National report
"Observance of the right to access to court in places of detention of the Federal Penitentiary Service of Russia" based on the results of studying the situation with access to court for prisoners in 13 regions of the Russian Federation

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List of abbreviations and terms used in the report

C

CAT - United Nations Committee against Torture
CC RF- Constitutional Court of the Russian Federation
CEC RF - Criminal Executive Code of the Russian Federation
Civil Registry Office - Body for recording civil status acts in the constituent entities of the Russian Federation
CoAP RF - Code of Administrative Procedure of the Russian Federation
CPT - European Committee for the Prevention of Torture

E

ECHR - Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR - European Court of Human Rights

F

FC RF – Family Code of the Russian Federation
FKU IK - Federal State Institution correctional colony
"For official use" - a stamp that is installed on the regulatory acts of the department, available exclusively for employees of this department
FSIN RF - Federal Penitentiary Service of the Russian Federation
FZ - Federal Law
FZ-76 RF - Federal Law No. 76-FZ of 10 June, 2008 "On public control over ensuring human rights in places of detention and on assistance to persons in places of detention"

G

GUFSIN - Main Department of the Federal Penitentiary Service

H

HIV - Human immunodeficiency virus
HRC - Human Rights Commissioner
HR Committee - United Nations Human Rights Committee

I

ICCPR - International Covenant on Civil and Political Rights of the United Nations
IK - Correctional colony
IU - Correctional institution

M

MVD - Ministry of Internal Affairs
MJ RF - Ministry of Justice of the Russian Federation

O

OSUON - Strict conditions detachment of serving a sentence

P

PC - Public Council

PKT - Cell-type room in a correctional institution

PMC - Public Monitoring Commission for monitoring the observance of human rights in places of forced detention and assistance to persons in places of forced detention, formed in accordance with Federal Law of the Russian Federation No. 76

Preventive supervision - inclusion by the decision of the administration of the institution of a prisoner in a special register if there is reliable and verified information about his/her intentions to commit an offense or negative influence on other persons, as well as medical and psychological indications

PVR IU - Internal regulations of a correctional institution approved by Order No. 295 of the Ministry of Justice of the Russian Federation of 16 December, 2016

R

RF - Russian Federation

S

SC RF – Supreme Court of the Russian Federation

ShIZO - Penal isolation detachment in a correctional institution

SIZO - Pre-trial detention center

U

UFSIN - Regional Department of the Federal Penitentiary Service

UIS - Penal Enforcement System

UN - United Nations

V

VC - videoconferencing is a communication method by which the remote participation of a prisoner in a court session is ensured. The Judicial Department installs special equipment in the institution of the Federal Penitentiary Service, which provides the prisoner with the opportunity to see and hear the participants of the court session in the courtroom, and the participants from the courtroom - to see and hear the prisoner.

Introduction

The report "Observance of the right to access to court in places of detention of the Federal Penitentiary Service of Russia" is presented to your attention. This document is based on the reports of regional observers and is a synthesis of information received from 13 regions of Russia, analysis of identified general trends and particular cases, comparison of current practice, international standards and national legislation. The report also contains recommendations on the formation of sustainable, working mechanisms to ensure the right to access to court in places of detention.

Access to justice, and in particular to the court, is a component of the human right to a fair trial[1], which is provided for by the Constitution of the Russian Federation and international norms of law. Article 46 of the Constitution states that everyone is guaranteed judicial protection of his rights and liberties[2], respectively, everyone should be provided with access to justice[3].

Access to the court is a fundamental right, the provision of which guarantees the protection of other human and civil rights and freedoms. The conditions in which a person, including in custody, can freely use the possibility of judicial protection, are not only a guarantee of the legal protection of this person, but also support his awareness of himself as a subject of legal relations, and also consolidate the recognition of this subjectivity by the state.

Accessibility in the framework of the report is considered as procedural, physical, informational, including legal protection, and material.

The procedural accessibility of justice is understood as access to the procedural rights and procedures established by law that ensure the standards of justice.

[1] Fair trial includes: the right to access to justice, the equality of the parties in the process, the adversarial nature of the trial, the right to a fair and public trial within a reasonable time by an independent and impartial court established by law. In turn, each component of the right to a fair trial includes an extensive list of requirements, for example, the publicity of the trial includes: publicity, openness of the trial, the oral nature of the proceedings, and the publicity of the court decision. When determining the reasonableness of the term, such circumstances as the legal and factual complexity of the case, the behavior of the participants in the process, the sufficiency and effectiveness of the court's actions carried out for the purpose of timely consideration of the case, and the total duration of the proceedings in the case are taken into account. In order to comply with the principle of independence, the procedure for the selection and appointment of judges (with an understandable procedure), the term of office and the mechanism for suspending and terminating the powers of courts, the existence of guarantees that exclude the possibility of pressure on the court when making decisions by it should be developed. Impartiality is understood as the absence of prejudice or bias of the judge, the procedure of recusals.

[2] http://www.consultant.ru/document/cons_ doc_ LAW_ 28399/1flcale76ebdb70979b8aefe86b441f7cd9373e3/

[3] Including the right to unhindered appeal of everyone to the court, including the right to appeal against any illegal actions and decisions of officials and bodies conducting criminal proceedings, obstructing the exercise of the right to access to justice or unlawfully restricting this right.

Physical accessibility is understood as the possibility of a personal participation in the judicial process, the territorial location of the premises in which the judge carries out his activities, his fitness for people, including those with physical vulnerabilities (musculoskeletal, sensory).

Informational aspect of accessibility is associated with the availability of information about the location of the court, the mode and schedule of its work, the availability of background information, the schedule of cases for the current day, week, samples of documents, the availability of legal information, etc.

Material, financial accessibility: as a general rule, state justice is free of charge (in most cases, the consideration of civil disputes provides for the payment of a state fee by the plaintiff, however, if the claims are satisfied, this amount, among other court costs, will be assigned by the court to the defendant); in practice, access to justice (primarily civil) is not always effective without applying for the help of qualified advocates, which requires material costs.

The right of access to the court is the more significant for study, the more closed the institution within which this right should be ensured. It is obvious that access to the courthouse, to documents, to legal protection is complicated for prisoners[4]; they are practically deprived of access to the Internet to use current regulations and the possibility of studying court decisions, which often determine practice in Russia. There are many other factors that distinguish the procedures for organizing the prisoner's interaction with the court and taking into account all these factors, reducing their impact on the quality of trials is one of the conditions for ensuring the court's credibility for prisoners.

The sustainability of judicial protection mechanisms is one of the important components of the right of access to court. It implies that the created forms and procedures will work, including in changing conditions, both inside the institutions of the Federal Penitentiary Service and outside. The past year, when the whole world, and Russia in particular, faced new living conditions due to the COVID-19 pandemic, showed that many institutions, including the judicial and penitentiary systems, were not ready to provide prisoners with access to court to the extent required by the principles of accessibility of justice. Therefore, the creation and operation of procedures providing for the effective exercise by prisoners of their right to access to the court, including during the period of restrictions, becomes the most important task for the consolidation of efforts and joint actions of authorities and public institutions.

We hope that this report will be useful in discussing, developing and implementing effective mechanisms that allow all categories of prisoners, regardless of the committed crime or existing restrictions (physical, cultural, linguistic, etc.), to fully participate in the judicial protection of their rights.

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[4] For the purposes of this report, a prisoner is any person deprived of liberty and staying in a pre-trial detention center, colony, prison.

We express our deep gratitude to everyone who contributed to the appearance of this report. Separately, we would like to thank the members of the PMC and Public Councils who visited places of detention and prepared regional reports, on the basis of which, in turn, this generalizing study was prepared. We thank all the organizations and institutions that responded to the requests of PMC and PC members; employees of the penal enforcement system; lawyers and advocates; the prisoners themselves who agreed to take part in the surveys and answer numerous questions that were asked to them. Without the participation of all these people, the implementation of this large-scale undertaking would have been impossible.

The Project Team

Right of access to the court in international standards and national legislation

Access to justice, and in particular access to the court, is covered by the norms of the main instruments of international law[5]. Thus, Article 8 of the UN Universal Declaration of Human Rights states: *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"*[6]. The International Covenant on Civil and Political Rights[7] contains Article 14 *"Equality before courts and tribunals and the right of everyone to a fair trial"* and the UN Human Rights Committee emphasizes the importance of the standards contained therein: *"The right to equality before courts and tribunals and to a fair trial is an essential element of human rights protection and serves as one of the procedural means of ensuring the rule of law*[8]*"*.

Article 6 of the ECHR "The right to a fair trial"[9] can be considered as the main international legal source for Russia.[10]

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[5]Including thematic documents of "soft law", e.g., European Penitentiary Rules of 2006 https://rm.coe.int/european-prison-rules-978-92-871-5982-3/l6806ab9ae in the 2020 edition https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000l6809ee58l

[6] https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml

[7] https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

[8] General comments No. 32: Article 14: Equality before courts and tribunals and the right of everyone to a fair trial. Adopted by the UN Human Rights Committee in 2007 https://tbinternet.ohchr.org/ layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=8&DocTypeID=1

[9] https://www.echr.coe.int/documents/convention_rus.pdf See also the guidelines on article 6 of the ECHR: the right to a fair trial (criminal and civil law aspects)
https://www.echr.coe.int/Documents/Guide_ Art_ 6_ criminal_RUS.pdf
https://www.echr.coeлnt/Documents/Guide_ Art_ 6 _ rus.pdf

[10] Due to the significant similarity of the wording of Article 14 of the ICCPR and Article 6 of the European Convention for the Protection of Rights and Fundamental Freedoms, the approach of the ECtHR and the UN Human Rights Committee to resolving cases in this area, as well as the relatively more developed case-law of the ECtHR, in terms of international standards, we will focus on Article 6 of the European Convention and its interpretation by the Strasbourg Court.

And although in the wording of this article there is no grammatically separate and fixed right of access to the court, the European Court of Human Rights back in 1975 in one of its fundamental cases “Golder v. Great Britain”[11] found that the procedural guarantees of due process listed in the Convention do not make sense without ensuring access to it, and therefore it should be assumed that Article 6 of the Convention implicitly contains the right to access to court ("right to trial" in the wording of the ECtHR). Due to the fact that the Convention is binding on the signatory States in the interpretation given to it by the ECtHR, as well as the relevant provisions of the Constitution of the Russian Federation (part 4 Article 15[12] and Article 17[13]), this position is legally binding for the Russian Federation.

Before proceeding to specific standards and examples from legislation, it is necessary to make the following general comments:

- the right to access the court is a human right. That is, it does not depend on the citizenship, position and status of the person whose rights have been violated. Any person (in accordance with the case-law of the ECtHR, both physical and legal) whose rights have been violated by the state (the Russian Federation) has the right to a court. This also applies to the criminal process and does not depend on what status (suspect, accused or convicted) a person is in, and whether he is in prison or not. On the contrary, the controlling international bodies (the ECtHR or the HRC) will pay more attention to the situation of criminal prosecution, since by the very nature of such a situation, the state has much wider opportunities for infringement of rights;
- since international standards by their nature represent that *minimum minimorum* of rights, which should be guaranteed to everyone, always and everywhere, then, accordingly, national legislation should contain a much larger volume of regulation, as well as provide additional, expanded guarantees of rights compared to international ones. Consequently, all international standards should be met by national regulation providing at least the same guarantees, but not all guarantees provided by Russian legislation will necessarily comply with some international standard;
- the right of access to a court, unlike, for example, the prohibition of torture, is not absolute. In other words, it can be restricted if there are substantial and sufficient grounds (such as a state of emergency or martial law). However, each such restriction must be compensated, balanced by the State, since a complete restriction on access to the court and guarantees of a fair process under no circumstances can be compatible with the provisions of international acts and the Constitution of the Russian Federation;

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[11] Golder v. the UK (no.4451/70, 21 February 1975): http://hudoc.echr.coe.int/eng?i=00-57496

[12] "Generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes rules other than those provided for by law, then the rules of the international treaty shall apply" http://www.consultant.ru/document/cons_doc_ LAW_ 28399/54dd4elf6le0b8fa47bff695ЮOc08bl92a95f7a3/

[13] "1. In the Russian Federation, human and civil rights and freedoms are recognized and guaranteed in accordance with the generally recognized principles and norms of international law and in accordance with this Constitution. 2. Fundamental human rights and freedoms are inalienable and belong to everyone from birth. 3. The exercise of human and civil rights and freedoms must not violate the rights and freedoms of others".
http://www.consultant.ru/document/cons_doc_ LAW_ 28399/d94e831070Пb26a082b3517d5 e9e4c348fc419/

- from the point of view of international standards and the rights of prisoners, the right to access to court concerns mainly their "civil rights and obligations" (in the wording of Article 6 of the European Convention). The ECtHR noted that the right to a trial from the point of view of criminal charges covers a very small area, mainly in those jurisdictions where individuals have the opportunity to insist on conducting criminal proceedings against themselves (for example, to be acquitted of serious charges and thus restore reputation) or others (for example, private cases charges in the Russian legal system). However, as the ECtHR has repeatedly noted, the Convention does not guarantee the "right to charge" either itself or third parties, even the most severe restrictions on access to court in such cases will most likely be justified. Consequently, international standards on access to justice will apply mainly to cases where prisoners protect their civil rights and, in some cases, appeal against the actions of the administration of penitentiary institutions.

