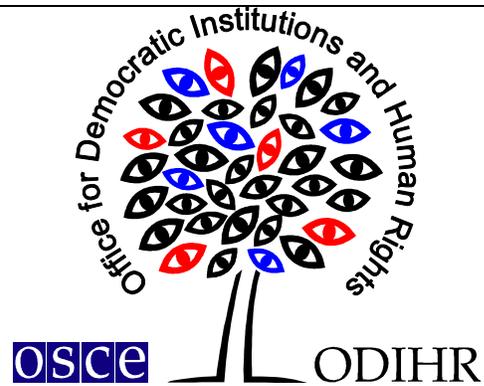


Warsaw, 23 September 2010

Opinion-Nr.: CRIM – ARM/162/2010  
(AT)

[www.legislationline.org](http://www.legislationline.org)



## NOTE

# ON MODIFICATIONS TO ARMENIAN CRIMINAL LEGISLATION RELATED TO ACTS OF CONTEMPT OF COURT

**Based on an unofficial English translation of relevant legislation and documents  
provided by the OSCE Office in Yerevan**

*This Opinion has benefited from the contribution made by Professor Karoly Bard, Pro-Rector for Hungarian and EU Affairs and Chair of the Human Rights Program of the Central European University in Budapest, Hungary*

**TABLE OF CONTENTS**

- 1. INTRODUCTION**
- 2. SCOPE OF REVIEW**
- 3. EXECUTIVE SUMMARY**
- 4. ANALYSIS AND RECOMMENDATIONS**
  - 4.1. Contempt of Court Legislation in Armenia**
  - 4.2. Summary of the Minister of Justice’s Request**
  - 4.3. International Human Rights Principles and Contempt of Court**
  - 4.4. Contempt of Court Legislation in the OSCE Region**
    - 4.4.1. Contempt of Court in Civil Law States*
    - 4.4.2. Contempt of Court in Common Law States*
  - 4.5. Recommendations for the Republic of Armenia**

**Annex 1: Letter of the Minister of Justice of the Republic of Armenia to the Head of the OSCE Office in Yerevan of 4 June 2010**

**Annex 2: Criminal Code of the Republic of Armenia (Excerpt)**

**Annex 3: Judicial Code of the Republic of Armenia (Excerpt)**

**1. INTRODUCTION**

1. *From April 2008 till June 2009, the ODIHR conducted a Trial Monitoring Project in Armenia. The Final Report completing this Project (hereinafter “the Final Report”) was issued in March 2010 and included numerous recommendations on various issues related to criminal proceedings and the implementation of related human rights standards.<sup>1</sup> Chapter 8 of the Final Report described contempt of court proceedings in Armenia, noting that during monitored court procedures, the application of sanctions for acts of contempt of court raised a number of concerns. One of these concerns involved the legal basis for dealing with acts of contempt of court, which is currently to be found in Article 343 of the Criminal Code and in Article 63 of the Judicial Code of the Republic of Armenia. The Final Report stated that Armenian Law would benefit from a clearer distinction between judicial sanctions for acts of contempt of court and prosecution for criminal contempt of court.*
2. *In response to this recommendation, Members of Parliament from the Armenian National Assembly (hereinafter “the Parliament”) prepared draft laws envisaging amendments and modifications to a number of laws stipulating court sanctions for acts of contempt.*
3. *On 4 June 2010, the Minister of Justice of Armenia sent a letter to the Head of the OSCE Office in Yerevan in which he informed him about the above draft laws. In this letter, the Minister of Justice noted that while the Government of the Republic of Armenia (hereinafter “the Government) agreed to principal provisions of the draft laws, the sanctions for acts of contempt of court and the process leading up to such sanctions were in dispute. The OSCE Office was asked to have the arguments of both the Government and the Members of Parliament discussed by experts and to inform the Ministry of Justice of the results of such discussion.*
4. *On 15 June 2010, the OSCE Office in Yerevan forwarded this request to the OSCE ODIHR, asking it to provide expertise in this matter. The current Note is provided in response to this request.*

**2. SCOPE OF REVIEW**

5. The scope of this Note covers only the question posed by the Ministry of Justice related to the nature of contempt of court proceedings and such proceedings’ compliance with international human rights principles. Thus limited, the Note does not constitute a full and comprehensive review of the current and draft legislation governing acts of contempt of court in Armenia.
6. The Note raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international human rights standards

---

<sup>1</sup> The Final Report may be found on the OSCE ODIHR website under [http://www.osce.org/documents/odihr/2010/03/42944\\_en.pdf](http://www.osce.org/documents/odihr/2010/03/42944_en.pdf)

and best practices, as found in the international agreements and commitments ratified and entered into by the Republic of Armenia.

7. This Note is based on an unofficial translation of the Minister of Justice's Letter of 4 June 2010 and of the relevant provisions of the Criminal Code and Judicial Code of Armenia, all of which have been attached to this document as Annexes 1, 2 and 3 respectively. Errors from translation may result.
8. In view of the above, the OSCE ODIHR would like to make mention that this Note is without prejudice to any written or oral recommendations and comments to contempt of court legislation or the Armenian Criminal Code and Judicial Code that the OSCE ODIHR may make in the future.

### **3. EXECUTIVE SUMMARY**

9. In order to ensure the full compliance of future legislation with international standards, the OSCE ODIHR recommends as follows:
  - A. To specify in relevant legislation which types or levels of contemptuous behavior would give rise to responses by the competent judge under the Judicial Code and which types or level would be considered sufficiently severe to warrant criminal proceedings, [par 55] and;
  - B. In criminal proceedings involving acts of contempt of court, to ensure that the offender benefits from all rights guaranteed to him/her by the ECHR and the ICCPR, in particular fair trial rights and the right to liberty. [pars 56-57]

### **4. ANALYSIS AND RECOMMENDATIONS**

#### **4.1. Contempt of Court Legislation in Armenia**

10. In Armenia, the contemptuous treatment of court is a criminal action laid down in Article 343 of the Criminal Code,<sup>2</sup> which is expressed by insulting the participants of a trial, punishable with a fine of 100 to 300 minimal salaries or with 1-2 months of arrest. If the same action involves insulting a judge with respect to the execution of his/her official duties, the fine rises to 200 – 500 minimal salaries, while alternative punishments include correctional labour for 1-2 years or 2-3 months of arrest. Criminal appeal procedures in general are regulated in Chapters 46-48 of the Criminal Procedure Code.<sup>3</sup>
11. The issue of acts of contempt of court is also laid down in Article 63 of the Judicial Code of Armenia.<sup>4</sup> This provision stipulates which sanctions may be imposed by courts in cases of, *inter alia*, contempt of court or obstructing the normal course of a session. The types of judicial sanctions mentioned in Article 63 range from a simple warning to removal from the courtroom or

---

<sup>2</sup> The Republic of Armenia Criminal Code of 1 August 2003, last amended on 8 April 2010.

