

Response

of the Armenian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Armenia

from 20 to 23 May 2014

The Armenian Government has requested the publication of this response. The CPT's report on the May 2014 visit to Armenia is set out in document CPT/Inf (2015) 10.

Strasbourg, 27 January 2015

INTRODUCTION

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out its visit to Armenia from 20th May to 23th May of 2014, pursuant to Article 7 Paragraph 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the European Convention). The delegation paid targeted visits to Yerevan-Kentron Prison, Yerevan-Nubarashen Prison (Unit for life – sentenced prisoners), as well as Prison Hospital in Yerevan and construction site of Armavir Prison which in the future is intended to accommodate life-sentenced prisoners with other inmates. The main purpose of the visit was to review the measures taken in respect of life-sentenced prisoners and, in particular, the prisoners A and B who were held in solitary- confinement for almost 14 years at Yerevan – Kentron Prison, in the light of specific recommendations made by the CPT after the 2010, 2011 and 2013 visits to Armenia.

The Ministry of Justice of the Republic of Armenia expresses its gratitude to the Committee for the co-operation and assures that it pays particular attention to all the recommendations and comments submitted by the Committee. The Ministry of Justice of the Republic of Armenia considers the reforms of the penitentiary service as a priority and undertakes, to the extent currently possible, all the measures aimed at improving the situation at the penitentiary establishments.

Enhancing transparency of the Penitentiary Service: new developments

The Ministry of Justice informs the CPT that the Ministry of Justice and its Penitentiary Service are taking constant measures to enhance transparency of the Service. In particular, web-site of the Penitentiary Service at www.ced.am has been launched at the beginning of October, 2014. This web site gives broad opportunities to prisoners, their relatives and all interested people to get useful and necessary information about prisoners' rights; the relevant legal acts, all information about the penitentiary entities.

A free of charge 24/7 hot line at +37410442273 has been launched within the Penitentiary Service. There is also a free of charge voice portal at +97460743333 that provides useful and necessary information on prisoners' and their relatives' rights and duties, as well as established procedures. Apart from these developments all amendments to the Penitentiary legislation (including those that are mentioned in this Response) are discussed with the Public Council adjunct to the Ministry of Justice which is comprised of NGOs.

RESPONSE TO THE RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION ARISING FROM THE VISIT BY THE CPT TO AREMIA FROM THE 20th TO THE 23th MAY 2014

The Government would like to express its commitment and readiness for providing the fullest cooperation to the CPT as it was evidenced by the rapid access to all the establishments visited enjoyed by the delegation, as well as the necessary information communicated to the delegation for carrying out its tasks and the possibility of interviewing all the persons it wished in private.

FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

Notice: In the following paragraphs the Government will stress and provide a response to the recommendations, comments and requests for information set out in paragraphs 15, 22, 23, 25, 26, 31, 38 and 39 of the Report of the CPT on its visit to Armenia from 20 to 23 May 2014 (the Report).

A. Situation of life - sentenced prisoners at Nubarashen Prison

1. Ill - treatment

With reference to the paragraph 15 of the Report

1. In this respect, the Government would like to note that by the letters dated on 30 June and 4 July 2014 the Armenian authorities informed the CPT that on 2 June 2014 the life sentenced prisoner, mentioned in the paragraph 15 of the Report, had been transferred to the Prison Hospital and on 9 June 2014 had been consequently transferred for a review of his state of health to the forensic ward of Nubarashen Psychiatric Centre. According to the updated information received by the Government, the mentioned life-sentenced prisoner has been subjected to the last hospital forensic expertise on 18 July 2014. Based on the outcomes of the mentioned expertise the prisoner was found partially incapable and is currently held at the forensic ward of Nubarashen Psychiatric Centre (civil hospital) under the permanent medical supervision of specialized doctors.

2. Conditions of detention, security, contact with the outside world and discipline

With reference to the paragraph 22 of the Report

2. With this regard the Government would like to inform that considering the observations and recommendations made by the CPT in its periodic reports rudimentary reforms have been undertaken in penitentiary system in order to bring the field in total compliance with the international standards. First of all, in addition to the existing legislation stipulating correction and encouragement of the law-abiding behavior as the ultimate goal of the execution of the sentence, the Draft bill of Penitentiary Code (the Draft bill) goes further by prescribing that the ultimate objective of the execution of sentence is to prepare prisoners for release and to their integration into the society after release. The approach reflected in the mentioned provisions is, *inter alia*, in line with the Recommendation Rec(2003)23 on “Management by prison administration of life sentence and other long-term prisoners” and Recommendation Rec(2003)22 on conditional release (parole).