1. Obstacles (barriers) in access to justice.

The ECtHR has concluded in a number of cases that obstacles (or barriers) both of a physical and procedural nature, may violate the right of access to court. For example, the prohibition of a prisoner to contact his advocate and consult with him on the issue of filing a lawsuit against a prison guard for libel was considered to violate this right. [14]

A situation in which courts are closed for some reason or cannot function normally for a significant period in a certain territory may also violate the right to access to courts. [15]

A problem with access to the court may also arise if the State, for no particular reason, prevents persons from accessing the documents necessary for their case, which are available only to the State. [16]

If the country's legislation provides for the possibility of filing a claim and/or documents in electronic format, then refusal to do so would be contrary to international standards. [17]

The absence of a person's physical access to the courthouse can also potentially disrupt access to justice. However, in this case, several significant factors will play a role, for example, whether a person could effectively represent his position without physical access to the court (in writing, by mail, or by video), whether the person was represented in the process, etc. An example is the ECtHR judgment of 16.02.2016 "Case "Yevdokimov and Others v. Russia" (applications N 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12).

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[14] Golder v. the UK, see above

[15] Khamidov v. Russia (http://hudoc.echr.coe.int/eng?i=001-83273), where the situation was considered about the applicant's inability to file a claim for compensation for destroyed property in the courts located on the territory of Chechnya from 1999 to 2001.

[16] Campbell and Fell v. the UK (http://hudoc.echr.coe.int/eng?i=001-57456).

[17] Lawyer Partners A.S. v. Slovak Republic (http://hudoc.echr.coe.int/eng?i=001-92959).

The appeal was against the rejection by domestic courts of petitions of applicants held in correctional institutions for their participation in court sessions in which their claims are considered. The case involved a violation of the requirements of paragraph 1 of Article 6 of the ECtHR[18].

2. Restrictions on categories of persons entitled to apply to the court and on legal capacity.

As a general rule, if a person has a right in accordance with national legislation, the inability to defend this right in the courts due to the lack of *locus standi*[19] will be a restriction of his right to access the court. As for minors, persons with mental illnesses, bankrupts or "malicious complainants", the ECtHR has almost always found restrictions on filing lawsuits and complaints for such categories of persons in accordance with international standards. Persons whose legal capacity is limited should be able, at a minimum, to challenge the deprivation of legal capacity (or request the return of legal capacity) without contacting third parties[20]. A violation of access to the court will also be the refusal to consider other previously filed claims of a person after his recognition as incapacitated.

3. Limitation periods and other procedural terms.

From the point of view of international standards, as such, procedural deadlines may exist in order to properly administer justice and strengthen legal certainty. The clearer and more definite the deadline is specified in the legislation, the more likely it is that it will comply with international standards. Such deadlines, which are so short that they left virtually no opportunity to comply with them, were found to violate the very essence of the right to access to court.

If the statute of limitations (for a crime) has expired due to the fault of the authorities, this may violate the right to access to court (for example, if this leads to the denial of a civil claim filed in a criminal case).

4. Availability of clear and understandable procedures.

[18] http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=463967#N07xooS61QWflc4G

[19] "lack of legitimate interest"

[20] See the case Shtukaturov v. Russia, where the ECtHR ruled that the inability to appear in the court of appeal due to the recognition of the applicant as incompetent by the court of first instance violated his rights.

Shortly after this decision, the applicant won the case in the Constitutional Court of the Russian Federation, and the corresponding amendments were made to the CEC of the Russian Federation.

International standards require that legal procedures be sufficiently specific and clear, and provide clear and practically feasible ways of appealing. The ECtHR also recognized as a violation of the right to a court the excessively strict and formal application of procedural rules, especially regarding the admissibility of a complaint/claim, punishment for errors that do not depend on the person, or concentration on excessively formal requirements that are not mandatory for consideration of the case on the merits. Also, failure to inform or improperly inform persons about the right and procedures of appeal and the relevant deadlines will violate the right to a court. The refusal of the court (without reasons and explanations) to make a decision on the case will also be considered unacceptable.

5. Judicial and state fees.

By itself, the obligation to pay state duty does not contradict international standards, since they do not guarantee the right to a free process, however, its prohibitive amount may be recognized as a disproportionate interference with the right to eyes

6. Mandatory pre-trial procedure.

The existence of a mandatory pre-trial dispute settlement procedure (for example, a claim procedure) does not violate the right to access to court if, after its exhaustion, the person still retains the opportunity to resolve the dispute in court.

7. Representation and legal assistance.

As for the right to a defender and communication with him in the framework of criminal proceedings, from the point of view of the ECtHR, this right does not relate to the "right to access to court", but is covered by special guarantees listed in paragraph 3 of Article 6 of the Convention[21]. The availability of tools and materials to provide protection in criminal proceedings (paper, pens, printer/copier, etc.) is also covered by paragraph "b" of paragraph 3 of Article 6 of the Convention.

A violation of the right to access to court, for example, may be a refusal to provide legal assistance in civil proceedings if such a process is excessively extensive and involves complex legal issues[22].

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[21] Part 3of Article 6 of the ECHR "3.Everyone charged with a criminal offence has the following minimum rights:
a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
b to have adequate time and facilities for the preparation of his defence;
c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.
https://www.echr.coe.int/documents/convention_ rus.pdf

[22] So, in the landmark case of Airey v. Ireland (http://hudoc.echr.coe.int/eng?i=001-57420) the ECtHR considered the refusal of the Irish authorities to provide the applicant with free legal assistance in a very complex divorce process to be a violation of the right to a court.

The ruling of the ECtHR "Mikhailova v. Russia" of November 19, 2015 determined the right to demand a free defender in administrative cases related to deprivation of liberty for low-income citizens[23] when the interests of justice require it[24].

8. Execution of court decisions that have entered into legal force.

From the point of view of the ECtHR, the proper execution of a court decision that has entered into legal force is an integral part of the right to access to court, because otherwise it emasculates the very essence of the right to a fair trial. Both actions and inaction of the State aimed at non-enforcement of a court decision will be considered interference with the right to a court. At the same time, the ECtHR usually does not see a problem with delaying the execution of court decisions for up to a year. The ECtHR has issued two key judgments on this issue against Russia: Burdov v. Russia 1[25] and Burdov v. Russia 2[26] — the first one is the "pilot judgment" in relation to the Russian Federation, which entailed the reform of the executive legislation.

In the Russian legal system, the right to access to justice is enshrined primarily in Articles 46[27] and 47 [28]of the Constitution of the Russian Federation[23]. It is emphasized that the right to access to the court is a guarantee of the protection of the dignity of the individual as a fundamental principle of the Russian Constitution[29]. The Constitutional Court of the Russian Federation has also repeatedly considered various aspects of access to the court and noted their importance.

Along with access to justice, the Constitution of the Russian Federation contains a number of guarantees closely related to this right, such as equality before the court and provision of qualified legal assistance (Articles 19[31], 48 of the Constitution of the Russian Federation[32]).

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23 http://hudoc.echr.coe.int/eng# {%22itemid%22:[%22001-158708%22]}

24 http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=458394#p8jpooSeorE4ofvk1

25 http://hudoc.echr.coe.int/eng?i=001-60449

26 http://hudoc.echr.coe.int/eng?i=001-90671

27 "1. Everyone is guaranteed judicial protection of his rights and freedoms. 2. Decisions and actions (or inaction) of state authorities, local self-government bodies, public associations and officials may be appealed to the court. 3. Everyone has the right, in accordance with international treaties of the Russian Federation, to apply to interstate bodies for the protection of human rights and freedoms if all available domestic remedies have been exhausted."
http:///www.consultant.ru/document/cons_doc_LAW_28399/ 1f1ca1e76ebdb70979b8aefe
86b441f7cd9373e3/

28 "No one can be deprived of the right to have his case examined in that court and by that judge to whose jurisdiction it is attributed by law"
http:///www.consultant.ru/document/cons_doc_LAW_28399/ a2ae88fffa093e36496f4c67
89a00e5f2956e1c9/

29 the Constitution of the Russian Federation. Problematic comment. (Ed. by V.A. Chetvernin). C.85 (source: https://pravo.hse.ru/data/2016/10/25/1110642287/constitution.pdf).

30 A compilation of the acts of the Constitutional Court concerning the right of access to the court in the context of criminal justice can be found at:
http://www.ksrf.ru/ru/Decision/Documents/Право%20на%20доступ%20к%20правосудию%20в%20разумный%20срок%20в%20уголовном%20судопроизводстве.pdf

31 http://www.consultant.ru/document/cons doc_ LAW_28399/a4d26fe6022253f9f9e396e9ca6f63c80946702f/

32 http://www.consultant.ru/document/cons doc_ LAW_ 28399/78dcbb89fb8a04e896d5863e68edd708540f844c/

The sectoral legislation emphasizes the need to comply with international and constitutional guarantees in the penitentiary sphere, so Part 1 and Part 2 of Article 3 of the Criminal Executive Code of the Russian Federation[33] say that the penal enforcement legislation of the Russian Federation and the practice of its application are based on the Constitution of the Russian Federation, generally recognized principles and norms of international law and international treaties of the Russian Federation, which are part of part of the legal system of the Russian Federation. Moreover, this article implements the constitutional principle: if an international treaty of the Russian Federation establishes other rules for the execution of punishments and treatment of convicts than those provided for by the penal enforcement legislation of the Russian Federation, then the rules of the international treaty apply.

Due to the specifics of the penitentiary sphere, the main array of its regulation falls on subordinate (interdepartmental, departmental, internal and local) acts. In theory, all of them should be issued on the basis of and in pursuance of higher acts (Constitution, Criminal Executive Code of the Russian Federation), and cannot restrict the rights of prisoners more than provided for by federal law (as provided for in Part 3 of Article 55 of the Constitution of the Russian Federation). However, in practice, it is not uncommon for by-laws to contradict both legislation and each other, and are often labeled "for official use", being inaccessible to the citizens they concern. Selected aspects of the analysis of national legislation concerning the right of prisoners to access to court and individual guarantees related to access to an advocate and provision of legal assistance can be found in the annex to the report.

Methodology of monitoring "Compliance with the right of access to court in places of detention"

The study was conducted by public observers (members of the PMC, Public Councils under the territorial bodies of the Federal Penitentiary Service of Russia, expert councils under regional Human Rights Commissioners). The study would not have taken place without the assistance of the leadership of the territorial bodies of the Federal Penitentiary Service, which ensured the unhindered work of observers within their powers and provided the necessary information on the topic under study.

The study tools were created by the team of the project "Strengthening civil control in detention facilities in Russia" - employees of the organization "Man and Law" and experts of the Helsinki Foundation for Human Rights. The developers of the toolkit have experience in public and expert work in the field of human rights, including in places of detention — at various times they were members of the Public Monitoring Commission of the Republic of Mari El, the Public Council under the Head of the Federal Penitentiary Service of Russia for the Republic of Mari El, public and expert councils under the authorities. Involved lawyers with experience in human rights work in places of detention took part in the development of the toolkit.

[33] http://www.consultant.ru/document/cons_doc_LAW_12940/a326ddfd895673b75069ec86a121b03396a85389/

During the study, the project team and regional partners were guided by the principles of openness, partnership with authorities, and the safety of any actions for prisoners.

The objective of monitoring: To study the situation with the observance of prisoners'[34] rights to access the court in order to develop recommendations for improving the implementation of this standard in places of deprivation of liberty.

Goals:

1. To study the situation with the observance of the right of access of prisoners to court in selected institutions of the Federal Penitentiary Service in 13 regions of the Russian Federation.

2. Study of the legislation of the Russian Federation in the field of access to court in places of deprivation of liberty and international standards of access to justice.

3. Preparation of regional reports on the results of the study of the situation with respect to the right of access to the court, including recommendations for responsible and interested institutions to improve the situation in the studied area in places of deprivation of liberty.

4. Discussion of recommendations with representatives of the territorial bodies of the Federal Penitentiary Service within the framework of organized round tables and other interaction, as well as, if possible, with other responsible and interested institutions.

Studied areas:

1. Possibility of freely sending procedural statements and judicial correspondence, as well as filing complaints and applications to the court and other regulatory authorities.

2. Possibility of personal participation in the court session in criminal, civil and administrative cases. Organization of the court session via videoconference.

3. Situation of foreigners/people who do not speak Russian;

4. Access of advocates and other persons entitled to legal assistance to places of deprivation of liberty;

5. Correspondence and telephone conversations of the prisoner with the defender.

6. Conditions for prisoners to obtain a power of attorney certified by the head of the institution for the implementation of legal protection.

7. Storage and access to the prisoner's procedural documents.

[34] A prisoner in this report is any person who is in custody, regardless of his procedural status.

8. Availability in places of deprivation of liberty of up-to-date legal information about the rights of prisoners and ways of their protection in court, including the necessary information about the addressees of access to justice.

9. The possibility of obtaining paid legal assistance and paid services providing judicial protection.

10. The possibility of using free legal assistance.

11. Protection from illegal practices that restrict the right to access to justice.

12. The practice of PMC members exercising their powers in protecting the rights of prisoners.

Selection and training of observers:

For the study, a selection of candidates was announced from among public observers who can visit places of detention, disseminate the experience of conducting the study among colleagues, and also have experience in organizing events to discuss human rights issues in places of forced detention.

As a result, PMC members who have access to places of deprivation of liberty in accordance with Article 15 FZ-76 "On Public Control over Ensuring Human Rights in Places of Forced Detention and on Assistance to Persons in Places of Forced Detention", members of Public Councils under the Territorial Bodies of the Federal Penitentiary Service who visit subordinate institutions in accordance with the provisions "On Public Councils" adopted at the regional level, and members of expert councils under regional Commissioners human rights officers who visit places of detention within the framework of agreements between the Authorized Persons and the FSIN body in the region were selected.

13 regions were selected for monitoring on a competitive basis (Altai, Primorsky Krai, Sverdlovsk, Tomsk, Ulyanovsk, Rostov, Bryansk, Irkutsk, Nizhny Novgorod, Ivanovo and oblasts, the Republics of Mari El and Komi). The selected representatives of these regions have attended seminars on human rights, have knowledge of human rights, experience of visits to places of deprivation of liberty, communication with prisoners and employees of the Federal Penitentiary Service, experience in drawing conclusions based on the results of visits.