<sup>3</sup> Criminal Procedure Code of the Republic of Armenia of 1 September 1998, last amended on 17 March 2010.

<sup>4</sup> The Republic of Armenia Judicial Code, adopted on 21 February 2007, last amended on 16 September 2009.

judicial fines in an amount of up to 100,000 drams. Judges may also file a request with the Prosecutor General or the Chamber of Advocates concerning the punishment of a prosecutor or advocate, respectively. The modalities of issuing certain sanctions are found in pars 2-5 of Article 63. According to Article 63 par 8, court decisions on judicial sanctions are final from the moment of promulgation, but may be appealed in cases involving judicial fines.

12. It thus appears that acts of contempt of court are on the one hand treated as a criminal action, on the other hand as a disciplinary matter. Article 63 leaves it up to the competent judge to decide whether to impose a warning, remove the person in question from the courtroom, impose a fine or, in the case of prosecutors or advocates, file requests with the Prosecutor General or the Chamber of Advocates.

#### **4.2. Summary of the Minister of Justice's Request**

13. In his letter of 4 June 2010 to the Head of the OSCE Office in Yerevan, the Minister of Justice outlined the different points of view of the Government and the National Assembly MPs with regard to draft legislation submitted by the latter on contempt of court actions.
14. According to the Government, it is necessary, in order to ensure proper due process during trials, to clearly differentiate between judicial restraint measures and liabilities. While it is not opposed to liability measures in general, the Government finds it unacceptable for the judge ruling the court proceedings to apply such measures directly without a proper prior investigation and does not believe that such sanctions could have a preventive effect. The judge could, on the other hand, prepare a report about contempt in accordance with the defined procedure for determining administrative or criminal liability, thereby making contempt of court a subject of discussion by authorized authorities or a different court. These bodies could then initiate administrative proceedings and investigate the case, while taking into account all circumstances of a specific case, including aggravating and mitigating circumstances.
15. The Government fears that directly applied fines without investigation could also be applied towards people who cannot be subjected to liability (e.g. due to insanity) or in cases where certain grounds exclude liability. Also, such an approach would not make it possible to take into account individual circumstances of a case, e.g. aggravating or mitigating circumstances.
16. Further, Article 83.5 (6) of the Armenian Constitution states that laws should regulate cases, procedure and conditions for criminal, administrative, economic (property) and disciplinary liability. According to the Government, fines imposed by courts are a type of administrative liability, meaning that in such situations, the procedures and terms of determining administrative liability should be followed.
17. The Government is also of the opinion that before imposing a court fine towards trial participants or other persons present during trial, courts must prove the guilt of the persons concerned. Likewise, courts must ensure that the affected persons' right to legal aid, as well as other requirements under Article

6 of the European Convention on Human Rights, is taken into account. It should be borne in mind that when imposing certain forms of liability, judges are often victims (of acts of contempt of court) on the one hand and act as judges on the other.

18. The National Assembly MPs, on the other hand, consider fines imposed on persons for acts of contempt of court to be an exceptional form of court sanctions which has nothing to do with liability and have a purely preventive purpose. Since a court sanction is a tool of urgent response, they believe that there is no need to stipulate the procedure and terms of imposing court sanctions, nor would it be correct to make this the subject of separate proceedings. In this context, the National Assembly MPs refer to a number of countries where it is a widely used practice to impose fines directly during court proceedings.
19. In his letter of 4 June 2010, the Minister of Justice asked that the OSCE Office have these arguments discussed by experts and that mention also be made of those countries that consider it acceptable for fines to be imposed directly during trial. The Minister of Justice suggested that perhaps, in those countries such practice is accompanied with additional procedures and guarantees that would take into consideration the Government's concerns.

#### **4.3. International Human Rights Principles and Contempt of Court**

20. Due to the differences in criminal procedures existing all over the world, there are no international obligations or best practices relating specifically to the question of how to deal with acts of contempt of court. Instead, the main parameters for the proper handling of cases involving acts of contempt of court can be found in more general human rights principles, namely the right to liberty, the right to fair trial and the right to freedom of expression, as well as the right to a legal remedy.
21. The right to liberty is stipulated in Article 9 of the International Covenant on Civil and Political Rights<sup>5</sup> (hereinafter "the ICCPR") and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention" or "the ECHR"). Both provisions state that every person has the right to liberty and that this right may only be limited if the grounds and procedure supporting this limitation are established by law. The wording of Article 5 of the Convention is even more specific in that it lists only five examples of when a deprivation of liberty is permitted. One of these examples is "the lawful detention of a person after conviction by a competent court" (Article 5 par 1 (a)), another is "the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law" (Article 5 par 1 (b)). In view of the fact that acts which are found to constitute contempt of court may lead to the deprivation of liberty of a person, the procedure must be based in law. The arrest or detention of a person will only be justified if the court order or judgment reflects applicable law, or if there is no other way to

---

<sup>5</sup> The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and acceded by the Republic of Armenia on 23 June 1993.

fulfill an obligation prescribed by law, in this case the proper conduct of court proceedings. The law needs to be clear and precise, and the competent judges need to apply it correctly. The arrested and detained individual must have the possibility to appeal against his/her arrest or detention (Article 9 par. 4 of the ICCPR and Article 5 par. 4 of the ECHR).

