance thereof, or the term up to five days may be applied for the juvenile convicts. According to the same Article, **when applying sanctions, the act considered as disciplinary breach, the sanction and its duration shall be indicated, and the convict shall be informed about it**. In addition, prior to the imposition of a sanction, the convict shall provide **a written explanation**, and if the convict renounces, then a relevant **protocol** shall be drawn up.

According to Article 97 of the Code, when applying sanctions with respect to a person sentenced to deprivation of liberty, the circumstances in which the violation was committed and the personality and conduct of the convict prior to the commitment of the breach shall be taken into account, and in the case of detention in a punishment cell, the term of confinement therein must be specified.

These legislative regulations are also reflected in the Prison Rules: according to Clause 216, when examining a disciplinary violation and imposing a sanction, the head of the detention facility or correctional institution shall examine the written material submitted by the employee of the detention facility or correctional institution regarding the committed offense and shall make a **decision** attached to the personal file of a person remanded in custody or a convict, and according to Clause 217: "When applying sanctions, the circumstances in which the breach was committed, the personality and conduct of the person remanded in custody or a convict prior to the commitment of the offense, and general characteristics shall be taken into account. The sanction shall be fair and be consistent with the seriousness and nature of the committed offense. The sanction shall be fair and be applied only on the basis of a decision made as a result of relevant research".

All sanctions shall be applied by a written decision of the head of the detention facility or correctional institution, or the Acting Director. The head of the correctional institution or the Acting Director is an official authorized to take responsible decisions, which can be appealed both in administrative and judicial reviews.

Part 2 of Article 18 of the Code, which relates to judicial supervision, prescribes that the court shall, in the cases and as prescribed by law, consider the complaints of a convict against the actions of the administration of the body or institution executing the sentence. Clause 169 of the Prison Rules obliges the administration of the detention facility or correctional institution to accept the proposals, applications and complaints submitted by persons remanded in custody or convicts, with no limitation to the number.

Ensuring the detention conditions of persons in custody or convicts is under the discretion of the relevant authorities and officials, and the State, in turn, is obliged to monitor the activities of the latter, especially with regard to compliance with the appropriate conditions for persons deprived of liberty.

5.3. The detention of persons in custody or convicts in a punishment cell as a sanction, which is imposed in the case of failure to fulfill their responsibilities, as well as the legitimate requirements of the administration of the bodies and institutions executing sentences, implies that for a certain period the latter should be isolated from other persons in custody or convicts and certain means of communication with the outside world should be denied. Persons in custody or convicts shall be isolated in a punishment cell and clear time-limits shall be introduced. Obviously, the terms for the convicts in the punishment cell are much more restrictive and would not be the same as in other cells, otherwise the institute of detention of persons in a punishment cell as a sanction becomes redundant.

Detention in a punishment cell is the most restrictive sanction prescribed by the penitentiary law, which **intends to encourage law-abiding behavior of persons in custody and convicts, and bring it in line with the internal rules of the penitentiary institution**.

Based on the comparative analysis of the regulations prescribed by the Law, the Code and the Decision regarding the restriction of the rights of persons in custody and convicts during the detention in a punishment cell, the Constitutional Court concludes that the range of these regulations is generally the same. During the detention in a punishment cell, they shall be prohibited from visits (except for visits of a lawyer or defense counsel), correspondence, purchasing additional food and basic necessities,

receiving deliveries and parcels, sending and receiving cash remittances, watching TV, reading books, the means of mass media, and playing board games.

According to Clause 233 of the Prison Rules, which are systemically interconnected with the norms at issue, in a punishment cell a person in custody or a convict shall be allowed to have **religious literature and photos**.

Permission to have a religious literature and photos may help rehabilitate a person in a punishment cell and rethink spiritual values, and other persons in custody and convicts, who do not profess any religion, are actually ignored.

The Constitutional Court considers that isolation in a punishment cell alone with own thoughts and fears may lead to a suppressive state of mind, and relevant inspiring literature of educational character attaching great importance to universal moral values may have a positive impact on a person.

