

THE IMPORTANCE OF MAINTAINING FAMILY CONTACTS FOR INMATES DURING IMPRISONMENT

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Persons who violate social norms of the human community, individual and human rights shall be sanctioned by the society, while the community tries to redress violated rights in the interest of social justice and conciliation. This goal may be achieved by the application of a sanction against the perpetrator of the criminal offence and redressing legal balance, perturbed by the committed criminal offence.¹ European legal systems – while highlighting the individual and civic rights of the person – consider the necessity of the restriction of human rights as evidence, but exclusively within the bounds of reason, with a view to protect important interests of the society. All criminal sanctions comprise either the deprivation or the restriction of some rights of the perpetrator, which shall be provisional and proportional to the criminal act. The gravity of these sanctions is reflected by the denomination of the applied punishment or measure: imprisonment, suspension of the licence for practicing certain professions, etc. Such deprivation or restriction of rights shall be prescribed only by an act of the Parliament. That is the substance and the core of each sanction. Nevertheless, neither the protection of the society and its members nor the infliction of penalties or the prevention of criminality shall mean the privation of all rights, but they must also serve the reintegration of the delinquent into society and his or her rehabilitation, as worded by laws and documents on human rights. However, the reintegration to society seems to be more painful and it produces more difficulties without any family contacts. It occurs frequently that the released prisoner has no one or nowhere to turn for help, as he or she has probably lost contact with his or her family and friends during the imprisonment. Even if the prisoner is determined on his or her release never to commit a criminal offence again, nothing can be done if

¹ György VÓKÓ: The Effects of the Guarantee System of Human Rights and Legality on the Delinquents. In: Walter de GRUYTER: *Psychology and Criminal Justice*. Berlin–New York, 1998. 456.

he or she cannot obtain employment, he or she has neither a family to wait for, nor friends to give a helping hand.² The former prisoner continues to be 'stigmatized', he or she will be outcast by other people for a long time, and therefore it will be difficult for him or her to begin a new life. According to the information obtained from recidivists purging imprisonment, the reasons leading to their recidivism (in case of some convicted there is more than one reason for recidivism) are responsible in the majority of cases (41%) to the absence of adequate family contacts. They considered that 46% of the reasons, leading to their recidivism had been expressively linked to their entourage after their release from prison (decomposition of the family life, inadequate relations with family and relatives, influence of the Roma community on the concerned recidivist, etc.). For 32.5 % of the convicts who also listed alcoholism as a reason for their recidivism, post-release circumstances had also a great importance. In the course of the reintegration in the society of the released prisoner, the first six months seems to be decisively important. The implication of the positive influence of the family has been reported by a statistical survey with a representative sample selected from convicted males. Among married male prisoners, only 15 % have become recidivist; while 33% of single males and 26% of divorced males convicted have been unable to desist from crime.³ Certain prisoners, released from imprisonment have suffered the loss of contact with their family, as they did not have any lodgement, nor had bonds either with friends or relatives.

The convicted also misses his or her family, which is forgiving and offers a sense of security, with each member taking responsibility for the others. The family represents the affection and confidence, the centre of all individual relationships, the place of departures and arrivals, that of affectionateness, responsibility, duties, recreation, and the sense of belonging to its other members. The family has a considerable formative effect on every one; it is within the family that one can discern beauty and noble things, humanity, and the affection of belonging together as one unit. Nowadays, sciences attribute eminent importance to the role of the family in the forming of public and social relationships as well as the sense of solidarity towards each other. Family life should be infiltrated by the experience of the individual of the community and of his or her participation in its everyday events, as well as the contribution to the common interests of the society. The family is able to offer an excellent milieu to the development of noble characteristics of the individual, as well as to the impetus to the respect of the rights of other people. Family life is the first school for everyone.

Every prisoner – convicted to imprisonment and those in preliminary detention – has the right to keep certain contacts with the outside world, and authorities of the penitentiary have to make efforts to create circumstances, which allow the best solutions to maintain these contacts.

² György Vókó: *Europäisches Strafvollzugsrecht*. Passau, Schenk Verlag, 2009. 140.

³ Vókó, György: *A magyar büntetés-végrehajtási jog*. Budapest-Pécs, Dialóg Campus Kiadó, 1999. 453.

Traditionally, these relations manifest, in case of prisoners, in the form of correspondence, telephone calls and visits, but there are also other channels of electronic communication, offered by modern techniques, provided that the tolls assuring their control are at the disposal of penitentiary authorities.

Moreover, contacts with the outside world are indispensable for alleviating potentially mortifying effects of life in prison. Persons in preventive detention should also have the opportunity to maintain contacts with the outside world, and restrictions, eventually imposed should be carefully examined regarding their undoubted necessity.