Before the start of the monitoring, the selected partners took part in a three-day orientation seminar, where they studied the standards for ensuring the right to access to court in places of detention, the basic principles of organizing monitoring taking into account the powers of public observers, the study tools (questionnaires, requests, observation map).

Before starting the study of the situation with the observance of the right to access to court in places of deprivation of liberty, the legislation of the Russian Federation was analyzed in terms of guarantees of this right in institutions of the Federal Penitentiary Service of the Russian Federation. National norms were analyzed for their compliance with generally recognized norms and principles of respect for human rights, which are an integral part of the legal system of the Russian Federation. The conclusions obtained in the analysis of the law are reflected in this Report.

Tools for conducting the study

As part of the study, the following information collection tools were used:

1. Interviewing advocates who are experts in the field of working with places of deprivation of liberty;

2. Surveys of PMC members of the past convocations with experience of visiting places of deprivation of liberty;

3. Survey of regional advocates working with places of deprivation of liberty;

4. Requests to the regional (main) departments of the Federal Penitentiary Service of the

Russian Federation;

5. Requests to the heads of institutions of the Federal Penitentiary Service of the Russian Federation;

6. Requests to the Chambers of Advocates of the regions;

7. Requests to regional prosecutors for supervision of compliance with the rule of law in correctional institutions;

8. Requests to the Human Rights Commissioners in the regions;

9. Conversations with heads of institutions;

10. Prisoner surveys;

11. Observation and filling out of the observation card in the institution;

12. Monitoring of the judicial process in the colony or in court;

13. Monitoring the organization of videoconferencing in a correctional colony;

14. Analysis of regional laws on free legal aid for inclusion of prisoners in the category of persons receiving free legal aid.

General information about the study conducted:

The study was conducted from January to the end of April 2020.

During the study, 77 forced detention facilities of the Federal Penitentiary Service were visited, more than 600 prisoners were interviewed, interviews were conducted with more than 150 employees, the experience of more than 50 members of PMC and Public Councils was studied, 65 lawyers and advocates were interviewed, 35 court sessions were attended both in the premises of courts and on the territory of colonies, 42 were sent requests to state bodies and departments, 107 responses were received.

Institutions for visits were selected according to one of the following criteria:

• institution for women;

• the institution most remote from the economic center of the region;

• institution with the maximum number of prisoners held;

• capital institution.

Prisoners were selected for the survey according to the following criteria:

• prisoners from among those who are most often placed in a punishment cell;

• prisoners from among those who more often than others apply for protection to different instances and judicial bodies;

• prisoners from among foreign citizens;

• prisoners who have filed an application with the European Court of Human Rights;

• prisoners who have a trial going on.

Positive changes that occurred during the study

It is important to note that as part of the study, FSIN employees actively interacted with observers and listened to their recommendations. Thanks to this, some problematic points were changed already at the stage of study:

1. Updating contacts of regulatory and supervisory authorities and officials at information stands in colonies;

2. Improvement of the conditions for participation in the trial through videoconferencing: installation of shelves, tables for working with documents in the premises of videoconferencing;

3. Updating of legal literature and electronic databases;

4. Ensuring the confidentiality of meetings with advocates and defenders (in one region, audio recording has been stopped in the meeting room, and in another, the area of the table where documents are laid out is excluded from the video camera review);

5. The number of rooms for meetings with advocates in one of the pre-trial detention centers has been increased.

Practice existing in places of detention: description of the information obtained during the study on the monitoring area

1. Possibility of freely sending and receiving procedural statements, judicial correspondence and filing complaints to supervisory and controlling authorities

According to the results of interviews with employees of institutions, it turned out that when sending complaints, appeals and statements, there is a practice when prisoners drop correspondence into a mailbox inside the colony. Correspondence is withdrawn from the mailbox every day, except weekends and holidays, in the future it is registered in the office of the institution and sent to its destination. Incoming correspondence (judicial, responses from the authorities, PMC) is given to prisoners within three days after receiving it under signature. Prisoners do not have the ability to use the service for electronic sending of court correspondence in any region.

Correspondence with the court, according to employees, is not subject to censorship. However, employees of two institutions visited in one of the regions reported that all judicial correspondence was censored. Many of the interviewed prisoners in this region reported that, in their opinion, correspondence with the court is viewed by employees. One prisoner said that he had given the cassation appeal in a closed envelope, but they had brought him an answer in an open form. One of the interviewees stated that the letter from the court was opened in his presence by employees.

The majority of the interviewed prisoners did not mention cases when they missed the appeal deadlines due to non-dispatch or delay in sending outgoing correspondence. Members of the PMC of the two regions reported about missing the appeal deadline due to the non-sending of a letter from the colony. Several prisoners reported that they missed the appeal deadline due to the delay in correspondence, but they do not know whether this is due to the non-sending of a letter from the colony or the letter disappeared already outside the institution, when forwarded by the postal service. In some regions, prisoners have complained that their judicial correspondence does not leave the colony for various reasons: in some places, employees refuse to accept complaints and send them, in some places they accept, but do not send them, as a result, the prisoner does not receive a response to the appeal.

In one of the regions, the fact of non-sending of court correspondence was recorded by the prosecutor's office: it was revealed that the prisoner could not send a letter due to the lack of stamps in the colony store.

In one of the regions, prisoners and advocates experienced difficulties in collecting and submitting to the court all the necessary documents relating to the subject of their complaints. Thus, for some prisoners, the staff either refused to issue certificates on the lack of funds in the personal account,

or delayed the issuance, stating that such certificates would be sent at the request of the court, which made it difficult for prisoners to be exempt from paying state duty. The prisoners reported on the failure to provide copies of documents that have the stamp “for official use”, which means, according to the administrations of institutions, should not be provided to prisoners (personal file materials, including materials on the imposition of disciplinary penalties)[35]. The advocate achieved the opportunity to get acquainted with the documents only through the court.

As prisoners from different institutions of the two regions reported, there are problems for them with access to medical documents. For example, when requesting medical documents, the medical and sanitary part of the institution responds that they can provide the necessary documents only at the request of the court.

The responses from State bodies indicate that the Prosecutor's Offices of the regions do not keep statistics on appeals related to ensuring the right of prisoners to access to court. These appeals are not singled out in a separate category and, therefore, the issue of accessibility of justice for prisoners is not assessed as a separate area of ensuring the rule of law in penal institutions.

As in the case of court correspondence, the observers recorded a large number of messages from prisoners, according to which the letters they write to the controlling and supervisory authorities do not reach the addressees. The convicts draw such a conclusion from the fact that they do not receive answers to their appeals. In one case, the prisoner noted that only an empty envelope reached the Prosecutor's Office from him, about which he was notified by a reply letter. In addition, the prisoners reported that the staff did not inform them of the outgoing letter numbers.

According to the members of the PMC of one region, it is difficult to control the passage of these appeals, since they may not be sent from the institution after registration, and the registration of simple shipments is not carried out by Russian post.

At the same time, in one of the regions, valuable experience was noted in maintaining registers of correspondence transfer from FSIN employees to the liaison office. That is, the employee makes a list of all simple letters delivered to the post office, passes the letters to the post office employee, and they jointly sign a document stating that all letters in the list are accepted by the post office. This practice makes it possible to track, when a letter is lost, which body is responsible for it.

In one of the regions, the prisoners noted that the staff refused to accept their complaints for subsequent dispatch.

In several subjects of the Russian Federation, the prosecutor's office does not keep records of complaints about access to court from places of detention. In one of the regions, the prosecutor's office did not receive complaints about access to court from prisoners in 2019, which in itself is a factor requiring attention. Also, the Human Rights Commissioners of several regions noted the absence of complaints about access to court from prisoners. The absence of complaints in such a significant area may indicate either that the prisoners are not informed about their procedural rights and opportunities to apply for their protection, or do not have the opportunity (or there are obstacles) to send complaints.

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[35] The Order of the Ministry of Justice of August 25, 2006 “On the approval of instructions on the organization and procedure for conducting searches and inspections in correctional institutions of the penal system”.

In one of the regions, the Prosecutor's Office redirects appeals related to the violation of the right to access the court to the territorial body of the Federal Penitentiary Service, which is not an effective measure.

The Prosecutor's office of one of the regions noted that all complaints of prisoners about the violation of their rights in access to court were left without satisfaction. The same answer was provided by one of the Human Rights Commissioners.

PMC members, Commissioners from different regions noted the lack of legal knowledge among prisoners as a factor in their non-use of protection mechanisms through complaints and appeals.

According to the employees, the censorship of incoming and outgoing correspondence is conducted in accordance with the law. However, some prisoners note that they prefer to transmit confidential appeals to state bodies through advocates, since all correspondence sent from institutions is subject to accounting and registration. It is impossible to send a complaint in a sealed envelope so that it is not clear which of the prisoners is sending the complaint. A letter without a return recipient may simply not leave the colony. Anonymous letters are not considered by the authorities according to the law. Not all prisoners know that you can not specify the sender's data on the envelope, but write everything inside the letter. In any case, the staff of the institution knows the data of the prisoner who sent the letter, as well as the addressee of the letter.

There is a positive practice in institutions in one region, where an appeal (without specifying the sender's data on the envelope) can be sent to the address of a human rights assistant, which eliminates the risks for the prisoner that his complaints will be read by employees.

Conclusions:

1) During the study, a large number of messages about the loss of letters after their transfer to employees of FSIN institutions were revealed. The procedure for confirming the transfer of documents to the administration by the prisoner for sending to judicial and other bodies is not fixed by regulatory legal acts. The absence of a mechanism for monitoring outgoing correspondence does not allow prisoners to make sure that their letter has left the colony and has been sent to the liaison office. In addition, when sending letters from employees of the Federal Penitentiary Service, employees of the Russian Post do not sign a joint document confirming the list of letters sent, but the existing positive practice shows that it is possible to organize the process of fixing the sending of correspondence.

2) During the monitoring, a large number of complaints and reports about the censorship of correspondence that is not subject to censorship by virtue of the law were revealed. [36] At the same time, in some cases this was confirmed by the interviewed employees. This practice is a violation of the right to confidential communication and access to the court. In addition, it turned out that prisoners often do not know about the right of confidential correspondence or do not use it - they give envelopes in open form.

3) There are cases of obstacles in obtaining documents necessary for defense in court (medical documents, documents with the stamp “For official use”, which are important for drawing up a legal position, other documents). The imposition of the stamp “For official use” on documents that are directly related to the rights of prisoners prevents the full protection of rights. In such conditions, the prisoner is deprived of the opportunity to fully draw up a statement of claim, petition and other documents.

[36] Articles 15, 91 of the Criminal Executive Code of the Russian Federation

4) The inability to send a letter without specifying their data, on the one hand, contributes to the control over the sending of correspondence (the sender receives a coupon for the transfer of a letter to an employee), and on the other hand, it can become a risk factor for a prisoner who has filed a complaint against the actions of employees of this institution.

5) Prisoners are deprived of the opportunity to send claims, complaints and statements in electronic form, which restricts their right to access the court compared to other citizens of Russia.

2. Possibility of personal participation in the court session in criminal, civil and administrative cases. Organization of the court session via video conferencing.

According to the practice of the institutions and according to the responses provided to requests, in civil and administrative cases in most regions, prisoners are not sent to court. Meetings to consider applications for parole, to change the regime of serving a sentence are also held remotely in most cases. The exception is the educational colony - in it all court sessions are held in person, and the judge personally comes to the colony.

If a prisoner has applied to the court for protection of his rights, his case will be considered in the videoconferencing mode, and the choice of the format of participation in favor of personal presence in the courtroom is not provided for prisoners.

The basis for the transfer of a prisoner from the colony to the court may be a new criminal case initiated against him, as well as the need for his participation in the meeting as a witness.

Visiting sessions of courts in the institutions of the Federal Penitentiary Service are almost not practiced — only one region noted the holding of such meetings.

In one of the regions, the procedure and problems of staging prisoners for face-to-face participation in a court session, which has signs of inhuman treatment, are described in detail: *"Court sessions take place simultaneously in different districts of the city and the region, it is impossible to provide a video conference call for such a number of court sessions. In this regard, most of the prisoners are transported in a specialized car (paddy wagon) to the courtroom. The decision that the state of the prisoner does not prevent him from transportation and participation in the courtroom is made by the doctor of the pre-trial detention center, who signs the appropriate conclusion before each transportation of the prisoner. Staging, according to the prisoners, is a long process. It starts early in the morning (at 5-6 o'clock), a paddy wagon with prisoners leaves the pre-trial detention center, simultaneously taking prisoners from the IVS of different districts of the city. Thus, a prisoner who has a court hearing scheduled for 13-15 o'clock is on his way all the time from early morning, on average about 5-8 hours without food, the opportunity to go out, move, and use the toilet. This is followed by a trial, where also, often, there is no opportunity to take food, and sometimes to satisfy natural needs. After the trial, the transportation is repeated. Prisoners are collected from different district courts of the city, transported to the IVS, after which the remaining are returned to the pre-trial detention center. Most often, according to the prisoners, they are brought to the pre-trial detention center around 00 - 01 a.m. After that, they go through the inspection procedure for about 0.5 — 01 hours, only after that the prisoner gets into the cell. Some prisoners, according to them, have court sessions every day, except weekends. The schedule is the same. They wake up at 03-04 a.m., depart at 05-06 a.m., the whole day in the paddy wagon and the court, return to the pre-trial detention center at 00-01 at night, and at 03-04 in the morning they wake up again and depart for the next court session.*

Under such severe conditions, the human body is greatly weakened, according to the

prisoners, even young people often lose consciousness, chronic diseases worsen and manifest themselves. The staff does not confirm such a schedule of transportation of prisoners, but they agree that special vehicles and convoys are not enough to transport all prisoners, which is why, sometimes, there are delays in transporting prisoners to court."

