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Reent Ya. Yu., Kiyko N. V.**Реент Я. Ю., Кийко Н. В.****LEGAL REGULATION OF PUBLIC CONTROL
OVER ENSURING THE RIGHTS OF CONVICTS:
THE EXPERIENCE OF RUSSIA AND BELARUS****ПРАВОВОЕ РЕГУЛИРОВАНИЕ ОБЩЕСТВЕННОГО КОНТРОЛЯ
ЗА ОБЕСПЕЧЕНИЕМ ПРАВ ОСУЖДЕННЫХ:
ОПЫТ РОССИИ И БЕЛАРУСИ**

Abstract. The penitentiary service is a part of the state law enforcement system and its activities are related to the interests of society. In this case, the process of execution of criminal penalties may be accompanied with harm to law enforcement interests of persons detained in prisons. The practice of penitentiary services around the world shows that there are still cases of violations of the rights and freedoms of convicts. That is why special attention has been paid to the involvement of various social groups for monitoring the rights of convicts. In each individual state, the system of control over the activities of the penitentiary service varies depending on the social and state system, the type of legal system, and the level of development of democracy. At the same time, regardless of these factors, the control over the penitentiary service is expressed in the collection of information about the activities of penitentiary institutions, the detection of violations in their work, and at the final stage in the notification of the competent authorities about the violations, monitoring the elimination of violations and shortcomings, informing the public of the results of their work. Exercising control, most democratic states draw attention to the fact that prisons, as an important part of public life, must be information-based, open and democratic. The main task of monitoring should be to ensure compliance with generally accepted ethical standards in the execution of penalties related to isolation from society. So, according to the professor of the International center for prison studies at the University of London Vivien Stern: «The international community has said, and international law has also noted, that the whole process of depriving a human being of liberty from the moment of arrest to the moment of release from a correctional institution must be humane. Humane means ethical. Throughout this process, we must remember that a prisoner is a human being like us and has the right to have his or her human nature respected». The presented work is devoted to the description and analysis of legal regulation of public control over ensuring the rights of convicts in Russia and Belarus.

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The review reveals the actual problems of normative regulation activities of public control subjects, as well as provides a comparative legal analysis of the regulatory framework of Russia and Belarus in this area.

Keywords: penal system, legal regulation, public control, rights of convicts, Belarus.

Аннотация. Пенитенциарная служба является частью правоохранительной системы государства и ее деятельность связана с обеспечением интересов общества. При этом процесс исполнения уголовных наказаний может сопровождаться причинением вреда правоохраняемым интересам лиц, содержащихся в пенитенциарных учреждениях. Практика деятельности пенитенциарных служб во всем мире показывает, что пока еще имеют место случаи нарушения прав и свобод осужденных. Этим обусловлено особое внимание, которое стало уделяться привлечению различных общественных формирований к осуществлению контроля за обеспечением прав осужденных. В каждом отдельно взятом государстве система контроля за деятельностью пенитенциарной службы разнится в зависимости от общественного и государственного строя, типа правовой системы, уровня развития демократии. В то же время вне зависимости от указанных факторов контроль за пенитенциарной службой выражается в сборе информации о деятельности пенитенциарных учреждений, выявлении нарушений в их работе, а на завершающем этапе – в уведомлении компетентных органов о допущенных нарушениях, контроле за устранением нарушений и недостатков, доведении до сведения общественности результатов своей работы. При осуществлении контроля в большинстве демократических государств исходят из того, что тюрьмы, являясь важной частью общественной жизни, должны быть информационно открытыми и демократичными учреждениями. Основной задачей контроля должно стать обеспечение соблюдения общепринятых этических норм при исполнении наказаний, связанных с изоляцией от общества. Так, по словам профессора Международного центра изучения тюрем Лондонского университета Вивьен Стерн: «Международное сообщество сказало, и в международном праве это также отмечено, что весь процесс лишения человеческого существа свободы с момента ареста до момента освобождения из исправительного учреждения должен быть гуманным. Гуманным означает этическим. На протяжении всего этого процесса мы должны помнить о том, что заключенный такой же человек как мы и имеет право на то, чтобы его или ее человеческая природа уважалась». Представленная работа посвящена описанию и анализу правового регулирования общественного контроля за обеспечением прав осужденных в России и Беларуси. В обзоре раскрываются актуальные проблемы нормативного регулирования деятельности субъектов общественного контроля, а также содержится сравнительно-правовой анализ нормативной базы России и Беларуси в рассматриваемой сфере.

Ключевые слова: пенитенциарная система, правовое регулирование, общественный контроль, права осужденных, Республика Беларусь.

Information about authors / Сведения об авторах

Yaroslav Yur'evich Reent, PhD (Law), senior lecturer of the department of management and organization of the penal system activities, Academy of the FPS of Russia, Ryazan, Russian Federation, e-mail: ultranox@mail.ru.