3. According to the above mentioned ultimate objective, consideration has been given to the diversity of personal characteristics to be found among prisoners, and account taken of them to make individual plans for the implementation of the sentence (individualization principle). Thus, individual sentence planning should start following the entry into the prison and be reviewed at regular intervals and modified if necessary (considering the risks and needs assessment). For the achievement of this objective one of the major purposes of the sentence planning should be to provide a purposeful use of time. This means, a range of suitable occupations, such as occupation of educational, physical or cultural nature should be provided. This will depend on the physical and intellectual capacities of the individual prisoner.

4. In contrast to the existing legislation, according to the regulations of the Draft bill the limitations posed to the life-sentenced and long-term prisoners in respect of the right to visits is abolished. The objective of the proposed amendment is to provide equal attitude to the life-sentenced as to the other prisoners with regard to the right to visits, to prevent the breakdown of family ties, as well as to provide a possibility of periodic contact with the outside world. Accordingly, visits should be allowed with the maximum possible frequency. As a result, a right of short-term visits of 4 hours at least once a month, as well as a long-term visit with the possibility to live together for 3 days once in 2 months shall be provided to the prisoners. In addition to the provision prescribing the possibility of same visit entitlements to all sentenced prisoners, particular efforts have been made to abolish the segregation on sole ground of the sentence (non-segregation principle) for granting various forms of short-term leaves to life-sentenced and long-term prisoners.

5. As to the recommendation to put an immediate end to the practice of routinely handcuffing life-sentenced prisoners within the prison perimeter, the Government would like to inform that given the CPT recommendations a special Instruction dated on 31 October 2014 issued by the Head of Criminal Executive Department was circulated among the penitentiary establishments' administrations, stipulating, among the others, that handcuffing or ankle-cuffing of prisoners outside their cells should be an exceptional measure, based on individual risk assessment. Furthermore, a protocol shall be drawn on each case of use of handcuffs and/or ankle-cuffs (see Annex).

6. As to the access to shower, it has to be mentioned that the issues of the personal hygiene of sentenced prisoners are under permanent attention of Armenian authorities, thus the Government would like to note that, although the prisons constructed during the Soviet Union period do not allow to fully resolve the given issue on the basis of objective technical deficiency, all the measures are being undertaken to offer more frequent access to shower. As to the newly constructed Armavir Prison all cells have shower area with individual access possibility.

3. Other issues

With reference to the paragraph 23 of the Report

7. The Government would like to reiterate that the Draft bill, considering the requirement of striking balance between the objectives of ensuring security (dangerousness principle), on the one hand, and, non-segregation principle, on the other hand, provides that the segregation of life-sentenced prisoners should not be based on the sole ground of their sentence. This means that issue in question is factually solved by the provisions of the Draft bill, which is already under circulation.

With reference to the paragraph 25 of the Report

8. With regard to the particular concerns raised by the CPT in respect of the newly constructed Armavir Prison, ventilation system has been installed considering all the recommendations and comments of the CPT delegation, raised during its visit and is in conformity with CPT standards.

9. In order to provide short-term visits under the open conditions in four out of eight boots, functioning in Armavir Prison, glass partitions will be removed to grant a possibility of unrestricted contacts.

10. As to the comment made by the CPT in its Report with regard to the security cell, works have been carried out to remove the sharp edges of the furniture of cells to reduce the possibility of self-harm.

With reference to the paragraph 26 of the Report

8. The Government would like to note that during the development process of the new draft amendments to the Penitentiary Code and, specifically, of the regulations on conditional release, periodic meetings have been organized with the civil society institutions aimed at cooperation and collaborative solution making. All their comments and recommendations have been taken into consideration for the revision of the Draft bill. Furthermore, a Public Council, mainly composed of NGOs, adjunct to the Ministry of Justice, has been established which also discussed and made its proposals on the issue of conditional release.