Most of the responses to requests to the territorial bodies of the Federal Penitentiary Service indicate that the videoconferencing for the participation of prisoners in court is provided. It is available in all institutions of the Federal Penitentiary Service of all regions.

The head of the Judicial Department in one of the regions reported that there were no complaints about the quality of communication or the ban on the use of videoconferencing.

According to the information of the employees of one of the colonies, difficulties in the implementation of court sessions arise only in cases of appointment by different courts of several court sessions at the same time. In such cases, guided by the "Regulations for the organization of the use of videoconferencing in federal courts of general jurisdiction"[37], first of all, a court session with the court of the highest instance takes place, the second is postponed to another free time.

The schedule of court sessions in the premises of the videoconferencing, as a rule, is not placed. Prisoners are notified by the staff of the date and time of the court session, they also ensure the participation of the prisoner in the meeting on the call of the judge.

Lawyers of human rights organizations in one region noted several cases when the regional court did not ensure the participation of prisoners in court sessions on non-criminal cases, despite petitions for personal participation in the court session.

Observers have noted cases when information about meetings is not posted in advance on the websites of courts or in the schedule on information stands in the courthouse. Sometimes the posted information does not correspond to reality (time, number of the meeting room).

In one of the regions, the schedule of meetings is kept only nominally. In practice, according to the testimony of advocates, they all come to the courtroom at the same time in the morning, since the hearing on their case can begin at any time, and they are waiting for their client to approach. Usually prisoners who have an advocate are called faster, the rest - as it turns out. The wait may take up to 5 hours. This means that the prisoners themselves, who have a meeting scheduled for that day, do not know at what moment it will take place.

During the meeting, a prisoner and an employee of the institution are usually in the room. In some cases, there is a prosecutor, even less often - a defender. More often, the prosecutor and the defender participate in the meeting from the courtroom.

In some regions, prisoners confirm a sufficient level of communication during the videoconferencing meeting. In several institutions, prisoners, advocates and employees reported technical problems in the operation of equipment, which is why meetings are often postponed. Information on the specialized portal "GAS-justice" also records cases of postponement of meetings due to equipment malfunctions. Observers who participated in court sessions during monitoring in some cases also noted such problems that do not allow participants in the process to clearly see and hear each other. In some cases, the meeting is postponed for 1-2 hours, and in some cases it has to be postponed to another date. At the same time, there were cases when the meeting was not stopped by the judge, even after the prisoner's appeal that the quality of communication did not allow him to fully participate in the process.

[37] Order No. 401 of December 28, 2015 On approval of the regulations for the organization of the use of video conferencing in the preparation and conduct of court sessions (as amended on December 30, 2020).

Technical problems are possible in the operation of any equipment, however, the prisoner should be provided with the right to petition the judge to terminate and postpone the meeting in cases where the quality of communication hinders the consideration of the case. This gives rise to the corresponding duty of the judge to satisfy this petition. The results of the study showed that in most cases the judge himself decides to postpone the meeting in case of technical problems, sometimes the defenders petition for this, but almost never the prisoners themselves. This may indicate that the prisoners are not aware of such a right, or are afraid to apply it.

According to the observations of the PMC members, it was noted that the premises for the videoconferencing are most often separate rooms in which equipment is installed that provides communication with the court. In one of the institutions, the office of the head of the IU is used for meetings, where the equipment is installed.

There is a grid in all rooms, but there are differences in its installation: in some institutions it only encloses the equipment from the rest of the hall, and in others it separates the place from which the prisoner participates in the meeting - in such conditions, the prisoner is separated by a grid not only from the equipment, but also from other participants in the meeting, if they are present in institution: an advocate, an accompanying employee of the law enforcement agency, a prosecutor.

The rooms have furniture (table, chairs). In some institutions, observers noted inconveniences for working with documents: the lack of shelves, tables for placing documents on them. In one of the regions, these shortcomings were eliminated after the recommendations of observers. In the other two, observers noted the absence of chairs for defenders in some institutions, most likely due to the fact that defenders rarely participate in meetings in the colony, as reported by interviewed defenders and prisoners.

In one region, PMC members noted the availability of legal reference information in videoconferencing premises: addresses of courts of various levels, price lists for advocate services.

In one region, prisoners participate in a standing session. According to them, the process does not last long, on average 10-15 minutes, in addition, prisoners do not consider it possible to sit in the presence of employees. In the described practice, the existing legal uncertainty is seen: what rules apply in the premises of the court session on the territory of the colony — the rules of the court or the rules of the correctional institution? According to the example given, the convicted person is forced to obey the internal regulations of the IU in the first place, since violation of these rules entails the imposition of penalties. The existing legislation does not exempt the prisoner from the execution of the internal regulations of the IU during the court session, however, such a situation can significantly reduce the possibilities of protection — the need to take into account the presence of an employee, the inability to sit down and work freely with documents. The mixing of the two authorities, the relevant regulations and strict rules requires attention and the creation of formal procedures in such conditions that regime restrictions do not remove the possibility of full participation in the court session through the videoconferencing.

In three regions, a small area of premises for videoconferencing is noted, in some cases only one person has the opportunity to accommodate, therefore, the defender cannot participate in the meeting together with the defendant. In cases where the prosecutor is present at the meeting, the prisoner is forced to sit with him at the same table in close proximity. According to observers and relatives of the prisoners, this is not malicious, but pressure on the prisoner, who feels uncomfortable, and sometimes does not dare to spread out the documents on the table where the prosecutor is already located. It is important to take into account that in most parole proceedings, the prosecutor usually opposes the parole of the prisoner.

In another region, observers noted that in the premises of the videoconferencing, next to the

prisoner, when appealing the actions of the employees of the IU, there is an advocate of the colony representing their interests. Given the small area of the premises (about 2 sq. m.), such a close presence with the opposing side for the prisoner may be a negative factor, especially given his dependent position on the employee of the IU.

The described practices signal that the proximity of the staff of the IU, the prosecutor, who more often does not support the position of the prisoner, creates unacceptable conditions for the prisoner's participation in the court session. This is reinforced by the unequal role positions noted above, where, for example, the prosecutor or the advocate of the institution are participants in the process, and the prisoner is first of all forced to be guided by the PVR, and then by his interests in the judicial process. In addition, the actual dependence on the staff of institutions and their orders exacerbates the situation of inequality in the meeting.

According to the response of the Judicial Department of one of the regions, during the court session through videoconferencing systems, prisoners have the right to transfer additional documents and get acquainted with the case materials. The transfer of additional documents is carried out by departmental facsimile and e-mail.

In most of the court sessions where observers took part as listeners, the prisoners did not declare the need to exchange documents with other participants in the process or with the court, also the majority of the interviewed prisoners reported that they did not use such an opportunity.

The described isolated cases indicate that advocates most often apply for this, and as they noted, it requires certain persistence: not every such petition is granted.

The defender described a case when the prisoner filed a petition for familiarization with the case materials. The judge suggested that he familiarize himself with the materials using videoconferencing, that is, the documents are laid out in front of a video camera, and the prisoner gets acquainted with them through the screen. The prisoner refused this method, since little time was allocated for familiarization, and the screen was too high to read the text of the document.

The interviewed advocates mostly prefer to participate in the meeting in the courtroom. This way it is more convenient to transmit written petitions and attach documents. They usually discuss the legal position in advance at meetings with their principal.

As for the conversations of prisoners with their counsel during the meeting, the practice varies in different regions. In some of them, the interviewed advocates reported that they could talk to the defendant, who is in the colony, during the court session only in the presence of other participants in the meeting, which violates the principle of confidentiality. In one region, advocates reported that they had not filed such petitions, in another - that it was possible to interrupt the meeting for a conversation, but this rarely happens.

In some regions, a break for communication between the defender and the prisoner is possible, and this opportunity is used by advocates (this was recorded during the participation of observers in court sessions as listeners, and confirmed during conversations with advocates and prisoners). In such cases, a break is announced, the remaining participants in the process are removed from the courtroom or the court session is postponed. However, observers in several regions noted that even during the advocate's communication with the prisoner, when all the other participants in the trial left the courtroom, confidentiality was not properly ensured: in the corridor of the court, you can hear what the defender and the defendant are talking about in the courtroom. In one region, judges refuse to provide confidential conversations to defenders who do not have the status of an advocate, arguing that the defender does not have an advocate status.

Observers who participated in the meetings as listeners (with the exception of one region) did not record cases when prisoners or defenders declared the need for confidential negotiations during the

meetings. This indicates that this practice is not common in court proceedings.

Observers noted that prisoners are not well informed that they can send and receive documents on their case, request time to familiarize themselves with them, request a confidential conversation, as well as to postpone the meeting if the quality of communication does not allow full participation in the process.

Conclusions:

1) In most cases, prisoners are deprived of the right to participate personally in the trial and have the opportunity to participate in the meeting only through the videoconferencing. On the one hand, this makes it easier for prisoners to get to court, since the process of staging for a court hearing is fraught with significant difficulties. On the other hand, personal participation is the only opportunity for a prisoner to fully participate in the process if the process with the help of videoconferencing does not meet the requirements of accessibility of the trial. The impossibility of personal participation in such a case deprives the prisoner of the possibility of exercising all the rights guaranteed in the judicial process.

2) One of the problems of personal participation in the court session are the conditions for the staging of prisoners (moving in carts, early departure and late arrival, long waiting in the convoy premises before the start of the meeting, non-provision of lunches and snacks and other violations that become possible, including due to the lack of opportunities for public control during the staging). From the point of view of observers, the whole process of staging for court sessions is inhumane and requires an immediate change in conditions.

3) Poor communication quality, when the participants in the process do not hear and see each other well, causes difficulties in the process of presenting a position on the case, the possibility of implementing the principle of adversarial parties, etc. At the same time, it is noted that in a situation where the quality of communication does not allow you to hear the words of a judge or advocate, prisoners, with rare exceptions, are afraid to ask again (which is partly due to the above-mentioned problem of mixing regulations). This may indicate that the prisoners are not aware of such a right, or are afraid to apply it.

5) There are cases when prisoners participating in the meeting through the videoconferencing are not given a break during the meeting for a confidential conversation with an advocate, which indicates a violation of access to legal protection. The lack of an opportunity to discuss the legal position during the meeting, when the prisoner is in the colony, and the advocate is in the courtroom, greatly complicates the realization of the prisoner's right to defense in court.

6) Prisoners in general are poorly informed about what and how they can do during the preparation and conduct of the remote trial, including information about opportunities to send and receive documents on your case, request time to get acquainted with them, request a confidential conversation, as well as to postpone the meeting if the quality of communication does not allow you to fully participate in the process. The lack of awareness of prisoners about the right to transfer documents during the trial through remote technical capabilities, for familiarization by the court and inclusion in the case, or for familiarization by prisoners with the written position of the advocate, or with another document available in the case and examined in the process, restricts their rights.

7) The bars, which should perform the function of protecting the equipment in the videoconferencing hall, separate the prisoners not only from the equipment, but also from the rest of the participants in the process in the videoconferencing room. This puts the prisoner, regardless of his procedural status, in the position of the accused, even if he acts as an applicant in this process. No legal norms can justify the separation of the defender and his client, but this practice is common. Putting a

prisoner participating in the trial behind bars, even if it does not physically deprive him of access to the court, in any case demotivates, creates a feeling of helplessness and guilt, unequal status with other participants in the process who are on the other side.

8) There is no clear regulation in the implementation of remote processes in colonies; there is a mixture of court and colony regulations. In practice, the existing legal uncertainty is seen: what rules apply in the premises of the court session on the territory of the colony — the rules of the court or the rules of the correctional institution? The need to comply primarily with the requirements of the PVR can put the prisoner in an unequal position and significantly reduce the possibility of participating in the court session and defense (the need to take into account the presence of an employee, the inability to sit down and work freely with documents, etc.)

9) Being in close proximity to the premises of the videoconferencing of the staff of the IU, the prosecutor, creates unacceptable conditions for the prisoner's participation in the court session, aggravates the situation of inequality in the process, can become a form of pressure on the prisoner: causes discomfort, the prisoner does not dare to spread out documents on the table, where the prosecutor or the advocate of the colony has already spread out his papers.

3. Situation of foreigners/people who do not speak Russian

There are very few prisoners who absolutely do not speak Russian in the institutions of the Federal Penitentiary Service. The observers participating in the study did not meet any during the visits. This is confirmed by the responses of the heads of the FSIN institutions: in six regions it was noted that there are no such prisoners in institutions, in two regions there are 1-2 such prisoners. The observers proceeded from the goal to study how well institutions are prepared to exercise the right of access to court for this category of prisoners, what judicial and legal protection procedures are provided in case a person who does not speak Russian appears in the institution.

It is important to note that foreign citizens were held in the institutions visited; all the interviewed prisoners were citizens of CIS states and informed the observers that they had sufficient command of the Russian language to understand the content of the available documents, interact with employees and other prisoners. 8 foreign citizens (Uzbekistan, Georgia, Ukraine) were interviewed in one region. They reported that they do not need an interpreter, understand documents and legal acts in Russian.

According to the employees of the institutions and interviewed advocates who have experience representing the interests of a prisoner who does not speak Russian in court, an interpreter is provided by the decision of the body in which the criminal case is being conducted (investigative body or court). For prisoners who speak Russian, only at the stage of consideration of their criminal case, the right to free assistance of an interpreter is provided by the norms of the Constitution of the Russian Federation and the CEC.

Since the legislative level does not provide for the provision of an interpreter in a pre-trial detention center or in a colony, including during a meeting of a prisoner with an advocate, some advocates reported that they simply do not undertake to protect persons who do not speak Russian at the pre-trial stage, or stipulate that they will be present at certain investigative actions. At the same time, one interviewed advocate said that he had experience defending a foreign citizen who did not speak Russian, and an interpreter was allowed to meet an advocate with a prisoner in a pre-trial detention center.