Ярослав Юрьевич Реент, кандидат юридических наук, старший преподаватель кафедры управления и организации деятельности УИС, Академия ФСИН России, г. Рязань, Российская Федерация, e-mail: ultranox@mail.ru.

Nikolay Vladimirovich Kiyko, PhD (Law), head of the penal law department, Academy of the MIA of the Republic of Belarus, Minsk, Republic of Belarus, e-mail: avant_n@mail.ru.

Николай Владимирович Кийко, кандидат юридических наук, начальник кафедры уголовно-исполнительного права, Академия МВД Республики Беларусь, г. Минск, Республика Беларусь, e-mail: avant_n@mail.ru.

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The concept, essence and purpose of public control over ensuring the rights of convicts

In any democratic state, power is based on the rule of law, and the legality of the exercise of power is achieved through control of power. As A. S. Panarin rightly points out (2002, p. 10), there is nothing more dangerous than uncontrolled power, based not on the law, but on the threat of violence, so reliable democratic control is necessary.

The term “public control” appeared in the legal literature quite a long time ago. Legal encyclopedia offers the following definition of public control – “the activities of citizens and their associations to verify compliance with the rules established in a certain area of relations” (Tihomirov, M. YU. & Tihomirova, L. V. 2008, p. 618). Powers, forms and methods of activity of subjects of public control usually have legislative fixing. However, even in subjects of public control that do not have legally defined powers, the control influence can be carried out within the legal framework (for example, the activities of public associations, the media and other institutions of civil society).

The main characteristic features of public control, distinguishing it from the state control, were investigated in a number of scientific works on jurisprudence. In the most general form they can be represented as follows:

- public control has no imperious character;
- public control is not mandatory;
- public authorities and local self-government bodies cannot be subjects of public control;
- public control is carried out on behalf of the public and citizens (Grib, V. V. 2010, p. 35).

Since the subjects of public control have no authority, they are forced to act through state bodies or appealing to public opinion. It follows that the subjects of public control apply both legal and social control mechanisms. Using legal mechanisms, the subjects of public control exercise their right to appeal to various state authorities to take the necessary measures to detect violations in the activities

of state bodies. Using social mechanisms, the subjects of public control influence state bodies by influencing public opinion, making public information about violations and forming a negative attitude of society to such facts and guilty officials. Often, public censure can have a greater effect than the use of measures of state coercion. The dissemination of information on violations of the rule of law by public officials can also serve as a basis for the intervention of the relevant public authorities.

Having defined the concept and identifying the essence of public control in general, we proceed to the consideration of such areas of public control as public control over ensuring the rights of convicts.

The execution of criminal penalties is the area of state activity where human and civil rights are most vulnerable and require special control by the state and the public. Since the penitentiary service is an element of the state law enforcement system, it can be argued that its activities are aimed at ensuring the law enforcement interests of society.

Society is objectively interested in the isolation of offenders, and to implement its interests, it gave the state the function of the execution of sentences in respect of persons breaking the law. In the exercise of this function by the state, the possibility of violating the rights of convicted persons is not excluded. Public control in the penitentiary sphere is an important tool to counteract such vicious practices.

The object of public control in the penitentiary sphere is the social relations developing in the process of ensuring the rights, freedoms and legitimate interests of convicts.

Taking into account the analysis of the complex of rights, freedoms and legitimate interests of convicts, it can be argued that the subject of public control in the penitentiary sphere includes: the quality of material, housing, social, cultural, medical, educational, security, organization, working conditions of convicts, and conditions and regime of detention in correctional institutions. At the same time, the

subject of public control in this case can not be attributed to the organization of the protection of institutions, operational-search activities carried out against convicts, jurisdictional decisions of the administration of correctional institutions on the application of disciplinary measures and other legal restrictions. These specific activities are only in competence of the state bodies control and supervision.

Considering the subjects of public control, they can be divided in two independent groups. The first includes independent public formations that carry out control activities on their own initiative (public associations, the media). To the second group – the public formations created at the initiative of public authorities for achievement of socially significant purposes (public chambers, public councils, public supervisory commissions). According to S. M. Zubarev, the control of the subjects of the first group should be called the control of public structures, and the second of public-state structures (2006, p. 80).

Thus, public control over ensuring the rights of convicts is the activity of public and public-state formations to record, collect and analyze information on the state of ensuring the rights of convicts, sentenced to deprivation of liberty, and to respond to violations identified through an appeal to the state authorities or public opinion, as well as public inspection, analysis and evaluation of acts issued by state bodies and decisions taken on the legal support of convicts, sentenced to deprivation of liberty.

Features of legal regulation of public control over ensuring the rights of convicts in Russia

According to the Constitution, Russia is a democratic state governed by the rule of law, in which citizens have the right to participate in the management of state affairs. These provisions are the legal expression of the idea of democracy.