22. The right to fair trial, laid down in Article 14 of the ICCPR and Article 6 of the ECHR, embodies numerous individual principles, namely the right to be heard, equality of arms before court, court proceedings within a reasonable time, as well as the independence and impartiality of tribunals established by law. This right is also reflected in par. 6 of the UN Basic Principles of the Independence of the Judiciary, which states that all judicial processes shall be conducted fairly and the rights of parties shall be respected.<sup>6</sup>
23. The fair trial principle is applicable in cases involving criminal charges or determining the rights and obligations of individuals in a suit at law. Therefore, to trigger the application of fair trial guarantees under Art. 6 ECHR, contempt of court charges would need to be classified as criminal charges within the autonomous meaning of this provision under the ECHR. This in turn depends on the classification of acts of contempt of court in national law, the (punitive) nature of the offence and the severity of the possible punishment.<sup>7</sup> In cases where contempt of court actions are considered criminal matters in domestic law, or where they are punished with a certain degree of severity, there is quite a lot at stake for alleged offenders. The latter thus need to be provided with all of the above minimum fair trial rights,<sup>8</sup> and the judge or court presiding over the contempt of court proceedings must give the appearance of being impartial and objective.<sup>9</sup>
24. In cases of less severe punishment, where the purpose is mainly to restore order in the courtroom and not so much to punish the offender, Article 6 may not always be applicable due to the lack of a “criminal charge”. For example, in the case of *Ravnsborg v. Sweden*, the European Court of Human Rights (hereinafter “ECtHR”) found that measures ordered by the court to ensure the proper and orderly functioning of court proceedings were more akin to the exercise of disciplinary powers than the imposition of punishment for the commission of a criminal offence. Additionally, in this case the possible amounts of fines did not attain a level such as to make them criminal sanctions. For this reason, and also due to the restrictive circumstances of converting these fines into punishments, the Court found that what was at stake for the applicant was not sufficiently important to warrant classifying the

---

<sup>6</sup> The UN Basic Principles of the Independence of the Judiciary were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>7</sup> See the ECtHR’s *Engel v. the Netherlands* judgment of 8 June 1976, application nos. 5100/71, 5101/71; 5102/71, 5354/72 and 5370/72, par. 82.

<sup>8</sup> See the ECtHR’s *Ravnsborg v. Sweden* judgment of 23 March 1994, no. 14220/88, par 34.

<sup>9</sup> See the ECtHR’s *Kyprianou v. Cyprus* Grand Chamber judgment of 15 December 2005, application no. 73797/01, par. 127, where the Court noted that in proceedings of contempt of court directed at the judges personally, these same judges then took the decision to prosecute, tried the issue, determined the applicant’s guilt and imposed the sanction of imprisonment. It found that in such a situation, “the confusion of roles between complainant, witness, prosecutor and judge could self-evidently prompt objectively justified fears as to the conformity of proceedings with the time-honoured principle that no one should be a judge in his or her own cause and, consequently, as to the impartiality of the bench”.

offence as a criminal offence.<sup>10</sup> For this reason, the case fell outside the ambit of Article 6 of the ECHR.<sup>11</sup> In such cases, offenders will thus not be entitled to the fair trial rights guaranteed by Article 6.

25. Finally, the right to freedom of expression (Article 19 of the ICCPR and Article 10 of the ECHR) implies that everybody has the right to seek, receive and impart ideas of all kinds, either orally, in writing or in print. This right may only be curtailed by law and only if such limitation is necessary in order to protect e.g. national security, public order, public health or morals, or the rights and reputation of others (ICCPR). The ECHR is more explicit in that it also includes the protection of territorial integrity, public safety, the prevention of disorder or crime, preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary. This latter ground clearly states that also in contempt of court cases, the freedom of expression of an individual may be curtailed in order to maintain the authority and impartiality of the judiciary. The latter is also laid down in the UN Basic Principles on the Independence of the Judiciary, which also stresses that there shall be no inappropriate or unwarranted interference with the judicial process (par. 4).
26. In all instances, an individual needs to be granted the right to appeal, since both the ICCPR (Article 2 a)) and the ECHR (Article 13) grant every person the right to an effective remedy in cases of alleged human rights violations.
27. The above human rights principles are also supported by numerous OSCE Commitments, notably the independence of the judiciary,<sup>12</sup> the right to appeal,<sup>13</sup> and the right of each individual to a fair and public hearing within a reasonable time, including the right to present legal arguments and be represented by legal counsel of one's choice.<sup>14</sup> The freedom of expression is also outlined in OSCE Commitments, notably the Copenhagen Document (par. 9.1), and confirmed by the Concluding Document of Budapest<sup>15</sup> and the Istanbul Document.<sup>16</sup>

#### **4.4. Contempt of Court Legislation in the OSCE Region**

28. Throughout the OSCE region, there is a general consensus as to the importance of maintaining the authority of the judiciary. At the same time, there are different approaches to how this should be done. While certain OSCE participating States consider acts of contempt of court to be a criminal offence, other countries see such acts as a purely disciplinary matter that should be dealt with as such. The following section lists examples from individual OSCE

---

<sup>10</sup> See the ECtHR's *Ravnsborg v. Sweden* judgment, par 34.

<sup>11</sup> *Ibid.* See also the *Putz v. Austria* judgment, no. 18892/91, of 22 February 1992, where the ECtHR came to a similar conclusion for fines imposed to maintain order during civil procedures.

<sup>12</sup> See the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), Copenhagen, 29 June 1990, par 5.12, as well as the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow Document), Moscow, 3 October 1991, pars. 19.1 and 19.2.

<sup>13</sup> See the Concluding Document of Vienna – The Third Follow-Up Meeting (Concluding Document of Vienna), Vienna, 15 January 1989, par. 13.9.

<sup>14</sup> *Ibid.*, as well as the Copenhagen Document, pars 5.16 and 5.17.

<sup>15</sup> Concluding Document of Budapest, 6 December 1994.

<sup>16</sup> Istanbul Document, Istanbul, 19 November 1999.

participating States, in an attempt to provide a brief overview of the different approaches adopted in the region.