In any court proceedings where the initiator is a citizen who does not speak Russian, the assistance of the state in providing translation services is not provided, and the prisoner can only count

on himself or the help of relatives. According to the management of only one of the visited correctional institutions, if necessary, at the request of the prisoner, a court provides an interpreter for the trial, with subsequent translation of documents.

Legal literature in languages other than Russian in institutions, as a rule, is not available. In one of the regions, there are PVRs in institutions translated into Chinese, due to the fact that this region borders with China, and there are many prisoners in institutions who are citizens of this state.

From the moment the prisoners arrive in institutions to serve their sentences, difficulties arise in familiarizing themselves with the legal situation, as well as in communicating with employees of institutions, noted by the employees of several institutions themselves. Financial resources for the purpose of attracting translators are not allocated, therefore, prisoners who could communicate with these persons, as well as employees of the institution or employees of other law enforcement agencies who speak a foreign language, were involved in familiarizing prisoners who do not speak Russian with the legal situation. This approach is also applied in one of the national regions where there were prisoners who speak the state regional language. Russian is spoken by the interviewed advocates of this region, however, they claim that all prisoners speak Russian on a par with the national language, and they ask to use Russian when interacting. In some cases, advocates are ready to switch to the national language. The prisoners' requests for an advocate speaking the language of the region were not recorded during the study.

Conclusions:

1) There is a certain gap in the legislation concerning the right to free assistance of an interpreter to persons who do not speak Russian, who are in colonies and pre-trial detention centers in Russia. This creates barriers, sometimes insurmountable, for prisoners to protect their rights. The conditions in which a person who does not speak Russian must find an interpreter on his own and pay for his services make it virtually impossible for a person in custody to have legal protection.

2) There is no legal literature in other languages in the institutions. It seems that it is impractical to purchase normative legal acts in other languages for the future, however, when foreign citizens who do not speak Russian enter the institution, they should be provided with basic normative legal acts, as well as printouts of basic legal information concerning, at least, ensuring rights and obligations in the institution. If necessary, the prisoner should be able to obtain other legal information that he will need when applying for the protection of rights and freedoms. In this part, electronic databases, programs in terminals, where legal documents can be posted and updated in other languages, become an effective tool.

4. Access of advocates and other persons entitled to legal assistance to places of deprivation of liberty

Based on the majority of responses from the territorial bodies of the Federal Penitentiary Service, there were no complaints about obstacles to the access of advocates and other persons to provide legal assistance from prisoners.

One of the territorial bodies reported on the confirmed unjustified fact of withdrawal of the power of attorney from the defender.

The Chamber of Advocates of 5 regions reported that advocates have not noted any obstacles in

accessing clients in places of detention over the past year.

The prosecutor's office of one of the regions in 2018 recorded a violation: the advocate's request was not answered by the administration of the institution within the time limit established by law (30 days). Thus, according to the decision of the prosecutor's office, due to the untimely response of the administration, the time limit for the prisoner to apply to the court with a petition to replace the unserved part of the sentence in the form of imprisonment with a milder type of punishment was unreasonably increased.

In two regions, the prosecutor's office satisfied the appeals related to the failure of the advocate and the defender to meet with the prisoner.

Among the difficulties in the work, which were noted in the responses to requests, by advocates, members of the PMC during surveys, were the following:

• It is forbidden to carry equipment for recording information: a camera, a voice recorder, a phone (for using a camera and a voice recorder). Advocates are allowed to bring a laptop and a mobile printer into the detention center of one region, but they cannot use them in the presence of the client. In another region, you can carry a laptop without Internet access, but only with the permission of the head of the correctional institution. Such an additional filter is not regulated by law, which means it is arbitrary and restricts prisoners in the possibilities of protection. Only in one region advocates/defenders are allowed to bring equipment with them: a camera, a phone.

• Long waiting time for a meeting with the client. This is due in some cases to the lack of meeting rooms, on the other hand, to the protracted procedure of delivering a prisoner to a meeting with an advocate. In one region, some institutions have introduced a requirement to make an appointment in advance (per day), and advocates who arrive at a meeting without an appointment may be denied a meeting. Only in two regions the waiting time for the meeting is 10-20 minutes. At the same time, in institutions where meetings are organized by appointment, the waiting time ranges from 10 minutes to half an hour. Thus, the pre-appointment mechanism can be an effective measure that optimizes the organization of meetings, but it cannot be a mandatory requirement, since meetings can also be unscheduled, emergency, but in such cases the possibility of a meeting should be provided.

• In a pre-trial detention facility in one of the regions, investigators may prohibit an advocate from meeting with his client.

Differences in the practice of granting visits to advocates and defenders who do not have the status of an advocate

Employees of institutions in several regions provide meetings with a defender who does not have the status of an advocate on the same grounds as meetings with an advocate. In one of the regions, the meeting may be allowed by the chief, provided that the defender has a higher legal education, despite the fact that this condition is not based on the law.

In two regions, meetings with a defender who does not have the status of an advocate are provided as part of the exercise of the right to a short-term appointment, with all the restrictions arising from this rule (a limited number of meetings, while the prisoner must choose whether to meet with relatives or with a defender, listening to conversations, lack of confidentiality, since the meeting takes place in the presence of an employee and other people who arrived on a short-term date). This information is confirmed by employees, prisoners, and lawyers of human rights organizations. This position of the administrations of places of forced detention comes into clear contradiction with paragraph 4 of Article 89 of the Criminal Code of the Russian Federation, which enshrines the right of prisoners to confidentiality of visits without limiting their number, not only with advocates, but also

with other persons entitled to legal assistance.

In several of the surveyed regions, information about meetings with persons who do not have the status of an advocate is not recorded at all - such cases are unknown to employees, and prisoners do not use such a mechanism. At the same time, in one of these institutions, the heads reported that they would refuse to meet with a defender who does not have the status of an advocate. Thus, the lack of practice may be a consequence of the position of the management of institutions, which does not allow such meetings.

Defenders who do not have the status of an advocate were more likely to report various obstacles to access to their clients than advocates. There have been cases of long (up to a whole working day) waiting for the head of the institution to sign a meeting permit.

There were cases that relatives had been waiting for a short-term appointment for a long time and when a lawyer of a human rights organization came out, relatives insulted him for waiting for a long time.

One interviewee defender, who does not have the status of an advocate, said that employees of colonies in which he had not previously been, had questions about the grounds for granting a visit, but after referring to paragraph 4 of Article 89 of the Criminal Executive Code of the Russian Federation, he was granted visits on the same conditions as advocates. In other cases, if a lawyer is already conducting the case of a prisoner, he can submit a power of attorney to represent the interests of this prisoner or an extract from the minutes of the court session on admission to participate as a defender.

Inspection procedure and prohibited items

When visiting prisoners in the institutions of the Federal Penitentiary Service, advocates, according to their information, undergo a screening procedure. They pass through the frame of a metal detector, or employees carry out a metal detector on things and clothes, leave all items prohibited by the PVR (including mobile phones, photo, video and audio equipment, laptops and tablets - where they are prohibited from carrying, and this is almost everywhere).

If necessary, it is possible to exchange documents during a meeting between an advocate and a prisoner — this was noted by both advocates and prisoners.

Before and after the meeting, the advocate's documents are usually not viewed. In one region, according to advocates, employees superficially look through documents that advocates bring to a meeting. In another region, advocates reported on the constant attempts of the pre-trial detention center staff to check the documents with which the advocate leaves the meeting with the client. With the insistence of advocates, reminding of the possibility of inspection only by a reasoned decision of the head of the institution, and not at the exit, but only at the entrance to the institution, it was possible to overcome attempts to see the documents.

Meeting rooms

Meetings with an advocate and a defender who does not have the status of a lawyer are provided in a room for meetings with advocates and persons entitled to legal assistance. In some institutions there are no special rooms for meetings with advocates, therefore, in some institutions meetings are held in the courtroom, in another case, a short-term meeting room is provided for meetings, as well as the offices of the head of the institution, his deputies or the premises of the operating unit. In such cases, a meeting is not possible if court sessions are held in the videoconferencing premises, and meetings with relatives and friends are held in the short-term

meetings room.

In one region, meetings with an advocate take place in one of the rooms of long meetings. At the same time, the conditions for providing meetings are similar to the conditions in special rooms - sufficient temperature and illumination, the presence of a table and chairs, the absence of video and audio surveillance and a dividing bar.

In those regions where meetings are provided in short-term meeting rooms, there are accompanying barriers: defenders cannot take papers from prisoners with whom they came to work, it is impossible to sign various claims and statements prepared in advance, since defenders and prisoners are separated by glass, and employees often refuse to hand over documents.

The defender noted a case when a pre-prepared power of attorney was transferred through an employee from a prisoner to an advocate to represent the interests of a prisoner, the power of attorney could not be found for a long time.

During meetings with the defender in one of the regions, prisoners write standing on all fours, leaning on a stool, or write on their knees, since the room for short-term visits is not equipped with tables. During the meeting of the defender with the prisoner, there are other prisoners nearby, without separation, who at this time meet with relatives.

In almost all the institutions visited, the meeting rooms are sufficiently heated and illuminated. The exception was two regions where insufficient illumination was noted, and in one region - lack of ventilation and stuffiness in the room (advocates also reported insufficient ventilation of meeting rooms in the pre-trial detention center), which is why the doors have to be kept open, which does not allow the prisoner to communicate confidentially with the defender, in addition, talking and walking in the corridor they distract from work.

In some institutions, this is a room with a partition - a glass partition with a window for the transfer of documents, or a bar through the cells of which documents can be transferred, in other institutions there is no dividing bar.

In most regions, both institutions where bars are installed and institutions where there are no bars are represented. This indicates that in different regions there are different approaches to the organization of premises for meetings with defenders.

The premises are equipped with tables and chairs for the defender and for the prisoner. In one region, the advocate's desk is located far from the dividing bar, which is why the advocate is forced to sit next to the bar on a stool and hold documents on his lap. The advocate, who during the visit of the observers was at a meeting with the prisoner, said that it was very inconvenient (it was corrected according to the recommendations of PMC).

In one of the institutions, it is impossible to exchange documents between an advocate and a prisoner through a dividing bar, so they are forced to exchange documents through an employee.

Confidentiality of meetings

In almost all institutions, rooms for meetings with advocates and defenders are isolated rooms designed for the presence of one pair of “defender of the defendant". However, in one region in a pre-trial detention facility, one room is designed to work for four couples, as a result of which there is no confidentiality.

The practice of video surveillance differs not only in different subjects of the Russian Federation, but also in different institutions of the same region. For example, all rooms for meetings with the defender in institutions of several regions are equipped with video cameras without the possibility of recording sound. The camera view from the corner of the office, according to the staff,

allows you to view the entire room. The videos, according to employees, are viewed by strictly limited circle officials (employees of the operational search service, the head of the IU and his deputies). Recordings from cameras refer to the information "For official use", the shelf life in different regions ranges from 7 days to 3 months. In some regions, only part of the institutions are equipped with video surveillance in the meeting rooms with the defender, and in two regions video surveillance in the meeting rooms with advocates is not conducted at all.

In one of the institutions visited, a video camera in the room of meetings with an advocate also made an audio recording, which was reported by the head of the IU, but after the comments of the PMC members, he ordered the audio recording to be turned off.

According to the employees of the other institutions visited, there is no audio recording of meetings with advocates in the premises. Observers during the visits did not record listening and audio recording equipment. In one of the regions, observers checked the equipment on which the broadcast of video recordings from surveillance cameras is displayed, and made sure that the sound is not recorded.

Employees during the meeting of the advocate with the prisoner, as a rule, are outside the premises. Observers in one region noted that he could not hear a conversation with an advocate, since the distance between him and the speakers was about 15 meters, in other cases; observers noted that confidentiality was not guaranteed, since the door of the room could be ajar. The interviewed advocates of the two regions noted cases when an employee is present in the room during a meeting. In one of the regions, the defender and the prisoner reported that the employees were present during the meetings of the prisoners, in some cases it was recorded on the DVR, in others written records were made. This practice is a serious violation, since it does not allow the defender and the defendant to discuss cases confidentially, including in cases when it comes to complaints about the actions or omissions of colony employees.

Time, days and duration of meetings

The time of providing visits with advocates / defenders, as a rule, is limited to working hours - from 09.00 to 17.00. In one of the visited institutions, visits are provided from 12.00 to 14.00, despite the fact that paragraph 4 of Article 89 of the Criminal Executive Code of the Russian Federation and paragraph 79 of the PVR of the IU fixes the duration of the meeting up to 4 hours. The staff of the institution explained that they extend the appointment if necessary, but the time of the appointment should not depend on the staff, and this case indicates an unreasonable restriction.

According to the majority of the interviewed advocates, defenders and prisoners, they did not need meetings in the evening, at night, or on holidays and weekends. Accordingly, such an opportunity was not provided. In some cases, the prisoners reported that they did not have such a right.

The practice of providing meetings by the administrations of institutions varies, and even in institutions of the same region. In some institutions, employees confirm the possibility of meetings on weekends and in the evening, in others, employees reported that such an opportunity was not provided, and cases of refusal to provide a meeting on a day off were noted. Sometimes, in order to receive a meeting on a day off, it is necessary to submit an application to the chief in advance, in some institutions where meetings in the evening are not provided, employees allow advocates to stay after the end of the working day if the meeting has already begun.

It is worth noting that the practice of meetings with advocates and defenders on weekends and in the evening is not common, including due to the lack of a request from defenders and prisoners.

According to advocates and prisoners, there were no facts of interruption or interference in the meeting with the defendant. The exception is cases when the meeting time coincides with lunch or the

end of the working day, then the employees offer either to interrupt communication, or the prisoner to refuse lunch on application. In one region, the reason for interrupting a meeting may also be the end of working hours (shifts) of junior staff members. This was reported by the interviewed advocates. This is not a legitimate reason to terminate the meeting.

