



Strasbourg, 3 May 2011

Opinion No. 628 / 2011

CDL-REF(2011)020
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON MAKING A SUPPLEMENT TO THE PENITENTIARY CODE
OF THE REPUBLIC OF ARMENIA

LAW OF THE REPUBLIC OF ARMENIA

“ON MAKING A SUPPLEMENT TO THE PENITENTIARY CODE OF THE REPUBLIC OF
ARMENIA”

Article 1. The following new Chapter 16.1 shall be added to the Penitentiary Code of the Republic of Armenia of 24 December 2004:

“Chapter 16.1

RESTRICTION OF THE CORRESPONDENCE OF A CONVICT SENTENCED TO A FIXED-TERM
IMPRISONMENT OR LIFE IMPRISONMENT

Article 92.1. Procedure for considering motions on restricting the correspondence of a convict

1. For the purposes of preventing and disclosing crimes, observing the safety and disciplinary rules in a penitentiary institution or preventing the dissemination of the information — not corresponding to the reality — thereon, upholding public health and morality, the reputation of justice, protecting the constitutional rights of others, including also preventing a direct threat to social rehabilitation of other convicts, the head of a penitentiary institution shall file a reasoned motion with the court of general jurisdiction for obtaining a permission to restrict the right of a convict to correspondence.

2. The motion shall include the grounds, terms for implementing the measure and all the data necessary for the court to deliver a decision. All the materials that substantiate the need to restrict the correspondence shall be attached to the motion.

3. The court shall consider the motion at an in camera hearing, with the participation of the head of the penitentiary institution having filed the motion or his or her deputy. The motion must be considered and a decision must be delivered within a three-day period following its receipt.

4. As a result of considering the motion, the court shall deliver a decision on permitting the restriction of the confidentiality of the correspondence of the convict or on rejecting the motion, by specifying the grounds for granting or rejecting.

R A T I O N A L E

FOR THE NEED TO ADOPT A LAW OF THE REPUBLIC OF ARMENIA “ON MAKING A SUPPLEMENT TO THE PENITENTIARY CODE OF THE REPUBLIC OF ARMENIA”

According to the draft law of the Republic of Armenia “On making a supplement to the Penitentiary Code of the Republic of Armenia”:

Pursuant to Article 12(1)(9) of the Penitentiary Code of the Republic of Armenia, a convict has the right to communicate with the external world, including the right to correspondence, and pursuant to Article 92(5) of the same Code, the correspondence of a convict serving a sentence in the form of imprisonment shall be carried out through the administration of the correctional institution and, without getting acquainted with the contents of the correspondence, is subject to external examination in order to exclude the transfer of prohibited objects or substances.

While prescribing this right of a convict, the Penitentiary Code of the Republic of Armenia does not, however, provide for the right of the administration of the penitentiary institution to subject the correspondence of a convict to internal examination and to seize it in case of existence of grounds provided for in Article 43 of the Constitution of the Republic of Armenia and Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, the Penitentiary Code of the Republic of Armenia does not allow overseeing the correspondence of a convict in case of existence of grounds — laid down by the Constitution of the Republic of Armenia and the European Convention — for restricting the rights of a convict to freedom of speech and to confidentiality of correspondence.

In practice, this legislative deficiency gives rise to numerous difficulties relating to upholding the reputation of justice, observing the safety and disciplinary rules in a penitentiary institution by convicts, protecting public health and morality, the constitutional rights of others. This contributes to disseminating information — not corresponding to the

restrictions of the rights to confidentiality of correspondence and to freedom of speech. In case the court grants the motion, the head of the penitentiary institution acquires the right to oversee the correspondence of the convict and to seize it in case of existence of grounds prescribed by law.

Moreover, as a guarantee for the protection of the constitutional rights of a convict, it is also prescribed by the Draft that the letters of a convict addressed to the Minister of Justice, a court, the Prosecutor General, the Human Rights Defender, an ordained clergyman-confessor and his or her defence counsel shall not be subject to oversight. In addition, a convict is entitled to bring an appeal before the Court of Appeal against a decision on restricting his or her right to confidentiality of correspondence, as well as a provision is made that the correspondence of a convict may be opened only in his or her presence.

Thus, the adoption of the Draft will result in the prevention of dissemination by convicts of the information — not corresponding to the reality — about a penitentiary institution, in exclusion of violations against the protection of public health and morality, of the constitutional rights of others, including also direct threats to social rehabilitation of other convicts.