Untried prisoners shall be allowed to have contacts with family and other persons in the same way as convicted prisoners.⁴

Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, and to receive visits from these persons.⁵

This rule is in conformity with the disposition laid down in Article 8, Paragraph 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which specifies that everyone has the right to respect for his private and family life, his home and his correspondence. Paragraph 2 of this Article declares that „There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The International Covenant on Civic and Political Rights contains a more articulated disposition in its Article 17, [Paragraphs 1 and 2], under which “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

„Everyone has the right to the protection of the law against such interference or attacks.” The disposition worded in Paragraph 1 reiterated in Article II-67 of the Charter of Fundamental Rights of the European Union as follows: „Everyone has the right to respect for his or her private and family life, home and communications”. This disposition shall be applied also to prisoners; their right to respect for their private and family life and communication shall not be restrained arbitrarily or contrarily to the law. The right to respect for the private and family life in the framework of the penitentiary law – as third issue constituting ‘liberties’ – shall be observed completely.⁶

⁴ See the Annex to the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Rule 99.

⁵ See the Annex to the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Rule 24.1.

⁶ Vókó, György: *Európai büntetés-végrehajtási jog*. Budapest-Pécs, Dialóg Campus Kiadó, 2006. 85–86.

Article 8 of the European Convention on Human Rights recognizes the right of everyone to respect for his private and family life and correspondence. Rule 24 of European Prison Rules shall be read as determining the responsibility of the authorities of the penitentiary with regard to the respect for this right under the fundamentally restricting circumstances of prisons. This rule covers also visits, which represent an utmost important form of communication.

As the European Court of Human Rights (ECtHR) highlighted in a particular case with regard to a complaint concerning the violation of Article 8 of the Convention, such restriction shall be considered as being in conformity with the Convention only if the interference is „determined by an Act of the Parliament, and is necessary in a democratic society” for the protection of a legitimate purpose, enumerated in Article 8, Paragraph 2 of the Convention. The ECtHR held – while referring to Article 118, Paragraph 1, item d), and Paragraph 2 of the several times amended Law-decree 11 of 1979 on the execution of criminal punishment and measures – that „the interference had been determined by an Act of the Parliament.” As for myself, I would complete this reference with the disposition laid down in Act on Criminal Proceedings, Article 135, Paragraph (3), under which: „The defendant held in pre-trial detention may only be subjected to restrictions following from the nature of the criminal proceeding, or required by the rules of the institution, executing the detention.” In a particular case, the ECtHR considered the allegation admissible, under which the purpose of the limitation was the effective conducting of the criminal investigation, and its duration was not disproportionate to the obtainable purpose (the prohibition had been applied at the beginning of the procedure). The ECtHR referred to the principle developed in the jurisprudence namely, that in general, limitations, which would be unjustified against a person at large, may be admissible against a convicted prisoner or a defendant in pre-trial detention, which is subject to criminal investigation, as there is often a risk of complicity. Taking into consideration this argumentation, the ECtHR held that the limitation had been in conformity with the disposition of Article 8, Paragraph 2.⁷

The control of maintaining contacts with the outside world does not mean prohibition. It must be highlighted that the instance(s) of Strasbourg has/have always conceded the simple control of the correspondence of the convicted prisoners and that of the defendant, being in pre-trial detention, except for the correspondence with their lawyer and public authorities. This kind of control exists in all Member States of the Council of Europe, being justified by security considerations. The Court recognised that some measure of control over prisoners' correspondence is not of itself incompatible with the Convention, but the resulting interference must not exceed what is required by the legitimate aim pursued.⁸

⁷ Kokavec vs. Hungary. www.im.hu

⁸ Pfeifer and Plank vs. Austria, Application no. 10802/84; 25 February 1992.

There are also different channels of communication, other than correspondence. In the *Malone* case⁹ the Court summarized the general requirements to be applied to the use of telephone. The Court specified that each Member State should formulate with sufficient precision the dispositions on the use of telephone by detainees. The supervision of the telephone calls must not constitute a general practice; it may only be applied in case of justified suspicion against a definite person. The extension of this measure covers not only the interception of telephone calls, but also the 'metering' (the process known as 'metering' involves the use of a device (a meter check printer) which registers the numbers dialled on a particular telephone and the time and duration of each call in the United Kingdom). In another case, in 1993, it was held by Strasbourg, that a telephone conversation did not lose its private character solely because its content concerned or might concern the public interest.¹⁰ (In that case of attempted manslaughter, the criminal offence was not accomplished.)

