**JUNE 2018**

**ALTERNATIVE REPORT OF THE COMMISSIONER FOR HUMAN RIGHTS IN THE RUSSIAN FEDERATION TO THE COMMITTEE AGAINST TORTURE (CAT), 64th SESSION JULY 2018.**

**INFORMATION PROVIDED BY THE ACCREDITED NATIONAL HUMAN RIGHTS INSTITUTION OF THE STATE UNDER REVIEW IN FULL COMPLIANCE WITH THE PARIS PRINCIPLES**

The High Commissioner for Human Rights in the Russian Federation (hereinafter referred to as “the Commissioner”) acts in accordance with the Federal Constitutional Law “On the Commissioner for Human Rights in the Russian Federation” of February 26, 1997 and the amendments to it adopted in 2006-2016. Date of the establishment is May, 1998.

The Commissioner is an independent non-judiciary body, which is not subordinate to the central authorities, local governments or any officials, regardless of the position they hold.

The primary functions of the Commissioner involve restoration of the rights and freedoms infringed by the state bodies, local governments, officials and civil servants; participation in the law-making process by preparing proposals for improving legislation on the rights and freedoms of individuals and citizens and bringing it into conformity with the universally recognized principles and norms of international law; carrying out legal education on questions of human rights and freedoms, as well as forms and methods of their protection.

Furthermore, the Commissioner facilitates the enhancement of international co-operation. Additionally, according to the Federal Law “On the International Treaties of the Russian Federation” of 15 July, 1995, the Commissioner may submit recommendations on concluding international treaties of the Russian Federation, on the issues of his/her competence.

1. Much of the focus of the Commissioner’s work is on prevention of torture and other cruel, inhuman and degrading treatment or punishment. Within the Office of the Commissioner, there is a Directorate for Protection of Criminal Procedure Rights, with responsibility to receive and investigate complaints from the very moment of a person’s detention then at the stage of investigations and in the course of a sentence decided by a court and being served by an individual. This enables the monitoring of the human rights violations and is a means of prevention of torture and other cruel, inhuman and degrading treatment or punishment

The Annual report submitted to the President of the Russian Federation and other bodies of the State power includes the Commissioner’s recommendations for measures to be taken to improve both legislation and law implementation practice, including that of places of detention.

As of January 1, 2018, the institutions of the Russian penitentiary system held 602 176 inmates.

The Russian State authorities pay particular attention to the issue of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention). The Constitution of the Russian Federation assigns the highest value to man and his rights and freedoms.

**The Commissioner welcomes the development and successful implementation by the government of Russia of the Strategic Framework for the Development of the Penitentiary System in the Russian Federation up to 2020 (Order of the Government of the Russian Federation of October 14, 2010, No 1772-r, as amended and supplemented).** It is noteworthy, that the StrategicFramework includes the European Prison Rules adopted by the Council of Europe Committee of Ministers on 11 January, 2006 (Recommendation Rec(2006)2) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN General Assembly (A/RES/70/175).

**Of prime importance is also the draft of the Special Federal Programme for the Penitentiary System up to 2025** that provides for design, construction and renovation of 366 facilities and buildings, which is now being reviewed by the government. For our part, we note that the State repaired 986 facilities last year. Systematic work is being carried out to establish correctional centers by the year of 2019. By the beginning of 2018, it was confirmed that there were established 8 correctional centers and 15 segregated sections functioning as correctional centers within penitentiary facilities.

**The Commissioner’s proposal to amend the current federal legislation governing detention conditions for criminal offenders was upheld by the authorities and as a consequence Federal Law No503-FZ of December 28, 2016 «On Amending the Law “On Penal Facilities” and Federal Law “On detaining in Custody Persons Suspected or Accused of Offences” (hereafter the Law), developed to meet international standards on the treatment of people in custody, incorporated the proposals made by the Commissioner.**

**In particular, the Law regulates in details the use of physical force special equipment or weapons at correctional facilities and pre-trial detention centers, and sets forth an investigative procedure of such cases.**

The Commissioner believes that it is most important that defending lawyers as well as members of the public oversight commissions (hereafter POC) are provided by the Law with ample opportunities for protection of the suspects, accused or convicts who fall victim of illegitimate use of physical force, special equipment, weapons, and bringing perpetrators to justice.