#### ***4.4.1 Contempt of Court in Civil Law States***

29. In many civil law countries, acts of contempt of court are usually not considered to be a criminal offence, but rather strictly a means to maintain order in a courtroom. In **Germany**, for instance, judges may impose certain measures to maintain order in the courtroom or ensure active participation in court proceedings, e.g. remove a person from the courtroom (followed by 24 hours of detention), or impose a fine or prison sentence.<sup>17</sup> Such measures are only directed at parties to proceedings, witnesses, expert witnesses or members of the audience – they may not be imposed on defence counsel, representatives of the prosecution or lay judges. In case of grave misbehaviour, the latter group of persons could however be subjected to disciplinary proceedings by their own associations for unethical or improper conduct.
30. **Sweden** has opted for the same approach as Germany. Persons who disturb court hearings, take photographs in the courtroom or violate a regulation or court order pertaining to a court hearing, are sentenced to a fine. The Chairperson of a Court may also expel from the courtroom any person disturbing the hearing or otherwise behaving in an improper manner.<sup>18</sup>
31. **Bulgaria** follows a similar system<sup>19</sup> – in addition to fining or removing the accused, complainant or other party to proceedings, the court may adjourn the examination of the case in cases where the decorum of the courtroom is repeatedly violated by the prosecutor, the defence counsel or the counsel, despite a warning of the presiding judge. This is however only permitted if it is impossible to replace any of the above persons under the respective procedure without prejudice to the case.<sup>20</sup>
32. In **Austria**, the presiding judge is also permitted to remove from the courtroom persons disturbing the order of proceedings.<sup>21</sup> In case of resistance or if the disruptive behaviour persists, he/she may impose a fine or, if it is

---

<sup>17</sup> See Section 5 of the German Introductory Act to the Criminal Code of 2 March 1974, *Federal Official Gazette* I, p. 469; 1975 I p.1916; 1976 I, p. 507, last amended by Article 3 of the Law of 29 July 2009, *Federal Official Gazette* I, p. 2288. See also Sections 177-182 of the Constitution of Courts Act of 9 May 1975, *Federal Official Gazette* I, p. 1077, last amended by Law of 24 July 2010, *Federal Official Gazette* I, p. 976.

<sup>18</sup> See Chapter 5, Section 9 of the Swedish Code of Judicial Procedure, Ds 1998:000, in force as of 1 January 1999.

<sup>19</sup> According to Article 266 par 2 of the Bulgarian Criminal Procedure Code, promulgated in *State Gazette* No. 86/28.10.2005, the presiding judge may impose a fine on anyone present for gross violations of decorum in the courtroom. According to Article 267, the presiding judge is held to warn the accused party, the private prosecutor, the private complainant, the civil claimant or the civil defendant if they fail to abide by the rules of decorum at the court hearing, that upon second violation they shall be removed from the courtroom. If the person continues to violate order in the courtroom, he/she may be removed for a specified period of time. Once the removed persons return to the courtroom, the presiding judge shall inform them about the actions performed in their absence. Other individuals may also be removed from the courtroom.

<sup>20</sup> See Article 267 par 3 of the Bulgarian Criminal Procedure Code.

<sup>21</sup> See Sections 233-236a of the Austrian Criminal Procedure Code, adopted on 9 December 1975, *Federal Legal Gazette* 631/1975, Act current to 1 September 2010.

considered necessary to maintain the order or court proceedings, sentence the offender to prison for a period of up to eight days.<sup>22</sup> Any court orders to this effect are executed immediately.<sup>23</sup>

33. In **Moldova**, contempt of court is an administrative offence sanctioned by Article 317 of the Contraventional Code<sup>24</sup> through a fine of 10-50 conventional units for natural persons, and a fine of 50-100 conventional units for public officials.
34. Par 2 of Article 317 provides that the interference through various non-procedural means into the activity of courts of law, as well as various attempts to influence them, is punishable through a fine of 100-150 conventional units for natural persons, 200-400 conventional units for public officials or through contraventional arrest, for both categories of persons, of up to 15 days.
35. In **France**, the relevant laws distinguish between disturbing order in the courtroom and contempt of court actions. According to Article 321 of the French Criminal Procedure Code,<sup>25</sup> the presiding judge may expel any person from the courtroom who disturbs the order of the court in any manner. In case of resistance to the court order, or if the person in question causes a commotion, Article 321 par 2 stipulates that he/she shall immediately be placed under a detention warrant, sentenced and punished to imprisonment (two months to two years), and then forced to leave the courtroom (Article 321 par 3). Article 322 of the Criminal Procedure Code specifies that the same applies in case the order is disturbed by the accused, who shall then be guarded by law enforcement officers until the end of trial and shall be read the minutes of each hearing that he missed (Article 320 par 2 of the Criminal Procedure Code).
36. However, as soon as any disruptive behaviour involves “abuse by words, gestures or threats, written documents or pictures of any type not publicly available, or the sending of any article” to a judge, prosecutor, juror, or any other member of court acting in his/her official capacity, it is treated as a criminal offence under Article 434-24 of the French Criminal Code,<sup>26</sup> if this behaviour is “liable to undermine his dignity or the respect owed to the office which he holds”. Such criminal contempt of court is punished by one year imprisonment and a fine of 15,000 EUR. Should such behaviour occur during a hearing by a court, tribunal or any judicial forum, then the penalty is increased to two years’ imprisonment and a fine of 30,000 EUR. Attempting to discredit a court’s act or decision in public is punishable with six months’ imprisonment and a fine of 7,500 EUR, if it is likely to undermine the authority or independence of the court (Article 343-25 of the Criminal Code).

---

<sup>22</sup> See Section 233 of the Austrian Criminal Procedure Code.

<sup>23</sup> See Section 237 par 2 of the Austrian Criminal Procedure Code.

<sup>24</sup> The Contraventional Code of the Republic of Moldova, Law no. 218 of 24 October 2008, last amended on 7 September 2010.

<sup>25</sup> The Criminal Procedure Code of the Republic of France entered into force on 2 March 1959, cited here in its consolidated version of 1 September 2010.

<sup>26</sup> The Criminal Code of the Republic of France entered into force on 1 March 1994, cited here in its consolidated version of 11 August 2010.