Visits constitute the primary and most direct form of maintaining contact. Receiving visitors is at the same time a fundamental right of the detainee. „The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in a normal manner as possible. Prison authorities shall assist prisoners in maintaining adequate contacts with the outside world and provide them with the appropriate welfare support to do so.”¹¹

In the sense of Article 36, Paragraph (1) items b) and c) of the Law-decree on the execution of punishments, „In Hungary, the convicted detainee has the right [...] to communicate by correspondence with his or her relatives as well as persons whom he or she has denominated and authorized by the concerned establishment of penitentiary; the frequency and length of the letters shall not be limited; to receive visitors at least once a month; when required by security considerations of the penitentiary establishment, the convicted detainee shall communicate with his or her visitors through bars”. The commandant (director) of the penitentiary establishment shall order the latter form of communication, as well as that the conversation between the detainee and his or her visitor took place in a manner, that the visitor initiates a telephone call from a covered cabin.

Thus, independently of the gravity of the security regime applied to the convicted detainee, he or she shall be authorized to receive visitors at least once a month, namely, the visit by two minors and two majors at the same time. The time and duration of these visits shall be determined by the commandant/director of the concerned penitentiary institution. The duration may be prolonged in individual cases by 30 minutes each. Visits shall be delivered on the premises, designated for this purpose; both the detainee and his or her visitors shall be sitting at a table.

The detainee may be authorised to eat aliments – after having been checked – that his or her visitor has brought from outside the prison or bought on site, or take the

⁹ *Malone vs. United Kingdom* case, Application no. 8691/79; 2 August 1984.

¹⁰ *Case of A. vs. France* (Application no. 14838/89); 23 November 1993.

¹¹ Annex to the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Rules 24.4. and 24.5.

food, bought on site away to the detention area. During visits, only beverages bought on site or provided by the penitentiary establishment are allowed. The convicted detainee may offer gifts or any other item only if it is authorised by prison staff. Both the detainee and his or her visitors shall be advised on the eventuality of the supervision of their conversation. On the detainee's demand – in exceptional cases – the detainee may be transferred to the penitentiary establishment which is closest to his or her domicile with a view to facilitate the occurrence of visits, but only with the common permission given by the commandants /directors of the two prisons concerned. The convicted detainee may be visited by his or her relative purging his or her imprisonment in another penitentiary establishment only with the common permission of the commandants of the two prisons concerned. The costs of the transfer shall be assumed by the transferred prisoners, except for cases, when his or her journey takes place in the framework of regular transfers between the two prisons.

Prisoners accommodated in cells or units of special security shall be authorised to have conversations with their visitors only from a closed cabin; they must not accept any food or other things from their visitors and they must not give them such items, either. Notices on the visits for persons, that have been designated by the detainee shall be given by the penitentiary establishment through the latter. This notice shall contain – among other things – the eventuality of the checking of the clothes and packs of visitors, as well as information on the rules of staying in the penitentiary establishment.

Persons, who have been enjoined by the public prosecutor or the judge in the interest of the efficiency of the ongoing criminal procedure, or the comportment of whom probably would endanger the security of the penitentiary establishment according to the disposable information, shall be excluded from visits. The visit may be interrupted if the convicted or the visitor breaches the order of the visit, and he or she does not cease his or her disturbing comportment despite a warning by the prison staff. The visit must be interrupted if the comportment of the convicted or the visitor directly violates or endangers the security of the penitentiary establishment.¹²

The relevant disposition applicable to juvenile offenders disposes that „a meeting of parents may be convoked in the penitentiary establishment of juveniles, and relatives may also be invited to any event organised for juvenile detainees.”¹³ Persons serving confinement for misdemeanours are also authorised to be in correspondence with their relatives and persons which they have denominated and are authorised by the penitentiary establishment, and have the right to receive visitors at least once a month.¹⁴

According to the explanations to the new European Prisons Rules, the term ‘family’ should be interpreted in a larger sense, in a manner that also covers relationships,

¹² Decree no. 6/1996 (VII. 12.) of the Minister of Justice on the rules of the execution of imprisonment and the pre-trial detention, Articles 88–90.

¹³ Decree no 6/1996 (VII. 12.) of the Minister of Justice, Article 213, Paragraph 2.

¹⁴ Law-decree on the execution of punishments, Article 124, Paragraph 2, items b) and c).

which have been formulated between the detainee and another person similarly to that with the members of his or her family, even if this relationship is not formalised.

Rules 24.6, 24.8 and 24.9 of the European Prison Rules aim at guaranteeing that prisoners receive any important information on their close relatives, and that concerned persons out of the prison – which are important for prisoners – receive also effective information on them. Detainees should be assisted in communicating information on their person and provided with the appropriate welfare support to do so. This rule attempts to maintain a just balance between the recognition of the right of persons out of the prison, which are important for prisoners to be informed on certain events – in some cases, the prison authorities have the duty to inform these persons – and the right of the prisoners not to communicate certain information concerning their persons, if they desire to do so. „Any information received on the death or serious illness of any near relative shall be promptly communicated to the prisoner. Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.” Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution as well as of any serious illness or injury they may suffer.

Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.¹⁵ All these rules exist also in Hungarian prison law.

Resolution A4-0369/98 of the European Parliament – adopted on its sitting of 17th December 1998 – firmly called on the Member States that families of prisoners in particular should be taken into account, unless there are specific and justified grounds for not doing so (possible involvement in crime, links to organised crime or particular kinds of terrorism, etc.), by ensuring that whenever possible prisoners are held in a place close to the home of their families and by encouraging family and conjugal visits with special areas designated for this purpose, given that spouses and children always play an extremely positive role in helping prisoners to change their ways, become more responsible and re-establish themselves in society. The European Parliament urges to take into account the family relations of detainees.

According to the Law-decree on the execution of punishments, Article 22, Paragraph 3, „the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral of a relative or for other humanitarian reasons. The commandant / director of the penitentiary establishment may order the use of handcuffs and – in exceptional cases – may prohibit a visit, or refuse the permission for the prisoner to attend a funeral.”

¹⁵ Annex to the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Rules 24.6, 24.7, 24.8 and 24.9. and 24.5.

The above disposition of the Law-decree on the execution of punishments has a humanitarian character; naturally, the decision of the prison commandant on the refusal of the permission may be challenged by lodging a complaint.

The untried detainee should be authorized to visit a gravely sick relative or attend a funeral on the basis of the decision of the public prosecutor – until the rendering of a decision in the preliminary proceeding of the trial, and after by the authorisation of the judge, but in all cases exclusively under escort.¹⁶

A complaint may be lodged against the said decision of the public prosecutor to the hierarchically superior public prosecutor; meanwhile the ruling of the judge may be contested by lodging an appeal to the court of appeals. According to the Law-decree on the execution of punishments, Article 50, Paragraph 2, the contribution of relatives of juvenile delinquents to their education and promoting their reintegration to the society should be made use of.

It is most useful for all detainees – not only for those convicted – to maintain family contacts. Therefore, effective measures should be taken – and not only measures for the sake of appearances – with a view to support detainees to successfully return to the society, their family life and work.¹⁷

In conformity with the Law-decree on the execution of punishments, Article 113, „the purpose of the post-release assistance to prisoners is that the released person from imprisonment could benefit of social arrangements designed to assist them in returning to the free society after release.”

„Accordingly, the probation officer [...] if necessary, shall assist the convicted person in the rebuilding of his or her familial contacts.”¹⁸

Nevertheless, contacts with family and visits by family members are of crucial importance not only for the detainees, but also for the members of their family. Affectionate family ties must be kept alive with the other members of the family and *vice-versa*, as to assist the errant delinquent. Therefore, family members are able to persuade the delinquent from returning to a life of iniquity, thus directing him or her in the right way.

Contacts with the family are an efficient tool for reducing potentially detrimental effects of the imprisonment. Thus, such contacts are also able to abate destructive effects of the imprisonment on the detainee’s personality, including those of the ‘prisonisation’. One such effect is deprivation; it means that imprisonment deprives the detainee not only of his or her liberty, but also of different goods and services. Despite all efforts, the imprisonment does not provide the appropriate circumstances for strengthening the morality of detainees; on the contrary, in many cases, it leads to their moral corruption and criminal infection. The prison slang term ‘prison-school’ is used for characterising this phenomenon. Isolation breaks down the detainee’s self-esteem, his or her self-sustaining ability, communicative and other social skills,

¹⁶ See the Law-decree on the execution of punishments, Article 118, Paragraph 3.

¹⁷ Annex to the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Rule 33.3.

¹⁸ See the Law-decree on the execution of punishments, Article 114/A, Paragraph 2., item c).

which would be crucial in the outside world on release with a view to avoid re-offending.¹⁹

The crucial role of the family in helping prisoners to change their ways, become more responsible and re-establish themselves in society is incontestable. Therefore, authorities should make arrangements for assuring that visits shall be such as to allow prisoners to maintain and develop family relationships in a normal manner as possible.

During preventive detention – when these contacts may suffer limitations and restrictions with a view to assure the efficiency of the criminal proceeding – the utmost care should be taken to find the just necessary extent of the restrictions to be imposed.

These are the reasons why family contacts must be protected and safeguarded.

¹⁹ György Vókó: *Brott, straff och verkställighet. Ungersk Straffrätt under reformering*. Stockholm, Juridisk Tidskrift, 2009–10. 624–638.; 766.