Traditionally, the places of detention are the focus of the Commissioner’s attention. The Commissioner along with regional ombudsmen in 85 entities of the Russian Federation regularly monitor and visit the detention facilities as well as investigate complaints against violation of human rights of persons detained in such places. All this work and the adoption of the mentioned Law, has resulted in a decrease in the number of complaints against illegitimate use of physical force and special equipment by the personnel of the detention facilities over the year of 2017 as compared to the previous years.

It should be noted that each complaint lodged to the Commissioner is thoroughly investigated with the involvement of the Federal Penitentiary Service, the Ministry of Interior and the Prosecutor’s Offices, though the majority of the complainants’ claims are not borne out by the facts. However, there are cases when the competent authorities do institute the criminal proceeding to bring the personnel of the detention facilities responsible for violations to justice.

**In 2017, according to the information of the Ministry of Justice, the criminal proceedings, including the ones initiated following the requests of the Commissioner, were instituted against 289 members of the corrections staff.** In order to address the violations there were taken 18379 procuratorial measures, out of which 2618 concerned the protection of human rights within the penitentiary system.

Overall, 6465 corrections staff were held responsible for violations of human rights out of whom 19 individuals were brought to administrative liability, 77 individuals were found criminally liable while 6302 corrections staff were disciplined.

The above-mentioned fact is evidence of effectiveness of the state authorities to prevent acts of torture, ill-treatment and in bringing the persons responsible to justice.

The institution of the Commissioner for Human Rights in the Russian Federation contributes to monitoring and remedying violations.

Thus, the Commissioner received a petition with complaints against physical abuse lodged in defense of the rights of the convict L. held in the correctional facility № 29 in the Primorsky Territory. Following the Commissioner’s request the Prosecutor’s Office of the Primorsky Territory conducted an investigation that confirmed the applicant’s claims. In connection with the beating of the prisoner there were instituted criminal proceedings while the Prosecutor’s Office made a representation to the head of the Federal Penitentiary Service in the Primorsky Territory to rectify the breaches of the law.

Furthermore, the analysis of the law implementation demonstrates the necessity for its further improvement. In particular, there is a need for amendment and additions to some by-laws. In this regard the Commissioner prepared proposals with the aim to improve the respective regulations.

**It is noteworthy that the Commissioner’s initiative to ensure that convicts that are unable to pay still can enjoy their right to lodge complaints with oversight and monitoring bodies was supported by the authorities.** On January 7, 2017, the Internal Regulations for Correctional Facilities (approved by the order № 295 of December 16, 2016 of the Ministry of Justice of the Russian Federation) came into effect giving convicts that are unable to pay a way to file relevant complaints and have expenses covered by the facility administration—as had been envisioned by the High Commissioner. As a result, no petitions about inability to bring complaints against the administration of the penitentiary facilities were received by the Commissioner in 2017.

**Currently, the Commissioner is working on improvements in legislation to ensure the release from custodial sentences of seriously ill people, modernization of prisoner transport vehicles, an increase in financial support for newly born babies in detention facilities, as well as on legislation concerning convicts serving prison sentences far from the home locality, and on enhanced sentence credits for time spent in pre-trial custody for persons sentenced to** serve their terms in colony-settlements or ordinary colonies.

**2. The Commissioner, for her part, has direct involvement in implementation of the Strategy for Development of the Penitentiary System in relation to the drafting laws aimed at improvement of detention conditions in penitentiary facilities, improvement of the penitentiary service to meet international standards for the treatment of detained persons and requirements of social development.**

It is important that the above-mentioned Strategy envisages the introduction of detention conditions in line with the international standards, which include the prison standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and decisions of the European Court of Human Rights.