Conclusions:

1) During the study, serious violations of advocate-client privilege were recorded. This is evidenced by reports of violations of the confidentiality of meetings and the exchange of documents. Employees view or try to view the advocate's documents, the advocate is forced to transfer documents through an employee, listening to conversations between the prisoner and the defender in the short-term meetings room is noted.

2) There are not enough offices in institutions for meetings with advocates/defenders, especially in pre-trial detention facilities, and that affects the length of waiting.

3) In many regions, advocates are prohibited from using cell phones and any other equipment during meetings to record the information they receive, this complicates the defense process and does not allow them to record, including violations committed by the administration of institutions.

4) In the course of the study, various obstacles in the meetings of defenders and restrictions were identified - unreasonable interruptions of meetings, refusal to provide meetings in the evening and on the weekend, refusal to provide a meeting without an appointment. These actions are not based on the law and significantly restrict the right of prisoners to meet with a defender, who should have unhindered access to his client at any time of the day, should be able to discuss any issues confidentially with the client, receive any documents from the client, and not be subjected to unreasonable inspections.

5) The different practice of installing bars in the premises for meetings with an advocate indicates that in some institutions they are installed, despite the fact that there is no absolute requirement for the presence of a separating bar in the law. Based on this, we can say that for the effective and unhindered work of the advocate with the principal, these bars can be dismantled. To ensure security, an alarm button is sufficient, as well as the control of employees who are on duty near the premises.

6) The possibilities of meetings with defenders who do not have the status of an advocate depend on the established practice. In regions where the practice is formed by the regular and systematic work of defenders, they come to the meeting unhindered and meet on the same terms as the advocate. In regions where neither employees nor prisoners have experience working with defenders who are not endowed with the status of an advocate, prisoners are less likely to apply to advocates and public defenders for help, and there are more obstacles on the part of administrations in organizing meetings. Incorrect representations of employees, in turn, lead to false representations of prisoners about the possibilities of legal protection.

5. **Correspondence and telephone conversations of the prisoner with the defender**

According to the prisoners, they receive contacts of advocates from relatives, from members of the PMC, from employees of institutions, from periodicals distributed in the colonies.

In practice, correspondence with an advocate and telephone conversations are very rare. The prisoners reported that they prefer to discuss cases at a meeting, which, as a rule, is initiated by an advocate. He arrives at the institution, submits an application, after which the prisoner is called to a

meeting. There are almost no meetings initiated by prisoners.

Correspondence with an advocate/defender:

According to the employees, only in two regions correspondence with an advocate and a defender is not censored. In one of the regions, this is possible if the administration of the institution is informed about the advocate's work with the prisoner (there is a corresponding agreement and information in the personal file).

In many regions, a prisoner's correspondence with an advocate/defender is censored. This is reported by prisoners, advocates and defenders, as well as employees themselves. According to the information provided by the Human Rights Commissioners, prosecutor's offices, chambers of Advocates, complaints about censorship of correspondence of prisoners with defenders or other persons providing legal assistance on legal grounds have not been received. This may indicate that prisoners are not informed that they have the right to confidentiality of correspondence and treat censorship as a legitimate procedure.

Phone conversations

According to the information of the prisoners, telephone conversations with the defender are carried out upon application with the permission of the administration. The application is satisfied during the working day, usually 1-2 hours after submission. The expectation is caused by the fact that all applications are signed by the head of the institution or a person replacing him, the validity of the call is checked, and the inclusion in a busy schedule of conversations is carried out. Phone calls are made to the phone numbers deposited to the payment card upon application. If the advocate's phone number is entered in the card, then the conversation is not tapped.

In almost half of the institutions visited, employees reported that telephone conversations with advocate are provided on a general basis and are monitored. Such a position of institutions indicates either ignorance of the law, or a deliberate violation of advocate-client privilege.

In one of the regions, not all conversations with an advocate are monitored. And only in two regions telephone conversations with an advocate are not tapped.

In one of the institutions, a confidential conversation with the defender is possible if the prisoner writes a statement, but no such statements have been received from the prisoners.

Lawyers of human rights organizations in one region noted cases when the administration blocked the numbers of human rights defenders after a call from prisoners who reported illegal actions.

According to some advocates and prisoners, they assume that their conversations are being monitored, and their correspondence is being viewed. In other cases, the prisoners and the advocate reported that they were not aware of such examples, and they did not face censorship of their correspondence.

In practice, the advocate prefers to communicate with the client in person, rather than by telephone.

Due to the requirements of the legislation, prisoners who are in a pre-trial detention center, PKT, EPKT and strict conditions of serving their sentences are practically deprived of such a right - this was noted by PMC members in many regions of the study.

In two regions, prisoners are given the opportunity to contact an advocate when they are placed in a detention center. To do this, you need to submit an application to the management of the institution. This is a positive practice, as it provides protection opportunities, including with the help of

a defender.

Conditions for organizing telephone conversations

In all institutions, at the time of the visit, there were serviceable telephones in places accessible to prisoners. In most regions, phones are placed in places where other prisoners or employees are nearby, which violates the confidentiality of conversations (most often these are the corridors of detachments). In four regions, the phones are located in separate rooms, and that ensures confidentiality.

Members of the PMC of two regions noted the absence of tables, shelves for placing documents during a conversation with an advocate, and only in one region observers recorded that phones were placed on a bedside table where you can spread out documents and use stationery.

Conclusions:

1) The lack of confidentiality in a telephone conversation with advocates, defenders and other persons entitled to provide legal assistance hinders the effective work of advocates, defenders and other persons entitled to provide legal assistance. A prisoner cannot safely provide information in a telephone conversation if it concerns, for example, the staff of the institution, since he is completely dependent on them;

2) In most institutions, conditions are not created for a confidential conversation between a prisoner and an advocate in the colony premises (other prisoners who are nearby can hear the conversation), in addition, conditions for confidential work with legal documents are not provided during a telephone conversation with a defender;

3) Institutions do not have a uniform approach to censoring correspondence with advocates, defenders and persons who do not have a legal education and provide legal assistance to prisoners. In many institutions, there is a well-established practice of checking letters to and from the defender. As a result, neither advocates, nor defenders, nor prisoners know whether their correspondence is censored. This legal uncertainty creates conditions in which prisoners do not consider correspondence a confidential means of communication, do not use it, and therefore are deprived of the possibility of regular and timely exchange of information with their defender.

4) Prisoners held in a penal isolation cell, in accordance with the Penal Enforcement Code of the Russian Federation, do not have the right to call, including the defender. In practice, the deprivation of the only opportunity to promptly contact a defense advocate from the detention center significantly limits the possibility of obtaining timely legal assistance and protection. In this case, we can talk about a discriminatory provision of the law, which establishes a restriction in the exercise of the right to legal protection for a certain category of prisoners held in a detention center.

6. Conditions for prisoners to obtain a power of attorney certified by the head of the institution for the implementation of legal protection

According to the responses from the territorial bodies of the Federal Penitentiary Service, there are no obstacles on the part of the heads of subordinate institutions when issuing powers of attorney to provide legal assistance to prisoners, if these powers of attorney do not contain the authority to carry out civil law transactions. Employees of most of the institutions visited and prisoners confirmed this information during interviews.

According to the response of the head of the institution in one of the regions, appeals from prisoners to certify a power of attorney are extremely rare. Perhaps this is due to the fact that prisoners prefer to certify power of attorney through a notary.

However, it turned out that the heads of institutions in two regions do not certify powers of attorney from prisoners at all. According to officials, the refusal is connected with the possible negative consequences of third parties' authorization to represent the interests of the prisoner. In addition, some heads of institutions believe that any representation of the interests of a prisoner in court and other bodies is related to the material values of the prisoner.

According to prisoners and their relatives, powers of attorney for the alienation of property, or the receipt of inheritance, money, or other material values, are not certified by the heads of institutions. According to the employees, this is explained by the possibility, under pressure, or by deception, taking advantage of the situation of a person in custody, to perform actions of a civil nature on his behalf, thereby depriving the prisoner of property without his consent.

Conclusions:

1) Prisoners for the most part are aware of the possibility of contacting the head of a correctional institution to certify a power of attorney and, if necessary, use this opportunity, and the management of institutions, as a rule, freely certifies such powers of attorney;

2) Heads of institutions in most cases refuse to certify powers of attorney related to the alienation of the prisoner's property. Such an approach can be justified from the point of view of the rights and interests of prisoners. The prisoners are completely dependent on the colony staff, therefore, there is a risk of involuntary alienation of property with the help of a power of attorney. Therefore, prisoners can implement such procedures only through a notary, who is a disinterested party and is obliged to make sure that the prisoner's decision is voluntary.

7. Storage and access to the prisoner's procedural documents

According to the information of employees and prisoners, the latter have the opportunity to keep documents in their hands: copies of sentences and court rulings, responses based on the results of consideration of proposals, applications, petitions and complaints, medical documents necessary for applying to the court and other bodies. Usually, prisoners store them in a bedside table (usually one for two[38], not locked) or in an individual bag in a room for storing things in the detachment. Also, the prisoner can hand over the documents to the warehouse in an individual cell.

It is worth noting that the staff of the institution can get acquainted with judicial and other confidential correspondence in cases of a full search of the prisoner and his belongings, as was stated by one of the interviewed prisoners, since his correspondence was carefully studied by the staff of the institution during the search. In addition, prisoners are not always present during searches of things in their individual bags stored in rooms for storing personal belongings, or during searches in residential premises. The search of the PKT cells is carried out, as a rule, in the absence of prisoners, when they are in working cells, or on a walk, according to the “Instruction on the organization and procedure for conducting searches and inspections of correctional institutions of the penitentiary system in restricted areas, vehicles”, approved by the order of the Ministry of Justice. One interviewed prisoner noted a case of loss of his procedural documents after a search in his absence.

Conditions for working with documents are mainly provided in the cells of the penal colonies: there is natural and artificial lighting sufficient for work, the rooms are equipped with tables and chairs according to the number of seats in the chamber. The distance between tables and chairs in most of the visited rooms allows you to sit and write freely. Only in a few institutions, according to observers, the tables and chairs in the cells are arranged in such a way that it is inconvenient to work behind them, the back and legs begin to ache and become numb.

It is noted that in many regions, prisoners do not have the opportunity to work with their procedural documents when being placed in a detention center, since the PVR does not include procedural documents in the list of things that prisoners can have with them in a detention center. [39]

In these regions, prisoners are deprived of the opportunity to work with documents for the entire period of their stay in the ShIZO[40], including they are deprived of the opportunity to appeal their disciplinary punishment.

At the request of prisoners in the detention center, they can be provided with paper and a pen.

In two regions, prisoners who are held in a detention center cannot keep documents with them, but they can use them during personal time provided for by the daily routine. After working with the documents, the prisoners at the end of the day give them to the attendant, who returns the documents to the storage room. There is no special place for storing documents in the detention center.

In one region, observers were provided with a room in the detention center building, where, according to employees, prisoners work with documents.

At the same time, the observers were not explained how the withdrawal of prisoners to this room is organized, and how long they can stay there.

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[38] Annex 2 to the Order of the Federal Penitentiary Service of July 27, 2006 N 512.

[39] Item 152 of the Internal Regulations of Correctional Institutions (approved by the Order of the Ministry of Justice of the Russian Federation of December 16, 2016 No. 295

[40] The maximum period of stay in the detention center is up to 15 days (paragraph "b" of Part 1 of Article 115 of the Criminal Code of the Russian Federation).

Conclusions:

1) In a penal colony there is no special place where a prisoner can keep documents, being sure that his contents will not become known to outsiders. A room for storing personal belongings, a bedside table, where prisoners usually store their documents, are accessible to other prisoners, which means there are no guarantees of confidentiality. In addition, the content of the documents becomes known to the staff of the institution, who have the right to search the personal belongings of prisoners, and therefore to get acquainted with the documents;

2) The prohibition to have documents with prisoners who are in a pre-trial detention center is excessive and unreasonably restricts the rights to defense. Every prisoner, regardless of whether he has committed any violation of the regime of detention, who is in a detention center or in a punishment cell, should be able to exercise the right to appeal against the actions and decisions of officials, and the corresponding right to familiarize himself with documents, voicing his position. That is, in the premises of the ShIZO / PKT, in the punishment cells, in the detachments of strict conditions of serving a sentence, the right to appeal cannot be limited. At the same time, it should be understood much more broadly than the elementary provision of paper and pen to the prisoner.

3) Not all institutions, both in detachments and in the cells of the detention center / PKT, are equipped with convenient places to work with documents and write complaints. Not all detachments have desks, and it is impossible to devote several hours to working with documents in the cells, since the tables are not adapted for this.

8. Availability in places of deprivation of liberty of up-to-date legal information about the rights of prisoners and ways of their protection in court, including the necessary information about the addressees of access to justice

Legal literature for prisoners is in the library of institutions. In many regions, observers reported irrelevant legal literature, which is equivalent to its absence. We are talking about various outdated codes: the Criminal Procedure Code of the Russian Federation, the Labor Code of the Russian Federation, the Civil Procedure Code of the Russian Federation, and the Administrative Code of the Russian Federation.

In one region, the missing relevant legal acts are replenished with the assistance of non-profit organizations interacting with the regional department of the Federal Penitentiary Service.

Most of the institutions visited have electronic means of obtaining legal acts (electronic terminals, e-books, laptops without Internet access). They are located in libraries, canteens, shops, clubs and are available for use during the opening hours of accommodation for all prisoners who have the right to visit these places (prisoners from the detachments of strict conditions of serving their sentences, the penal isolation detachments and cell-type premises who are prohibited from visiting places of common stay of prisoners are deprived of this right).