5.4. The Constitutional Court states that the constitutional rights to **"inviolability of private and family life"** (Article 31 of the Constitution) and **"freedom of communications"** (Article 33 of the Constitution) are not absolute rights and may be restricted only by law, **for protecting state security, the economic wellbeing of the country, preventing or detecting crimes, protecting the public order, health and morals, or the fundamental rights and freedoms of others**.

The right of a convict to visits is an essential part of the right to respect for her/his family life, which is ensured by state bodies, and if necessary, the latter assist to liaise of the convict with the members of her/his family.

At the same time, it should be noted that due to particular personal qualities of a person in custody, her/hisr communication with the outside world may be restricted, including reducing the family visits and monitoring these visits, if these restrictions are reasonably necessary for achieving the legitimate goal.

As prescribed by Part 8 of Article 15 of the Law, the persons in custody and the convicts within the context of Part 2 of Article 50 of the Code, shall be entitled to minimum two visits per month with the close relatives and the mass media representatives, and convicts within the context of Article 92 of the Code, shall be entitled to minimum one visit per month.

The Government's argument that even in the case of detention in a punishment cell for the maximum term up to 15 days, the person during the remaining 15 (16) days of the month shall have the opportunity to exercise her/his right to communicate with the outside world, is not always supported in the law enforcement practice. In response to the explanations of the Government, the applicant stated that the study of the applications addressed to the Defender indicates that in practice there was a case when a convict was in a punishment cell for 189 days.

The Constitutional Court states that it follows from the above-mentioned that **in certain cases it is possible that a person in custody or a convict** is held in a punishment cell **for one month which is beyond the legally permitted period for a maximum disciplinary minimum for one sanction, and is unable to exercise the rights to the minimum number of visits, as well as right to correspondence and using the telephone.**

According to Part 3 of Article 17 of the Law, as well as Part 3 of Article 50 and Part 3 of Article 92 of the Code, the right of persons remanded in custody and convicts to correspondence is not restricted.

According to the challenged legal regulations, the persons held in a punishment cell **shall also be prohibited from the right to correspondence**. A person in custody or a convict, held in a punishment cell shall be prohibited to hold office supplies (paper, pen, envelope, etc.) or other means of transmitting thoughts, which in practice also makes it impossible to exercise the right to

communication, whereas Article 75 of the Constitution requires that, when regulating fundamental rights and freedoms of a person, the organizational structures and procedures necessary for their effective exercise shall be defined.

Taking into account that during the detention in a punishment cell, persons in custody and convicts shall be denied their right to correspondence mandatorily, i.e. without the required reasoning, the Constitutional Court believes that the discussed legal regulations raise concerns from the perspective of compliance with Article 33 of the Constitution.

5.5. The detention of a person in custody or a convict in a punishment cell as a sanction is also prescribed in the legislations of other democratic states, and is considered permissible also by the European Court of Human Rights. Judicial practice of the ECtHR shows that the violation of fundamental rights and freedoms is not the detention in a punishment cell as a sanction, but the inappropriate conditions created for persons in custody during the detention in a punishment cell, as well as the issue how the application of such a sanction is reasoned and legitimate.

Regarding the issue under consideration, the ECtHR expressed the position that a convict's visits and correspondence cannot be prohibited in the manner of disciplinary sanction imposed for the violation of prison rules. The Court found that such restrictions are nothing but interference by public authorities in the implementation of the rights to respect for private and family life, home and correspondence prescribed by Article 8 of the European Convention on Human Rights ("Poltoratskiy v. Ukraine", app. No. 38812/97, judgment of 29.04.2003, §§152-153).

As for the issue raised by the applicant regarding the mental health of the persons held in a punishment cell, the ECtHR stated that for people who suffer from mental disorders and have inclination to inflict self-harm, even suicide, it is necessary to apply special measures aimed at humane treatment. In addition, the ECtHR notes that punishing a person by placing him in solitary confinement, accompanied by a restriction on receiving visits and communications with other prisoners and applied to a person who has previously attempted suicide, is incompatible with the treatment of a mentally ill person and, in fact, represents inhuman and degrading treatment and sentence ("Shatokhin v. Russia", app. no. 502306/06, judgment of 02.27.2018).

Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, adopted on 11 January 2006, stipulates that prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of communication.

Commentaries to Recommendation Rec(2006)2 on the European Prison Rules state that the loss of the right to liberty that prisoners suffer should not lead to the assumption that prisoners automatically lose their political, civil, social, economic and cultural rights as well. Inevitably, rights of prisoners are restricted by their loss of liberty, but such further restrictions should be as few as possible, specified in law and should be instituted only when they are essential for the good order, safety and security in prison.

According to sub-paragraph (b) of paragraph 61 of the 21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2011, prisoners undergoing solitary confinement as a disciplinary sanction should never be totally deprived of communications with their families and any restrictions on such communications should

be imposed only where the offence relates to such communications. The Report states that isolation further restricts the already highly limited rights. Additional restrictions are not due to the fact of deprivation of liberty, and therefore must be justified separately.

In 2015, the UN adopted a revised version of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and the Rule 43 states: "Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order".

5.6. From the perspective of proportionality of the restriction of rights, the mandatory and simultaneous application of the restrictions of all rights, prescribed in the challenged provisions, poses a challenge. As the study of the practice of the foreign states shows, in each specific case, the competent authorities, assessing the danger of an act, impose a restriction of one or two rights, but the full range of restriction of rights, prescribed in the challenged provisions, are not imposed simultaneously.

Summarizing the above-mentioned, the Constitutional Court states that the detention of a person in custody or a convict in a punishment cell is characterized by their **social isolation, reduction of environmental influence and loss of control over almost all aspects of daily life**, which inevitably has a negative affect on the mental health of the person held in a punishment cell. **Therefore, the Constitutional Court considers that the prohibitions imposed on persons held in a punishment cell should be directly linked to the violation committed by a person in custody or a convict, and the restriction of their fundamental rights and freedoms should be reasonably necessary for achieving the legitimate goal.**

Based on the review of the case and governed by Clause 1 of Article 168, Clause 10 of Part 1 of Article 169 of the Constitution, Articles 63, 64 and 68 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. To declare Part 4 of Article 36 of the RA Law on Treatment of Detainees or Persons in Custody contradicting Articles 31, 33 and 78 of the Constitution, insofar as by virtue of the fact of application of sanction in the form of holding a person in custody in a punishment cell restricts her/his rights to inviolability of private and family life, and freedom of communications.

2. To declare Part 2 of Article 59 and Part 1 of Article 98 of the RA Penitentiary Code contradicting Articles 31, 33 and 78 of the Constitution, insofar as by virtue of the fact of application of sanction in the form of holding a convict in a punishment cell restricts her/his rights to inviolability of private and family life, and freedom of communications.

3. To declare the second sentence of the first paragraph of Clause 231 of the Prison Rules approved by the Decision N 1543-N of the RA Government of 3 August 2006 on Approving the Prison Rules of Detention Facilities and Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia contradicting Articles 31, 33 and 78 of the Constitution, insofar as by virtue of the fact of application of sanction in the form of holding a person in custody or a convict in a punishment cell restricts her/his rights to inviolability of private and family life, and freedom of communications.

4. Based on the requirements of Part 3 of Article 170 of the Constitution, Clause 4 of Part 9 and Part 19 of Article 68 of the Constitutional Law on the Constitutional Court, and also bearing in mind the circumstance that the declaration of the challenged provisions referred to in Causes 1, 2 and 3 of the final part of this Decision as contradicting the Constitution and void will inevitably result in

consequences, thereby violating the legal security established by repealing the mentioned provisions, to define June 5, 2019 for the final invalidation of the provisions declared by this Decision as contradicting the Constitution, providing the National Assembly and the Government the possibility to reconcile the mentioned provisions with the requirements of this Decision.

5. Pursuant to Part 2 of Article 170 of the Constitution this Decision shall be final and shall enter into force upon its promulgation.

Chairman **H. Tovmasyan**

February 5, 2019

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