In addition to introduction of corresponding amendments and changes to the legislation of the Russian Federation, work is also under way to improve construction norms for the correction facilities and pre-trial detention centers as well as development of the unified internal regulations of correction facilities and pre-trial detention centers which take account of the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

**The legislative enactments aim to regulate the following:**

* construction and reconstruction of the correction facilities to accommodate from 4 to 8 inmates in a room;
* construction of fully screened toilets partitioned form prison cells living space with installation of the exhaust ventilation system;
* construction of rooms to accommodate inmates out of their cell during the daytime;
* expansion of the area of exercise yards with provision of sport equipment;
* construction of cells not less than 4 sq.m. with natural light intended for individuals held in pre-trial detention facilities for short-term periods and inadmissibility of using single “box-cells” of approximate size of 0.8x1.2 m. which are not envisaged by the Russian legislation on criminal procedure;
* inadmissibility of using cells without windows and sanitary facilities intended for suspects, accused persons and convicts to be held for more than 2 hours;
* provision of security conditions for the prison staff without using metal cages;
* using metal fencing to ensure security for staff (investigators, defense lawyers and medical personnel) only for office space areas;
* inadmissibility of using non-transparent or semi-transparent window covers obstructing access to natural daylight.

The Commissioner believes that internal regulations of the detention facilities apart from general provisions should also contain details about free-time, recreational and cultural activities of inmates (including writing of complaints, reading, studying legal materials, watching films, playing chess, et cetera.).

If the Commissioner’s proposals are accepted, it will allow persons held in detention facilities to spend more time a day outside their cells that, undoubtedly, will enhance their further re-socialization.

In this regard, it is worth stressing that the above-mentioned conditions are already in place in a number of detention facilities.

Nevertheless, in our view, it is necessary to take the following measures:

* **to draft the Federal Law “On Amendments to the Federal Law “On Holding in Custody of the Suspected and Accused” of July 15, 1995”, in regard to the provisions concerning arrival procedure of suspects and accused persons at pre-trial detention centers in the absence of free places in the nearest pre-trial detention center;**
* **to develop a set of proposals to implement the decision of the Supreme Court of the Russian Federation of December 19, 2013, №41 “On the Judicial Practice Concerning Application of the Legislation Regulating Pre-trial Detention, House Arrest and Bail”** to ensure respect for rights of suspects or accused persons upon the adoption of a court decision on measures of restraint in the form of remand in custody or extension of the period of detention, provided by Art. 22 of the Constitution of the Russian Federation and obligations under articles 3, 5, 6, and 13 of the European Convention on Human Rights;
* **to establish procedure for providing information to courts on availability of free places in pre-trial detention centers;**
* **to draft regulations on placing a detained person in a pre-trial detention center with available places**;
* **to develop Special Federal Programme for Construction of pre-Trial-Detention Centers to comply with international standards for the treatment of prisoners under the international obligations of the Russian Federation.**

**3. The Commissioner pays close attention to allegations of torture and other inhuman or degrading treatment at the pre-trial stage.**

In the Commissioner’s opinion, Art. 5 of the Federal Law No. 3 “On the Police” of February 7, 2011, which clearly sets out that a police officer shall not resort to torture, violence or any other cruel or degrading treatment, has a positive effect on the exercise by police officers of their duties relating to the apprehension of offenders. Officers responsible for confirmed cases of cruel treatment of persons under investigation are persecuted.

**In 2017, the Commissioner received 42 complaints about the use of torture and other cruel, inhuman or degrading treatment. Out of this number, in 41 cases the applicants’ claims were not confirmed.** In one case an applicant’s claims about use of force were found to be justified under the following circumstances:

*A female applicant D. applied to the Commissioner with complaints against unlawful detention and assault by a police officer in Knyazhpogostsky District of the Republic of Komi, causing bodily harm. Following the Commissioner’s interference the Prosecutor’s Office probed the alleged violation. As a result, on July 19, 2017, the Investigative Committee of the Russian Federation instituted criminal proceedings, sanctioned by the Prosecutor’s Office, against the police officer under Art. 286 (3) of the Criminal Code of the Russian Federation.*

**During the first 5 months of 2018 the Commissioner received 31 applications about the use of torture and other cruel, inhuman or degrading treatment. Out of this number, in 27 cases the applicants’ claims were not confirmed while in 4 cases, following the interference of the Commissioner, the Prosecutor’s Office canceled police decisions to dismiss a criminal case and referred 4 cases for further preliminary investigation.**

It should be noted, however, that the law enforcement system is getting more transparent. Thus, there has been established regular working collaboration between the Commissioner and law enforcement agencies, which use best foreign practices. There are also professional development trainings with participation of the staff of the Commissioner’s office.