#### ***4.4.2 Contempt of Court in Common Law States***

37. In numerous common law countries, acts of contempt of court are considered to be a criminal offence. In **Canada**, contempt of court actions are considered to be common law offences, essentially meaning crimes that are not based in legislation, but on years of precedent judgments and court practice.<sup>27</sup> Sections 466-472 of the Federal Courts Rules define this concept by specifying contempt of court motions before Federal Court and the Federal Court of Appeal. According to Section 466, contempt involves several actions ranging from lack of proper participation in court proceedings, to disobedience of court orders, interference with the orderly administration of justice, or impairment of the authority or dignity of court.<sup>28</sup> As with other criminal offences, conviction needs to be based on proof beyond reasonable doubt (Section 469). According to Section 467 of the Federal Courts Rules, a person accused of acts of contempt of court shall be served with a contempt order and appear in court to respond to these charges. However, as a matter of urgency and if the contempt was expressed before a judge, the offender can be punished immediately, if the person has been called upon to justify his/her behaviour (Section 468). Acts of contempt of court may be punished through, *inter alia*, imprisonment (up to five years or until the individual complies with the order, or in cases the individual fails to comply with the order), a fine, or the order that the person in question refrain from such conduct in future. Acts of contempt of court are dealt with differently in provincial courts, which follow their own procedural laws.<sup>29</sup>
38. The **United Kingdom** has adopted a similar approach. In England and Wales, contempt of court in the face of a court (meaning contempt of court in the presence of the judge, within court precincts or in relation to a case), disobedience to a court order or breach of an undertaking to the court (civil contempt) may be punished by a Crown Court (higher court of first instance) of its own motion.<sup>30</sup> Other contempt of court actions will be dealt with by the Administrative Court in accordance with the Rules of the Supreme Court.<sup>31</sup> According to the applicable case law, a judge should exercise the power only when it is urgent and it is important to act immediately.<sup>32</sup> If there is no such urgency, the matter is to be referred to the Attorney General to bring proceedings to the Queen's Bench Division.<sup>33</sup>
39. For inferior courts, such as magistrate courts and county courts, the Contempt of Court Act of 1981<sup>34</sup> and the County Courts Act of 1984<sup>35</sup> apply.<sup>36</sup> In both

---

<sup>27</sup> Instead of others, see the Supreme Court judgment in the case of *Bhatnager v. Canada* (Minister of Employment and Immigration), [1990] 2 S.C.R. 217 stressing the criminal (or quasi-criminal) nature of contempt of court allegations.

<sup>28</sup> Section 466 of the Federal Courts Rules (SOR/98-106, registration 5 February 1998, Regulation current to 24 August 2010) also considers a court officer's failure to perform his/her duty as contempt of court, or violations of sheriffs or court bailiffs in executing a writ.

<sup>29</sup> As an example, see Section 27.2 of the Provincial Court Act of British Columbia, [RSBC 1996] CHAPTER 379.

<sup>30</sup> *DPP v Channel Four Television Co. Ltd.* [1993] 2 All E.R. 517.

<sup>31</sup> RSC Order 52, Committal for Contempt of Court.

<sup>32</sup> *Balogh v St. Albans Crown Court* [1975] 1 Q.B. 73.

<sup>33</sup> *Ibid.*

<sup>34</sup> The United Kingdom Contempt of Court Act was adopted on 27 July 1981.

acts, insulting judges or other parties to proceedings, or otherwise disrupting court procedures are considered to be acts of contempt of court. Magistrate and county courts may order the offender taken into custody for up to one month, or impose fines, or both.

40. The Court of Appeal, through its case law,<sup>37</sup> has provided guidance to courts on certain safeguards that they need to adopt in order to ensure fair proceedings. These include, *inter alia*, a short reflection period, the possibility of adjournment, arranging legal representation, and the opportunity to apologize. In order to avoid bias on the side of the courts, courts in England and Wales have adopted the “apparent bias” test to determine whether a fair-minded and informed observer would conclude that there was a real possibility that the court was biased.<sup>38</sup>
41. In **Scotland**, contempt of court is a *sui generis* offence, but generally still part of common law. In cases where it also amounts to a criminal offence, it may be prosecuted by indictment or summary complaint. The Lord Justice-General has issued a memorandum for judges to ensure that the summary procedure is conducted in a fair manner.<sup>39</sup> Acts of contempt should be dealt with expeditiously, but still fairly and objectively. The respondent must be able to arrange for legal advice and representation, have the opportunity to apologize and make a statement in mitigation.
42. In **Ireland**, the system is similar to that in Scotland in that contempt of court is a *sui generis* offence.<sup>40</sup> Contempt in the face of court is criminal in nature and tried summarily by superior and inferior courts. However, Irish courts do not consider acts of contempt of court to be directed against the personal dignity of judges. Instead, it is seen as an offence that interferes with the proper administration of justice. The adjudication and punishment of such offences is considered to be an inherent aspect of the authority of judges to control proceedings. Procedural guarantees ensure fairness, e.g. the requirement that judges shall only determine proceedings arising out of events in their court where necessary.

---

<sup>35</sup> The United Kingdom Country Courts Act of 26 June 1984.

<sup>36</sup> As mentioned in the country overview in the ECtHR’s *Kyprianou v. Cyprus* judgment, par. 45, in the United Kingdom a practice note issued by the Lord Chief Justice (May 2001) and a practice direction, also issued by the Lord Chief Justice supplemental to Order no. 52 of the Rules of the Supreme Court and Order No. 29 of the County Court Rules provide guidance on contempt of court issues to magistrate and county courts. Particularly the practice direction states that in cases where a committal application relates to contempt in the face of court, it would normally be appropriate to defer consideration of the behaviour to allow the respondent a period of reflection. Also, the judge should, *inter alia*, inform the offender in detail, and preferably in writing, of the actions and behaviour giving rise to the committal application, as well as the possible penalties he/she is facing, allow the respondent the opportunity to apologize to the court and provide explanations for his actions and behaviour and allow him/her to make arrangements for possible legal representation.