In some regions, only a part of institutions are provided with electronic resources, there are also regions in which such resources were not in any visited institution.

The frequency of updating electronic resources varies, for example, in some institutions e-books are updated once a year, in others - quarterly.

The working hours of libraries are 5-6 days a week, usually during working hours. During the interview, the prisoners confirmed the possibility of visiting libraries and using legal literature. At the same time, in one of the institutions, books are not given to them to take to the detachment, since,

according to employees, this leads to a delay in returning or damage. Prisoners also receive legal literature in parcels and broadcasts.

Appeals to the PMC and the Commissioner for Human Rights with a request to send regulatory legal acts may also indirectly indicate the insufficient equipment of institutions with legal literature, or its unavailability for prisoners.

In most of the colonies visited, there are international normative legal acts of the European Convention for the Protection of Human Rights and Fundamental Freedoms, less often - the Universal Declaration of Human Rights. And only in the visited institutions of one region were there no international legal acts found.

Legal literature is issued to prisoners in the detention center upon request. In one of the regions, there is a positive experience - in one of the institutions, a librarian bypasses the cells of the detention center daily, collecting applications for literature, including legal. In one region, prisoners placed in a pre-trial detention center are given legal literature from the library of the law school, and they are allowed to use it in their personal time in accordance with the daily schedule of the pre-trial detention center (the use time is 1.5 hours).

The addresses of courts, supervisory and controlling authorities, the procedure for considering appeals, complaint forms and appeals, contacts of advocates and chambers of advocates are placed on stands or in folders in detachments, are available for review, including without direct visibility of employees (sufficient illumination, placement height).

Observers have noted cases when there are no addresses of the regional court, the Supreme Court of the Russian Federation, the ECtHR on the stands.

There are no forms for drawing up a complaint to the European Court of Human Rights in free access in any institution; they are issued by an employee of the institution upon request. In one of the regions, prisoners reported that they almost do not use this opportunity, because they are afraid of persecution for complaining. In one of the institutions, three prisoners who often file applications are recognized as malicious violators and are in the PKT. According to the prisoners, they ask relatives to send the necessary information and samples, or take it from other prisoners. In three regions, it was noted that samples and instructions for filling out application forms to the ECtHR are posted on information stands in the detachments of institutions or are issued together with the application form.

In one of the regions, observers noted that in some institutions the data in the forms are not relevant.

In some cases, PMC members have noted the irrelevance of contact details on information stands (for example, PMC contact details).

In the cells of the detention center, this information is posted on the walls and doors of the cells. In several regions, information is placed in folders, stored by the duty officer and issued at the request of prisoners. At the same time, observers in one region noted that there is not enough information in the cells of the detention center - only PMC contacts and excerpts from the PEC. In some institutions, information is posted in the corridor and is available for review during going out for a walk and returning from it, which, according to PMC members, limits the time for familiarization. About this
the interviewed prisoners also reported, although they also confirmed that they could receive this information upon request.

In two regions, there is no legal reference information either in the cells or in the folders at the duty posts. The staff reported that prisoners in the detention center do not apply for such information, but if necessary, the duty officer will provide it.

There is no information on the amount of state duties and the possibilities of exemption from its payment at the stands in almost all institutions, employees say that prisoners can get this information

from employees.

At the stands placed in the detachments, prisoners can get acquainted with the information without direct visibility of the employee. In the detention center, it depends on how access to information is provided: if this information is placed in the cell, then you can get acquainted with it without direct visibility of employees, if in the folders at the duty station, then employees know which of the prisoners needs what information.

The staff reported that, if necessary, at the request of the prisoners, they make printouts for them with the necessary information — reference or excerpts from regulatory legal acts. The prisoners confirmed the possibility of obtaining such printouts. It is worth noting the positive trend of providing legal information to prisoners of the detention center, however, this practice makes its receipt dependent on the presence of an employee at the workplace, whether he has time to perform these actions, which undoubtedly reduces the level of accessibility.

Conclusions:

1) Conditions of free access to the contacts of regulatory authorities and legal background information are not provided for some of the prisoners who are held in a detention center. To obtain it, they are forced to turn to employees, that makes obtaining information dependent on the staff of the law enforcement agency, his favor, the availability of free time, and also does not allow maintaining the confidentiality of obtaining and using data that is necessary for the prisoner for legal protection.

2) The majority of prisoners are not aware of the amount of payment of the state duty, as well as the possibility of exemption from its payment. Information about this is not posted on information stands, is not brought to the attention of employees of institutions. This becomes an artificial barrier that does not allow applying to the court for protection, since for prisoners the need to pay is a serious obstacle due to low earnings (or lack thereof).

3) There is a big problem in obtaining timely updated legal documents by prisoners, which significantly limits the possibilities of protecting prisoners. The legislative framework is updated very often, and therefore it makes no sense to purchase regulatory legal documents in printed form, as they quickly become obsolete. The solution to this situation may be the installation of an updated electronic database of legal documents, the list of which can be strictly regulated. These databases, for example, Consultant +, allow you to use up-to-date legal documents without access to the Internet, while the right of prisoners to back up their position with references to legislation will be respected.

9. Possibility of obtaining paid legal assistance and paid services providing judicial protection

Prisoners are the most vulnerable category of persons in terms of financial capacity to pay for services that provide access to the court. First of all, this is due to the fact that only some of the prisoners are employed in colonies, and the accused and suspects do not have the right to work in a pre-trial detention center. Secondly, the earnings of prisoners are extremely low: due to the small amount of wages, and the fact that most of the earnings are withheld for the repayment of the writ of execution and maintenance in the institution. [41] As a result, a small amount remains on the prisoner's account, which is not enough to pay for the costs of state duty, a paid advocate, copying documents, postal services.

[41] Article 107 of the CEC of the Russian Federation says that from 50 to 75 percent of all prisoners are charged for maintenance

As a result of the study, it turned out that information about the procedure for obtaining legal aid is posted in the premises of the detachments on information stands.

During a survey by PMC members of prisoners who had complaints or are in court, it turned out that they did not apply to advocates for legal assistance, since their services are expensive. An example is the analysis of judicial decisions of GAS "Justice" [42] in one of the regions: out of 47 complaints about the actions (inaction) of officials of the Federal Penitentiary Service of this region in 2019, most cases were considered without the participation of an advocate.

Several prisoners reported problems with sending appeals in the absence of funds on their personal account.

According to interviews with prisoners, employees of institutions and advocates, if necessary and if there are funds, or if relatives are able to pay for services, prisoners have the opportunity to meet with advocates.

Payment methods for advocates - from the prisoner's personal account or through relatives. Among the interviewed prisoners, those who met with advocates stated that their services were always paid for by relatives. In cases of appeal to the court, the prisoners paid the state fee from the money available in the personal account. According to the statement of some prisoners, taking into account their financial situation, they were granted a deferral or installment payment of the fee, or they were completely exempt from paying it (several prisoners reported that they used this opportunity).

Among the main difficulties in accessing the court, the interviewed prisoners note the lack of funds to pay the state fee, the lack of funds to pay for the work of an advocate.

According to the information of employees and prisoners, the latter, on the basis of their written application to the court, are exempt from paying the state fee by a court decision. The prisoners reported that they write in the application, "I ask to be exempted from paying the state fee in connection with being in places of deprivation of liberty."

The fact that they actively use the possibility of exemption from payment of state duty was reported by prisoners in only one region.

The interviewed lawyer said that financial difficulties arise not only when paying state duty, but also when copying a set of documents to all parties to the process and sending it by mail: this also requires funds and resources (paper, provision of a copier, which is almost always unavailable to prisoners, since the administration of the institution does not have such a duty).

Conclusions:

1) Paid legal aid is a mechanism inaccessible to most prisoners, and the reason for this is the low level of income of prisoners or its complete absence.

2) Prisoners are poorly aware of the possibilities of exemption from payment of state duty when applying to court in the absence of money in the personal account. Information about this is not posted on stands and is not reported by employees at regular educational events and individual consultations.

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[42] The State Automated System of the Russian Federation "Justice" (GAS Justice) is an information system that provides free information about judicial proceedings in Russia. It is also used in court proceedings, providing information integration of judicial activity in Russia.

10. Possibility of using free legal aid

According to the responses of the heads of the territorial bodies of the Federal Penitentiary Service, as well as information from employees of institutions, free legal assistance to prisoners in the form of explanations by employees of legislation and consultations is provided in most regions. The frequency of such consultations varies in the regions: somewhere it is carried out monthly, and somewhere - weekly. Several of the interviewed prisoners confirmed that they used this opportunity, while some noted that they rarely turn to the colony's legal advisers because they do not have confidence in them. The procedure for consultations: prisoners make an appointment with an advocate, and on the appointed day he holds an appointment, answers questions. At the same time, it turned out in two regions that it was impossible to get legal assistance from the colony's advocates, the interviewed prisoners and human rights activists reported this.

In addition, free legal assistance is provided on a systematic basis by external bodies and organizations — State and non-State. Some of them operate within the framework of a written or oral agreement with the territorial bodies of the Federal Penitentiary Service, law faculties of regional universities, Public councils under the bodies of the Federal Penitentiary Service, employees of the HRC Apparatus, notaries, law chambers, NGOы, as well as groups of specialists from various government agencies (Pension Fund, Social Protection, Employment service). In one of the regions, in addition to face-to-face visits to colonies with consultations, an online format is also practiced, when lawyers and other specialists answer the questions of prisoners with the help of videoconferencing.

The prisoners confirmed that there is a possibility of receiving such a consultation, and they used it. At the same time, some prisoners reported that they were not notified of the arrival of lawyers, while others noted that they did not use such assistance, as they considered it ineffective.

During the survey, it turned out that free legal aid in one of the regions is provided to prisoners preparing for release, as well as those already released from prison (within three months from the date of release) by the executive state authorities of the region, which are part of the state system of free legal aid, on issues of employment, pension provision and social protection.

In addition, lawyers of public organizations provide free legal advice in accordance with paragraph 4 of Article 8 of the Criminal Executive Code of the Russian Federation, which enshrines the right of a prisoner to meet with a defender. In such cases, the advocate comes to the colony and invites the convict to meet, provides him with advice or conducts his case.

In the regional laws regulating the provision of free legal aid to certain categories of citizens in those regions in which the study was conducted, the category "those sentenced to serving a sentence of imprisonment" is not included in the list of persons who are entitled to receive free legal aid. The Federal Law identifies juvenile prisoners serving sentences, but only on issues not related to criminal proceedings. In one of the regions, NGO appealed to the Commissioner for Human Rights with a proposal to amend the regional law, taking into account the special legal status of prisoners and providing them with free legal assistance. Such a legislative initiative was prepared and submitted to a meeting of the legislative body, but it did not pass during the vote.

In several regions, the interviewed prisoners noted unsatisfactory, in their opinion, the work of the appointed advocates who defended them in the framework of the criminal process. This was manifested in a formal approach, lack of initiative in the process, and rare visits to the defendants in the isolation ward. Observers in one region noted limited opportunities to receive free legal aid in a pre-trial detention facility, a prisoner can only apply for it to his advocate by appointment, there are no other ways to receive free legal advice in a pre-trial detention center, despite the significant need for prisoners for consultations during preparation for trial and during trials. In the same region, prisoners reported that they sent applications for free legal advice to the bar chamber of the region, but did not receive a response to their appeals.

In addition, prisoners need advice on how to appeal the penalty, get a document, because many prisoners were not familiar with the internal regulations of the pre-trial detention center and the

life of the institution before being placed in custody.

In one region, prisoners reported that if it is impossible to get help in drafting complaints and petitions, they copy them from each other, use the documents of other prisoners as samples.

In another region, the prisoners noted that the available free legal aid is not enough. They can only get oral advice from a lawyer of an institution or a human rights organization, but they have no one to turn to when they need help in drafting a complaint, petition, or other documents.

Conclusions:

1) In conditions of stay in a pre-trial detention center, the possibility of receiving free assistance is limited compared to colonies. The only way to get free legal assistance is to consult an advocate by appointment, who provides protection in the framework of criminal proceedings. For other subjects of legal assistance (representatives of human rights organizations, specialists of legal clinics and bureaus) access to the pre-trial detention center prohibited or as difficult as possible. At the same time, prisoners in custody have a much higher need for legal assistance, and this is due not only to their criminal case, but also to the new conditions in which they found themselves (unfinished legal issues at large, the requirements of the internal regulations of the pre-trial detention center);

2) A positive practice is the initiative of the management of institutions to provide legal advice to prisoners on a regular basis. However, it is worth noting that such consultations are not popular due to the fact that prisoners may not trust employees and it would be easier for them to turn to an independent and disinterested external consultant;

3) None of the regional laws of the Russian Federation participating in the study on free legal aid, the category of convicts and prisoners in custody is not included in the list of persons entitled to free legal aid. This complicates the process of legal information and protection, since prisoners are limited in their ability to seek legal assistance - they cannot seek advice online or come to a legal clinic, a human rights organization. Prisoners are a vulnerable group of the population and should be able to receive free assistance. The possibilities of obtaining free legal aid are limited to those organizations/persons who themselves visit colonies for this purpose, and if there are none, then prisoners are deprived of the opportunity to receive free legal aid. Therefore, it is necessary to legislate the right of prisoners to receive free legal assistance, including in a pre-trial detention center.

11. Protection from illegal practices that restrict the right to access to justice

About half of the prisoners whose complaints are in courts or other bodies, including the ECtHR, reported that they do not feel pressure. Another part of the prisoners told about various forms of pressure on them, in connection with the submission of various applications or appeals.

In some regions, prisoners reported that they experienced pressure and harassment due to appeals to the court, regulatory authorities or human rights organizations. According to them, this manifested itself in the biased attitude of employees, the imposition of penalties, as well as pressure from the criminal asset of the colony.