**4. The Commissioner pays special attention to the problems of women held in detention facilities.** As of January 1, 2018, the number of women in correctional facilities amounted to 47,732 people or 8% of the total number of people in the relevant institutions, including 38,695 in jails, secure hospitals and preventive care establishments, and 9037 - in detention facilities and premises operating as detention facilities at prisons

The monitoring conducted by the Commissioner revealed that in recent years the conditions for the detention of convicted women have been significantly improved. Considerable work has been done to improve the facilities and equipment of children’s homes, improve the quality of medical care, and provide social support to women who have given birth to children in detention facilities. However, there are still problems remaining in the sphere of having the convicted women serve sentences in the institutions of the correctional system.

**In 2016-2017, the Commissioner has received some complaints from the convicted women concerning the right to receive information about their children and to stay in touch with them.** The results of the conducted inspections reveal that official refusals to provide women with information about the location of their children inflict mental pain on women.

*The convict P., who is serving a sentence in a correctional institution on the territory of the Volgograd region, has addressed the Commissioner on the issue of preserving family ties with her young son born in 2010. The mother did not have information about her child, who was living in a foster family, as the foster parents and the guardianship authorities prevented P. from maintaining a maternal relationship with her son. Taking into account the social significance of the problem, the Commissioner sent an appeal to the executive authority of the Volgograd region to establish the facts of the case and provide all possible assistance in restoring the child-parent relationship between the mother and the child. As a result, the guardianship and custody bodies cooperated with the close relatives and the child. Due to these measures, the boy was able to adapt to the living conditions in the foster family, maintains contact with his mother and is waiting for her return.*

**The Commissioner believes that of equal importance is organization of regular contacts between women and their young children who live at a significant distance from the correctional facility, where the convict (the mother) is held. Each such complaint remains a subject to constant Commissioner’s monitoring to ensure that a case is fully resolved.**

*Thus, after the Commissioner's request to the Prosecutor's Office and the Ministry of Education of the Krasnoyarsk Region, the interests of Ms.Zh., serving a sentence in a correctional institution, to communicate with her children are now protected. The department of guardianship and custody agency has been informed about their location, is in contact with Ms.Zh. about her children, and reguraly sends her pictures and photographs of her children; the convicts P. and U. were given assistance in establishing contacts with their children who are placed in foster families after their requests to the administration at their former residence.*

**5.** **The Commissioner notes that the government and the entire civil society shall also focus on the rights of disabled persons held in places of detention of the penitentiary system.** As of October 2017, 19.2 thousand disabled people (3% of the total number of convicted persons) were held in pretrial detention centers and correctional facilities

**Some adjustments were made in the Concept of Development of the Penitentiary System of the Russian Federation until 2020 on the initiative of the Commissioner. The adjustments aimed at creating better conditions for persons with full or partial disabilities were supported by the government.** However, practical implementation of the Concept requires further work. The living conditions as well as conditions of prison transfer of this category should be improved.

6. A separate approach is needed to the problems of the holding of patients placed in psychiatric facilities, including closed psychiatric institutions.

**In spite of the fact that the Commissioner has not received any complaints from patients of those institutions, nonetheless, according to Art. 21 of the Federal Constitutional Law “On the Commissioner for Human Rights in the Russian Federation”, the Commissioner is empowered to act on his/her own initiative taking appropriate measures within his/her competence when there is the need to protect the interests of persons not able to use their own legal remedies.** This provision of the law makes it possible for active work to be done in the field of prevention of torture and other cruel, inhuman or degrading treatment.