<sup>37</sup> See *R v Moran* [1985] 81 Criminal Appeal Reports 51; *R v. Hill* [1986] Criminal Law Reports 457; and *Wilkinson v. S.* [2003] 2 All England Reports 184.

<sup>38</sup> See *DPP v Channel Four Television* [1993] 2 All England Reports 517, and *Porter v. Magill* [2002] 2 Appeal Court 357.

<sup>39</sup> See the Memorandum of the High Court of Justiciary, part A on Contempt of Court issued by the Lord Justice-General, 28 March 2003:

[http://www.scotcourts.gov.uk/justiciary/memorandum/mem\\_contempt.asp](http://www.scotcourts.gov.uk/justiciary/memorandum/mem_contempt.asp).

<sup>40</sup> See summary in the ECtHR’s *Kyprianou v. Cyprus* judgment, pars 50-52.

43. In the **United States**, direct contempt of court occurs in the presence of the presiding judge (*in facie curiae*) or so near as to obstruct the administration of justice.<sup>41</sup> Such conduct “constitute[s] an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probably; it must immediately imperil”.<sup>42</sup> According to the Federal Rules of Criminal Procedure, in cases where this occurs in open court, the court or a magistrate judge may summarily punish a person committing criminal contempt if the judge sees or hears it;<sup>43</sup> he/she shall act instantly to suppress disturbance, violence or physical obstruction or disrespect to the court, in order to preserve order in the courtroom for the proper conduct of business.<sup>44</sup>
44. In cases where contempt is not expressed in open court, the court must give the person notice in open court, stating the essential facts constituting the criminal act and allowing the defendant reasonable time to prepare his defence.<sup>45</sup> In order to ensure the impartiality of the judiciary in such cases, judges who were the target of disrespect or criticism are disqualified from presiding at the contempt trial unless the defendant consents.<sup>46</sup> The various US States have their own criminal procedure codes with their own contempt of court rules, which may reflect the Federal Rules of Criminal Procedure.<sup>47</sup>

#### **4.5. Recommendations for the Republic of Armenia**

45. As may be seen from the overview of legislation from OSCE participating States, the definitions and ways of dealing with acts of contempt of court vary extensively within the OSCE region.
46. The starting point of both international standards and domestic legislation is the need to ensure the proper conduct of court proceedings and maintain the authority of the judiciary at all times. This is reflected in the ECtHR judgment of *Ravnsborg v. Sweden*, in which the Court noted that “legal rules empowering a court to punish any inappropriate conduct before it are indispensable to ensure the proper and orderly course of judicial proceedings”.<sup>48</sup> In this context, it is important to strike the right balance between the human rights and freedoms of individuals and the proper administration of justice. Essentially, the harsher and more invasive the potential sanction will be, the more likely it is that the offence itself will constitute a criminal charge within the autonomous meaning of Article 6 of the ECHR.<sup>49</sup> In such cases, it will then be important to provide the offenders with all guarantees inherent in the right to a fair trial under the ECHR (and the ICCPR).

---

<sup>41</sup> See, instead of others, the early case of *Michaelson v. United States*, 266 U.S. 42 (1924).

<sup>42</sup> *Craig v. Harney*, 331 U.S. 367, 376 (1947).

<sup>43</sup> See Rule 42 b) of the Federal Rules of Criminal Procedure, promulgated by the US Supreme Court on 6 January 1941 (311 U.S. 733), last amended on 1 December 2009.

<sup>44</sup> *Cooke v. United States*, 267 U.S. 517 (1925).

<sup>45</sup> See Rule 42 a) (3) of the Federal Rules of Criminal Procedure.

<sup>46</sup> *Ibid.*

<sup>47</sup> See, e.g. Rule 42 of the Tennessee Rules of Criminal Procedure, Rule 42 of the West Virginia Rules of Criminal Procedure, or Rule 36.01 of the Missouri Rules of Procedure.

<sup>48</sup> *Ravnsborg v. Sweden*, ECtHR judgment of 23 March 1994, no. 14220/88, par 34.

<sup>49</sup> See par 24 *supra*

***OSCE ODIHR Note on Modifications to Armenian Criminal Legislation Related to Contempt of Court Issues***

47. In Armenia, contempt of court is regulated in both the Criminal Code (Article 343) and the Judicial Code (Article 63). Article 343 of the Criminal Code specifies that contempt of court under this provision implies insulting participants to a trial or the judge. Article 63 of the Judicial Code, on the other hand, does not specify what constitutes “contemptuous behaviour”.
48. The above overview of contempt of court legislation in various OSCE participating States demonstrates that for the most part, common law countries tend to criminalize acts of contempt of court, while many civil law countries will define such actions as disciplinary matters usually sanctioned by removal from the courtroom or a fine.
49. In the common law system, all interferences with court proceedings, including disrespect towards the authority of the judiciary, but also witness intimidation or failure to follow a court order, are often considered examples of contempt of court. The rationale for criminalizing contempt of court is thus not so much the fact that judges or other participants in court proceedings were insulted during trial, but rather its tendency to delay or suspend the proper administration of justice.
50. As with other criminal offences, it is important to take into consideration the basic human rights of each individual, namely the right to be heard and the right to legal representation during trial. For this reason, some of the states listed in pars 37-44 *supra* have included basic fair trial guarantees in their laws and practices – even in urgent cases where summary proceedings are permitted and it is necessary to respond immediately to contemptuous behaviour, the offenders are provided with a reflection period, and with the opportunity to apologize and to defend themselves, if desired with the help of legal counsel. Special procedures must be in place to ensure that these individuals are able to complain against potentially biased judges, as well as against the contempt of court proceedings and the ensuing sanctions in general. In cases where individuals are taken into custody or detention, their rights under Article 9 ICCPR and Article 5 ECHR will also need to be taken into account.
51. In many civil law countries, acts of contempt of court are sanctioned by way of disciplinary procedures. The response to the offending action will usually consist in removing the offender temporarily from the courtroom or imposing a fine. In many of the civil law countries described above in pars 29-36 *supra*, such disciplinary matters will be treated differently from the violation of a court order or witness intimidation, which will be considered as criminal attempts to prevent the proper administration of justice and thus violations of the state order. However, also disciplinary proceedings may require the protection of an offender’s fair trial rights if the punishments envisaged by law are sufficiently grave, e.g. if the fines are very high or if the law foresees detention or the conversion of a fine into detention.<sup>50</sup>
52. In the case of the Republic of Armenia, contempt of court is treated both as a criminal matter and as a non-criminal matter under the Judicial Code. However, unlike in some of the common law countries mentioned above, the criminal offence of contempt of court (Article 343 of the Criminal Code) only covers insulting the participants of trial or the judge, while matters such as