9. Guided by the Recommendation Rec(2003)22 on conditional release (parole), in order to reduce the harmful effects of imprisonment and to promote the resettlement under conditions that seek to guarantee safety of the outside community, the requirements of the conditional release available for the life-sentenced prisoners have been reviewed under the Draft bill. These draft amendments are aimed at assisting the prisoners to make a transition from life in prison to a law-abiding life in the community through post-release supervision, as well as contributing to public safety and the crime rate reduction in the community. Thus, according to the proposed regulation the issue existing under the current legislation will be solved, as the progressive movement through the prison system from more to less restrictive conditions and, the possibility to spend the final phase under open conditions, if the legislative requirements are met, will be provided.

10. Furthermore, the issue of the absence of possibility of payment of compensation or making reparation to victims has been treated by the Draft bill on making amendments to the Criminal Code. Accordingly, the compensation to the victim can be provided after the conditional release in case if the written agreement exists between the victim and the sentenced prisoner in that respect. Thus, this cannot be considered as an automatic obstacle for acquiring the right for conditional release.

11. The Government would like to stress that the procedure for granting conditional release is planned to be changed. According to the Draft bill, the independent committee, which, upon the current legislation is the sole body deciding on the question of granting the conditional release, will cease to exist. This is aimed at elimination of sole decision making competence without further possibility of appeal, which increases possible corruption risks. The Draft bill provides that commission of the institution executing the sentence (the commission) will provide its reasoned decision on conditional release. Consequently, the supervising prosecutor will give its opinion about the lawfulness of the decision made by the commission. Finally, this decision will be subject to judicial review.

12. In addition to the above-mentioned, it is worth to highlight that additional guaranties are stipulated by the Draft bill for the prisoners seeking the conditional release: (i) the prisoner shall, on mandatory basis, participate in the hearing of the commission on the issue of parole or replacement of the remainder of the sentence with a reduced sentence; (ii) the prisoner can request the participation of an advocate, as well as an interpreter during the hearing; (iii) the copy of the reasoned decision of the commission, as well as the copy of the opinion of the prosecutor on the lawfulness of the mentioned decision shall be handed over to the prisoner; (iv) motion for granting parole or replacing the remainder of the sentence with a reduced sentence together with the prosecutor's opinion shall be submitted to the court. If the commission refuses to do so, the prisoner is entitled to submit written objections with regard to that decision and the opinion of the prosecutor thereon to the commission.

13. The mentioned amendments are aimed at ensuring that: the question of conditional release of the prisoner is heard by the body having power to order his release; the process is based on accessible and foreseeable standards and procedure prescribed by law; the adversarial proceedings are guaranteed during the judicial hearings; the decision made by the commission is reasoned, with the possibility of appeal, in case the prisoner disagrees with it.

14. As to the remarks on the absence of the probation service, the Government informs that currently a draft paper on the implementation of the probation service is under circulation and comprehensive discussion process, which involves both governmental bodies and NGOs, is organized. According to the draft paper, probation service, among the others, aims to reduce the reoffending by establishing positive relationships with offenders in order to supervise, guide and assist them and to promote their successful social inclusion, as well as to contribute to community safety and the fair administration of justice.

B. Situation of life - sentenced prisoners at Yerevan-Kentron Prison

With reference to the paragraph 31 of the Report

15. The prison doctor of Yerevan-Kentron Prison has no access to the life-sentenced prisoners concerned. Everything related to their treatment (medical examinations, medications, etc.) is carried out by psychiatrists.

With reference to the paragraph 38 of the Report

16. All necessary information and documents are sent to the CPT:

- (i) Table of activities;
- (ii) Report of the Head of the Penitentiary Service on the Special Commission's activities on prisoners A and B;
- (iii) Instruction of the Head of the Penitentiary Service on the Handcuffing Policy in prisons;
- (iv) Instruction of the Minister on Establishing a Special Commission on prisoners A and B;
- (v) Order of the Head of the Penitentiary Service on Establishing a Special Commission on prisoners A and B;
- (vi) New pictures.

With reference to the paragraph 39 of the Report

17. Based on the inquiry made and the data received, the Government would like to provide the following information concerning the prisoner C.

18. At present, the prisoner C is kept in solitary confinement upon his own will and written request. He benefits from outdoor exercise, can make telephone calls, as well as received two short visits and 15 telephone calls in July – October. At present, he benefits from one hour of out-door exercise, as well as from out-of-cell activities. In particular, he does exercises at the special equipped area of the prison yard every day. Thus, the Government would like stress that no restrictions are posed on him for the enjoyment of possibility of contact with outside world, as well as from the range of purposeful out-of-cell activities.