Information about the difficulties of fixing, proving and appealing the actions of employees by prisoners, including when prisoners are charged with actions that, according to the prisoners, they did not commit, has been voiced at various levels for many years. At joint meetings of the FSIN, the HRC, meetings of the HRC with the President, boards of the PC of the FSIN of the Russian Federation, etc. The head of the Federal Penitentiary Service and his deputies have repeatedly publicly voiced that all violations committed by prisoners should be recorded on a video recorder, which should be constantly turned on, that video recording of violations removes issues of objections and complaints from prisoners.
https://www.youtube.com/watch?v=XlHB-J8EeFs,
https://www.nnov.kp.ru/online/news/1468898/

In a number of colonies, prisoners who want to go to court, including with a petition for parole, must first ask the permission of the head of the detachment, which is illegal, since the prisoner can file a petition through an advocate or other representative directly to the court. But in such situations, penalties are imposed on a person who filed a petition for parole or a complaint bypassing the administration of the colony for various symbolic reasons (he did not button up, did not say hello, an unevenly sewn tag on clothes, etc.), which immediately makes release on parole almost impossible, since penalties are regarded by the court in most cases, such as that the prisoner did not embark on the path of correction.

In one region, lawyers of human rights organizations told about a case when a prisoner who applied to them for protection was fired from work, placed in a detention center, deprived of a visit with relatives. Also in this region, members of the PMC of past convocations told about cases of their non-admission to prisoners who wrote complaints. Later, the non-admission of PMC members was appealed in court and declared illegal.

Prisoners often associate pressure with the fact that, in their opinion, correspondence with advocates and defenders is checked by employees, and they know that prisoners complain about the actions of the administration of the institution. Also, pressure, both from employees and from other prisoners, begins after meetings with defenders, where employees are present during meetings and hear what the prisoners report to the defenders.

According to the management of institutions, disciplinary penalties are imposed on prisoners after consideration by the disciplinary commissions of the administration of the institution. To the prisoner, the imposition of a penalty is announced at the commission, with an explanation of the possibilities of its appeal. However, several prisoners told the observers that they often found out about the penalties only when applying for parole.

It is possible to appeal a disciplinary penalty under the law within three months, but in practice, in one of the regions, observers noted that many prisoners have been in the detention center for months (after their release, they are only brought into the detachment for a few minutes and a new penalty is imposed) and they cannot do it on their own, since the absence of permission in the when they are in the detention center, the employees interpret procedural documents as a ban.

In one region, PMC members noted that the protocol does not provide for an entry on familiarizing the prisoner with the right to appeal the commission's decision. After the relevant recommendations are sent by the PMC members, this paragraph of the protocol is introduced in the institutions. In another region, prisoners sign for familiarization with the procedure of appeal.

According to the management of institutions, prisoners have the possibility of judicial protection from the actions of FSIN officers. However, when studying the statistics of complaints, it was revealed that most of them are not satisfied. In two regions, the prisoners noted that they did not appeal disciplinary penalties due to futility. The violations imputed to them are not recorded on the DVR or video camera, as a result of which the prisoners have nothing to provide in support of their position, and the court and supervisory authorities more often believe the words of the employee than the words of the prisoner.

Preventive supervision is announced to the prisoner at the commission and they are informed about the possibility of appealing this decision. In one region, it was noted that familiarization with the commission's decision on preventive supervision is carried out under the signature of the prisoner. This is a confirmation that the prisoner knows about the measure taken

against him.

Also, the prisoners informed members of the PMC of one of the regions about the restriction of the ability to call the payphone installed in the colony to the number of the PMC, the prosecutor's office, the USB. At the same time, the administrations of institutions and departments did not confirm these complaints, despite the fact that prisoners do not apply in writing for such conversations. However, the members of the PMC draw attention to the fact that the prisoners are completely dependent on the administration of correctional institutions, their fears of applying with a written statement to the head of the colony that the prisoner wants to call the USB or the prosecutor's office seem quite justified.

In two regions, there is high confidence among prisoners that sending complaints will not give results or even lead to negative consequences (for example, pressure from employees). At the same time, some of the interviewed prisoners did not give their own examples, while referring to stories that this happened to others. Employees deny bias against prisoners who file complaints.

Conclusions

1) A significant number of reports have been recorded that prisoners are being persecuted after submitting complaints to regulatory authorities. At the same time, prisoners do not have the opportunity to confirm the facts of persecution, and in the vast majority of cases it is impossible to appeal against illegal, in their opinion, penalties. This is due, in particular, to the fact that most of the penalties, according to the prisoners, are imposed based on the oral information of employees and are not supported by photo and video materials that could refute the words of employees.

2) The institutions have not created confidential mechanisms for sending appeals to the regulatory authorities - the FSIN USB, the Commissioner, the Prosecutor's Office, the PMC. All telephone numbers to which the prisoner calls are known to the staff of institutions, as well as the addressees and senders of letters. The lack of confidentiality leads to the fear of filing complaints, first of all, against the staff of the institution, because prisoners are completely dependent on employees and are afraid of conflicts with them. The dependence of obtaining such an opportunity on the employees whose actions the prisoner wants to complain about is a significant factor that reduces the possibilities of legal protection.

12. Practice of the members of the PMC exercising their powers in protecting the rights of prisoners

There were no facts of opposition to PMC members by the FSIN during the study of compliance with the right of access to the court.

The only obstacle to the work of observers in the framework of the study was the pandemic. Visits to institutions began in January 2020, and they had to be stopped at the beginning of April 2020. This decision was justified by the absence at the beginning of the pandemic of scientifically studied and publicly presented mechanisms for the spread of the disease, effective ways to prevent transmission of infection, reliable methods of protection.

Visiting institutions could be dangerous for observers, contribute to the spread of infection both among prisoners, as well as among employees, and carried certain risks for the observers themselves. At the time of the termination of the visits, most of the planned monitoring activities were completed.

During the study, 135 requests were sent and 99 responses were received. Requests were sent to the regional departments of the Federal Penitentiary Service, the Judicial Department, the Regional Chamber of Advocates, the Commissioner for Human Rights, the Prosecutor's Office, as well as selected institutions of the Federal Penitentiary Service.

In most cases, the territorial bodies of the Federal Penitentiary Service provided sufficiently detailed answers, the Human Rights Commissioners and the Prosecutor's Office (with rare exceptions) also provided important information for study. The judicial departments of most regions reported that complaints from prisoners about access to the court were not taken into account separately, information was not provided to PMC. The same answers were received in some cases from the Prosecutor's Offices, as well as from one of the Commissioners.

Advocate chambers in half of the regions did not respond to the observers' requests.

In some cases, state bodies misinterpret legislation, in particular, Federal Law No. 76 “On Public Control”, unreasonably refusing PMC members to provide the requested information, which also violates Federal Law No. 59 “On the Procedure for Considering Appeals of Citizens of the Russian Federation”. In particular, in some regions, the authorities refused to provide statistical information in response to requests from observers for various reasons, for example, referring to the fact that PMC members cannot request this information, or that only the chairman of the commission can send a request on behalf of PMC. All this contradicts the norms of the law.

Members of the PMCs of past convocations told about cases of their non-admission to prisoners who wrote complaints. Later, the non-admission of PMC members was appealed in court and declared illegal.

Recommendations developed by observers based on the results of the analysis of the information obtained during the study[43]

To the legislative bodies:

• To make amendments to the existing regulatory legal acts allowing advocates to use audio and video equipment to record the information received when meeting with prisoners in places of deprivation of liberty;

• To include prisoners in places of deprivation of liberty in the state system of providing free legal aid;

• To make amendments to the existing regulatory legal acts providing for the release of prisoners who do not have funds in their personal account for reasons beyond their control from paying the state fee, in cases of applying to the court in civil and administrative proceedings;

• To amend the Federal Law "On the detention of suspects and accused of committing crimes", the Federal Law “On institutions and bodies executing criminal penalties in the form of imprisonment”, as well as departmental orders of the Federal Penitentiary Service of Russia, establishing a norm prohibiting the inspection of advocates, censorship of any documents transmitted or received from a prisoner;

• To make changes to regulatory legal acts in order to ensure an unhindered right to call supervisory and regulatory authorities, both regional and federal: Prosecutor's Office, Prosecutor's Office for Supervision, USB of the Federal Penitentiary Service, the Federal Penitentiary Service of Russia, the HRC, as well as the courts and the defender (free of charge, confidentially and without the permission of the head of the institution) for all prisoners.

• To regulate the procedure for recording the passage of correspondence from the prisoner to the communication department (including through the development of a joint regulatory act of the Federal Penitentiary Service of Russia and the Ministry of Digital Development, Communications and Mass Communications of the Russian Federation);

• To amend the regulatory legal acts in order to provide prisoners who do not speak Russian with an interpreter when applying for judicial protection;

• To fix in the regulatory legal acts the procedure for access to the pre-trial detention center for interpreters during meetings of advocates with clients who do not speak Russian;

• To amend the regulatory legal acts, securing the right of prisoners in the detention center to have documents and writing materials with them without time limit for the exercise of the right to judicial and other protection;

• To fix in regulatory legal acts the provision that a violation of internal regulations, not confirmed by photo or video recording, cannot be the basis for imposing a penalty.

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[43] The recommendations presented in the report are a synthesis of proposals that appeared both in the regions covered by the study and in the process of subsequent discussions with stakeholders during round tables, expert meetings and other events to discuss the results of monitoring. The recommendations are open to discussion.

To the Federal Penitentiary Service of Russia:

• To strengthen efforts to prevent illegal practices of censoring correspondence with the court, the Prosecutor's Office, the Commissioner for Human Rights;

• To inform prisoners about the right to an uncensored correspondence with an advocate/defender from the moment of signing a contract, issuing a warrant or issuing a power of attorney to represent interests;

• To ensure equal access for defenders who do not have the status of an advocate to meetings with prisoners on the conditions provided for advocates. To conduct regular explanatory work with the heads of the territorial bodies of the Federal Penitentiary Service on the inadmissibility of illegal practices of obstructing meetings of prisoners with a defender who does not have the status of an advocate;

• To provide access (familiarization and copying) of prisoners to all documents that directly relate to their rights, freedoms and duties in the institution for the use of these documents when applying to the court and other bodies in order to protect their rights (personal file materials, medical documents, materials on preventive supervision, as well as departmental instructions, if the prisoner appeals against certain provisions of this document);

• To place in the premises of the videoconferencing a memo on procedural rights, developed jointly with advocates and PMC (the right to send documents to court, receive documents from the parties to the meeting, the right to provide time to review documents, the right to a confidential conversation with a defense advocate, the right to request a postponement of the meeting if the quality of communication does not allow participation in the meeting);

• To place samples of forms of appeals and complaints in an accessible place in the detachments so that the prisoner has the opportunity to get the form he needs without attracting the attention of the staff of the law enforcement agency, and without contacting the employee for obtaining these documents;

• To determine the places to place in the cells of the detention center, PKT, EPKT a list of postal addresses and contact phone numbers of state and international human rights protection bodies, including the addresses of the Prosecutor's Office, Courts, the Commissioner for Human Rights in the Russian Federation, the Commissioners for Human Rights, the PMC, higher bodies of the Criminal Justice System, the European Court of Human Rights and extracts from the Convention on the Protection of Human Rights and Fundamental Freedoms to ensure access to them by prisoners without recourse to employees;

• To inform convicts about the possibilities of exemption from payment;

• To provide subordinate institutions with electronic resources of up-to-date legal information systems "Garant", "Consultant +", etc.;

• To equip places for telephone conversations with furniture and stationery for working with documents during a conversation;

• To consider dismantling the bars separating the meeting rooms with advocates. To ensure the safety of advocates, place the table and chairs in such a way that there is an alarm button next to the advocate;

• To move the bars in the videoconferencing rooms so that they enclose only the equipment for the videoconferencing, ensuring that the prisoner participates in the process on an

equal basis with other participants present in the room;

To the Judicial Department of the Supreme Court of the Russian Federation:

• To work to clarify with the chairmen of the courts about the inadmissibility of holding meetings with the help of videoconferencing in places of deprivation of liberty in conditions when the quality of communication does not allow all participants to fully participate in the process, to strengthen the control of the chairmen of the courts over the conduct of meetings held with the help of videoconferencing in places of deprivation of liberty, in order to assess the implementation by all participants of their procedural rights.

• To ensure timely placement of information on the stands and on the websites of courts about all pending cases involving prisoners, indicating the time of the meeting, the full name of the judge considering the case, the case number and the room number where it is being considered;

• To ensure timely consideration of cases in accordance with the schedule so that all participants in the process know at what time the meeting will take place.

To the Federal Chamber of Advocates of the Russian Federation:

1) To inform advocates about the possibility of visiting their clients in places of detention on weekends and holidays, in the evening; if necessary, to distribute among the chambers of advocates and communities of the regions court decisions taken in favor of a meeting with an advocate in the evening and on weekends;

2) Together with the members of the PMC, to disseminate and strengthen the standards of the prisoner's participation in the meeting through the videoconferencing (to inform the principals of their right to request a postponement of the meeting in cases where communication is not provided properly, to insist on the adjournment of the court session for a confidential conversation of the prisoner with the defender and other procedural rights);

3) To make a proposal to the Federal Penitentiary Service of Russia on the development of a memo on the procedural rights of prisoners participating in the meeting with the help of videoconferencing (the right to send documents to court, receive documents from the parties to the meeting, the right to provide time to review documents, the right to a confidential conversation with an advocate, the right to petition for postponement of the meeting, if the quality of communication does not allow you to participate in the meeting);

4) To strengthen the control of the work of advocates by appointment in places of detention.

** The interregional non-governmental human rights organization "Man and Law" was included in the register of NGOs performing the functions of a foreign agent by the decision of the Ministry of Justice of the Russian Federation of 30.12.2014*