---

<sup>50</sup> See the ECtHR’s *Ravnsborg v. Sweden* judgment of 23 March 1994, cited in footnote 8 *supra*.

witness intimidation or other manners of hindering court procedures are laid down in other provisions.<sup>51</sup>

53. Since contemptuous behaviour under Article 63 of the Judicial Code is not defined, it is conceivable that insulting parties to proceedings or judges in the courtroom could be dealt with either as a criminal matter or as a disciplinary matter, or as both. Which path to follow would then appear to depend very much on the individual judge. In such a situation, the offender will not know the consequences of his/her actions beforehand – the same behaviour could become a criminal matter before one judge (leading to a higher punishment, in some cases even to several months’ arrest or correctional labour) and a non-criminal matter before another (leading to removal from the courtroom or a fine).
54. Such a wide margin of appreciation, leading to a potentially arbitrary application of laws does not appear to comply with the purpose of legislation, which is to regulate all situations in the same way and inform individuals on the consequences of certain behaviour. To prevent arbitrary interpretations by courts or individuals, laws are required to be sufficiently specific and clear. This is also reflected in the case law of the ECtHR, where the Court stresses the qualitative requirements of laws, including their accessibility and foreseeability.<sup>52</sup>
55. In order to ensure Armenian legislation’s compliance with the above requirements, it would therefore be necessary to differentiate and specify in relevant legislation which types or levels of contemptuous behavior would give rise to non-criminal responses by the competent judge and which types or levels would be considered sufficiently severe to warrant criminal proceedings. The relevant provisions in the Criminal Code and in the Judicial Code of Armenia need to be rendered more clear and precise, in order to enhance their legality and foreseeability of these laws. The law will need to establish clearly and unequivocally to individuals and the court, which acts and behaviour during court proceedings will entail which legal consequences.<sup>53</sup>
56. Once this point has been clarified, then legislation and practice must ensure that proper procedures are followed. Criminal proceedings for contempt of court will need to follow the usual stages of procedure, including a proper investigation into the alleged offence, an indictment, and court proceedings. Proceedings will need to guarantee all fair trial rights to the offender provided by Article 14 of the ICCPR and Article 6 of the ECHR and sanctions involving detention would need to follow the principles of Article 9 ICCPR and Article 5 of the Convention. If the contemptuous behavior under criminal law still involves insulting a judge, then the proper procedure must help ensure the appearance of objectivity and impartiality of the judiciary – if the insulted

---

<sup>51</sup> See e.g. Articles 332 (hindrance to administration of justice and conducting investigations), Article 334 (concealment of crime), 337 (Hindrance to the appearance or testimony of the witness or the aggrieved) of the Criminal Code of the Republic of Armenia.

<sup>52</sup> See the ECtHR judgment of *Kakkaris v. Cyprus*, no. 21906/04, of 12 February 2008, par 140.

<sup>53</sup> *Ibid.*: “The [qualitative requirements of laws] must be satisfied as regards both the definition of an offence and the penalty the offence in question carries”.

***OSCE ODIHR Note on Modifications to Armenian Criminal Legislation Related to Contempt of Court Issues***

judge cannot maintain this appearance, then a different judge should preside over the case.<sup>54</sup>

57. In urgent cases where action needs to be taken immediately, special proceedings should ensure that the potential offender is provided with these same basic fair trial rights, in particular the right to be heard and the right to legal representation. Additional rights such as a reflection period and the opportunity for the offender to apologize would be helpful in that they could take into account the special situation of court proceedings and the extreme pressure that defendants or other participants in court proceedings may be under.
58. Contempt of court responses under the Judicial Code would need to follow proper procedures as well, either disciplinary or administrative, depending on how such proceedings are defined under domestic law. Given the fact that sanctions for contemptuous behaviour contained in Article 63 are not very severe, offenders would not be entitled to the fair trial rights guaranteed to persons subjected to a criminal charge.<sup>55</sup>
59. The OSCE/ODIHR stands ready to participate in future discussion and assist in further stages of the legislative drafting process on this matter should the authorities of the Republic of Armenia so request.

*[END OF TEXT]*

---

<sup>54</sup> See the ECtHR judgment in the case of *Kyprianou v. Cyprus*, footnote 9 *supra*.

<sup>55</sup> See the ECtHR's *Ravnsborg v. Sweden* judgment of 23 March 1994, cited in footnote 8 *supra*.

Annex 1:

**REPUBLIC OF ARMENIA  
MINISTRY OF JUSTICE**

---

04 June 2010  
Re: 01/1534-10

Ambassador S. Kapinos,  
Head of OSCE Office

Dear Mr. Kapinos,

Draft laws were submitted by the National Assembly MPs in the procedure of legislative initiative in relation to point 12 of Consolidated Recommendations of Trial Monitoring Report envisaging respective amendments and modifications to a number of laws stipulating court sanctions for contempt.

Specifically, revision of grounds for criminal prosecution and sanctions for contempt stems from the provision of the referred point 12 on the need to amend the Criminal Procedure Code and the Criminal Code to clearly differentiate the grounds for the application of contempt of court sanction.

In general, there is an initial agreement between the Government of Armenia and National assembly MPs on principal provisions of the drafts. However, there is a problem related to the following issue. According to the Government in order to ensure proper process of trial it is necessary to clearly differentiate between measures of judicial restraints and liabilities; specifically the government does not deem lawful not only procedural restraint measures (like notifications, temporary removal from a court room, mediation to the chamber of advocates or general prosecutor for disciplinary action) but also liabilities like fines.