The Commissioner and the staff of her office conduct regular inspections of the closed psychiatric institutions. In particular, the inspections revealed the lack of the state service for protection of the rights of patients held in psychiatric facilities as provided by Art. 38 of the Law No.3185-1 of July 2, 1992 “On Psychiatric Assistance and Guarantees of Citizens' Rights in Its Provision”. This and other problems of protection of the rights of people confined in psychiatric institutions were discussed at the meeting of the Coordinating Council of the Russian Human Rights Commissioners held on May 16, 2018. **In the Commissioner’s opinion, the Ministry of Healthcare of the Russian Federation shall draft legal enactments to regulate these issues. The respective legal proposals by the Commissioner were referred to the Ministry of Healthcare of the Russian Federation.**

7. The Commissioner is in constant interaction with the non-governmental human rights groups which closely monitor the issues of human rights protection in detention facilities.

**Also, there was established the Expert Council under auspices of the Commissioner consisting of prominent human rights defenders.**

Equally effective preventive mechanism against torture and other cruel, inhuman or degrading treatment of suspects, accused persons or convicts in the detention facilities is the public control over places of detention in the form of the Public Monitoring Commissions (hereafter PMC) established in the constituent entities of the Russian Federation. The PMCs’ effective activity backed by the right to unimpeded access to the detention facilities represents a serious incentive for the personnel of detention facilities to respect human rights.

According to the Federal Law No 76-FZ of June 10, 2008 “On Public Monitoring of Human Rights in Places of Detention and on Assistance to Detainees” the members of the PMCs have unimpeded access to any detention facilities. The registration of such visits is of mere informational character when a PMC notifies a head of a detention facility the day before of a visit. Moreover, the members of a PMC have the right provided by the law to use video recording equipment during their visits. According to the data at our disposal there are more than 1100 members of the PMCs in 83 entities of the Russian Federation. In 2017 alone the PMCs conducted 3600 visits to the detention facilities.

**The Commissioner supports proposals aimed at broadening the PMCs’ mandate and to train commissions’ members to make their efforts more successful.** To that end, the High Commissioner and Commissioners for Human Rights in the regions are engaged in workshops on enhancing the PMCs’ operations within the framework of the project “Public Monitoring Commissions – New Generation” started back in 2011. The group of leading experts holds 3 or 5 training workshops a year with the participation of the Russian and international specialists in the field of public monitoring of the places of detention. After the training workshops the participants conduct training workshops for other members and candidates to the position of PMCs’ members in the Russian regions.

Thus, since January to March 2018 there were held 14 two-day seminars with the participation of 40 national and 2 international experts. The staff of the Commissioner’s office, as well as regional commissioners for human rights, take an active part in all those events. This practice provides with opportunities to conduct legal education, including studying of theoretical and practical questions of the implementation of the national and international standards; discussing the preventive and proactive approaches of the PMCs’ work, exchanging experience on implementation of various methods in the work of the commissions and on cooperation with the representatives of the state authorities.

**The Commissioner highly evaluates such practice** since professional improvement of the PMCs’ members enables them to deal effectively with the situations in the detention facilities and prevent cases of torture, cruel, inhuman or degrading treatment.

**The Commissioner also attaches particular importance to the professional development of the staff of the law-enforcement agencies.** The Commissioner and staff members of her office regularly participate in the round tables, seminars and training workshops held for the police officers and personnel of the detention facilities raising their awareness of the international standards in the prison system sharing their own practical proposals on the improvement of the detention conditions and treatment of detainees. We intend to expand this work further in cooperation with the state authorities.

**We positively evaluate the work done to develop draft laws Nos 949326-6 and 269379-7 «On Amending Certain Laws of the Russian Federation to Improve Public Oversight of Safeguarding Human Rights in Detention”** to be adopted by the State Duma of the Russian Federation, **that expand the list of detention facilities subject to public oversight, including holding cells at courts.**

8. The draft Law No 361159-7 «On Amending Certain Laws of the Russian Federation” to be considered by the Russian parliamentwhich, if adopted, **will supplement the current right of the Commissioner to unimpeded access to detention facilities with the right to that for the staff of the Commissioner’s office upon investigation of complaints.**