In general, the Government is not against application of liability measure as such, however, it considers unacceptable that it is applied directly by the judge ruling the court proceedings without having any proper investigation. In this case the judge may report about the contempt in accordance with the defined procedure for bringing to administrative or criminal liability, thus making contempt a subject of discussion by authorized entities or any other court.

The Government has the following justifications:

1. Direct application of fines without investigation comprises danger since in practice it may be applied for example towards such people who can not be subjected to liability (e.g. insane) or simply there are grounds excluding liability. In addition, it will not be possible to keep several

- principles of justice (e.g., in case of personalizing grounds for liability it is necessary to take into consideration aggravating and mitigating circumstances, etc.);
2. According to Article 83.5 (6) of Armenian Constitution laws should regulate cases, procedure and conditions for subjecting to criminal, administrative, economic (property) or disciplinary liability. Fine imposed by the courts is a type of administrative liability, hence in such situation procedure and terms of bringing to administrative liability should be followed, whereas authors of the draft find it not necessary;
  3. Before imposing a court fine towards the trial participants or other persons present during the trial, the court must prove guilt of the persons concerned and must ensure their right to legal aid, otherwise requirements of Article 6 of the European Convention on Human Rights and Fundamental Freedoms will not be met. In other words, the judge should initiate proceedings of bringing certain persons to judicial liability. Meanwhile, while imposing the given form of liability the judge often is a victim (contempt against him) and a party imposing liability at the same time.

To our opinion fines imposed by courts will not serve as a preventive tool for proper conduct of court hearings, hence we find that court fines should not be envisaged as judicial sanctions and the court should be enabled to make a motion to a respective entity for imposing fine. The respective entity may initiate administrative proceedings and taking into account circumstances of a specific case, aggravating and mitigating circumstances take a decision on imposing fine.

MPs of the National Assembly find that imposing fine towards a person for court contempt is an exceptionally a court sanction and has nothing to do with liability and its purpose is exceptionally preventive. According to the MPs there is no need to stipulate the procedure and terms of imposing court sanction as it is done in case of liability, since court sanction is a tool of “urgent response” and making it a subject of separate proceedings would not be legally correct.

The MPs also base on the aspect that in a number of countries imposing fines directly during the court hearing is also a widely used practice.

Given the abovementioned, we kindly ask you to have those arguments discussed by the experts and inform us about the results. Please mention also the practice of those countries that deem acceptable the imposition of fines directly during the trials; maybe in these countries this practice is accompanied with additional procedures and guarantees that exclude the concerns indicated by us.

MPs of the National Assembly are also interested in making this issue a subject of expertise.

***OSCE ODIHR Note on Modifications to Armenian Criminal Legislation Related to Contempt of Court Issues***

This request is based on the fact that you have always helped us in our law making efforts and expressed willingness to continue our cooperation in the future.

Thank you in advance.

Regards,

G. Danielyan

Annex 2:

**REPUBLIC OF ARMENIA  
CRIMINAL CODE  
(Excerpt)**

[...]

Article 343. Contemptuous treatment of court.

1. Contemptuous treatment of court which was expressed in insulting the participants of the trial, is punished with a fine in the amount of 100 to 300 minimal salaries, or with arrest for 1-2 months.
2. The same action expressed in the insult of the judge with respect to the execution of official duties of the latter, is punished with a fine in the amount of 200 to 500 minimal salaries, or correctional labor for 1-2 years, or with arrest for 2-3 months.

[...]

Annex 3:

**REPUBLIC OF ARMENIA  
JUDICIAL CODE  
(Excerpt)**

[...]

**CHAPTER 9  
SAFEGUARDS OF THE NORMAL FUNCTIONING OF A COURT**

**Article 63. Sanctions Applied by Court**

1. In cases of contempt of court, obstructing the normal course of a session, abuse of procedural rights, or the inexcusable failure to perform or improper performance of procedural duties, the court may apply the following judicial sanctions against the participants in proceedings, parties to the case, and other persons present in the court's session:

- 1) Warning;
  - 2) Removal from the courtroom;
  - 3) Judicial fine; or
  - 4) Filing a request with the Prosecutor General or the Chamber of Advocates concerning punishment of a prosecutor or advocate, respectively.
2. A sanction must be in proportion to the gravity of the act and pursue the aim of safeguarding the normal functioning of the court.
3. An act of warning and removal from the courtroom shall be applied by means of a protocol decision of the court made in the same court session.
4. If a decision on removal from the courtroom is not immediately voluntarily complied with, compulsory removal shall be performed through the judicial Bailiff.
5. A judicial fine may be applied against parties to the proceedings and parties to the case. A judicial fine may be imposed in an amount up to 100,000 drams. The amount of the judicial fine shall be determined by the court in its sole discretion; however, in addition to the gravity of the act, the personal characteristics of the perpetrator of the act must be taken into account. A judicial fine shall be applied by means of a separate court decision made in the same court session. A decision imposing a judicial fine shall be subject to compulsory execution in accordance with the procedure set forth in the Republic of Armenia Law on Compulsory Execution of Judicial Acts.
6. If the sanction prescribed in Paragraph 1(2) of this Article is applied against the accused in a criminal case, the session shall be postponed for a period of up to two weeks. For persons on remand, the postponement period shall not be included in the calculation of served punishment time.
7. Only the sanctions prescribed in sub-paragraphs (1) and (4) of Paragraph 1 of this Article may be applied against a prosecutor involved in the examination of the case or an advocate taking part in the examination of the case as a representative or a defense attorney. A request may be filed with the Prosecutor General or the Chamber of Advocates by a separate decision of the court made in the same court session. A judicial sanction prescribed in sub-paragraph (4) of Paragraph 1 of this Article shall necessarily trigger the instigation of disciplinary proceedings against the prosecutor or advocate in question.

***OSCE ODIHR Note on Modifications to Armenian Criminal Legislation Related to Contempt of Court Issues***

8. A court decision imposing a judicial sanction shall be final from the moment of its promulgation. A court decision imposing a judicial fine may be appealed.
9. The imposition of a judicial sanction shall not hinder the ordering of other forms of liability prescribed by law against the person already sanctioned.

[...]