The legal basis of public control over ensuring the rights of convicts is described in part 1 of the article 3 of the Constitution of the Russian Federation, which establishes

that the people are the bearer of sovereignty and the only source of power in the Russian Federation. The provisions of the current legislation contain specific rules that provide for the possibility of monitoring the rights of convicted persons, various public formations and the mass media (article 23, 24 of the Penal code of the Russian Federation, Federal laws “On the basis of public control in the Russian Federation”, “On public associations”, “On the procedure for consideration of appeals of citizens of the Russian Federation”, “On the Public chamber of the Russian Federation”, article 47 of the Law of the Russian Federation “On mass media”, etc.).

Considering the issue of the subject composition of public control over ensuring the rights of convicts in Russia, it should be noted that the list of subjects of public control in General is specified in the article 9 of the Federal law No. 212 (adopted on 21.07. 2014) “On the basis of public control in the Russian Federation”. In accordance with this norm, the subjects of public control include: public chambers, public councils under executive bodies; public monitoring commissions, public inspections, and public control groups. The listed subjects belong to public-state subjects of control according to the classification given earlier. The analysis of the structure of the Russian civil society allows us to identify the public subjects of control, namely public associations and the mass media.

Next, we will proceed to a more detailed consideration of the legal regulation of the activities of individual subjects of public control in the penitentiary sphere. It is necessary to begin with research of legal regulation of public chambers activity. The public chamber is called upon to ensure coordination of socially significant interests of citizens of the Russian Federation, public associations, other non-profit organizations, public authorities and local governments to solve the most important issues of economic and social development, national security, protection of the rights and freedoms of citizens of the Russian Federation, the

constitutional system of the Russian Federation and democratic principles of civil society in the Russian Federation (Federal law of April 4, 2005). No. 32 “On the Public chamber of the Russian Federation”) by means of:

1) attraction of citizens, public associations and other non-profit organizations;

2) promotion and support of civil initiatives of national importance and aimed at the implementation of constitutional rights, freedoms and legitimate interests of citizens, the rights and interests of public associations and other non-profit organizations;

3) public examination of draft federal laws and draft laws of the subjects of the Russian Federation, as well as draft regulatory legal acts of the executive authorities of the Russian Federation and draft legal acts of local governments;

4) implementation in accordance with this Federal law of public control over the activities of the Government of the Russian Federation, Federal executive authorities, executive authorities of the Russian Federation and local authorities, as well as the observance of freedom of speech in the media;

5) development of recommendations for public authorities of the Russian Federation in determining priorities in the field of state support of public associations, other non-profit organizations and other associations of citizens of the Russian Federation, whose activities are aimed at the development of civil society in the Russian Federation;

6) providing informative, methodological and other support to public chambers established in the subjects of the Russian Federation, public associations and other non-profit organizations whose activities are aimed at the development of civil society in the Russian Federation;

7) involvement of citizens, public associations, other non-profit organizations and representatives of the media in the discussion of issues relating to the observance of freedom of speech in the media, the implementation of the right of citizens to disseminate information in a lawful manner, ensuring guarantees of

freedom of speech and freedom of the media, and the development of recommendations on these issues;

8) implementation of international cooperation in accordance with the purposes and objectives defined in this article and participation in the work of international organizations, as well as in international conferences, meetings and other events.

These functions are performed by the Public chamber of the Russian Federation, and regional public chambers perform similar functions at the regional level in relation to regional bodies of state and municipal authorities, the media, public associations, etc.

Analysis of the current legislation has led to the conclusion that the public chambers are an independent public institution, whose activities are aimed at strengthening the position of civil society as a whole.

Public chambers cannot be considered as the main subject of public control. This is due to the presence of specialized entities (public councils under the bodies of the penal system and public monitoring commissions). Nevertheless, the importance of public chambers in matters of public control in the penitentiary sphere should not be belittled. To determine the role of public chambers, we will consider some relevant regulatory documents.

According to the article 7 of the Federal law No. 76 (adopted on 10.06.2008) “About public control of ensuring human rights in places of detention and about assistance to the persons who are in places of detention” the Council of Public chamber of the Russian Federation solves the question of establishment and change of number of regional public monitoring commissions. The article 7.1 establishes that the code of ethics of Members of public monitoring committees is approved by the Public chamber of the Russian Federation. The article 10 imposes an obligation on the Public chamber of the Russian Federation to form regional public monitoring commissions. In accordance with article 11, the Public chamber of the Russian Federation may suspend the

activities of the public monitoring committees.

In accordance with paragraph 2.2 of the order of the FPS of Russia No. 542 (adopted on 01.10.2013) “On the establishment of the Public Council under the Federal penitentiary service on the issues of activities of the penal system and the approval of its composition”, membership of the Board is formed of the Federal penitentiary service of Russia in coordination with the Public chamber of the Russian Federation. According to paragraph 2.7 the Council sends to Public chamber of the Russian Federation the annual report on the activity.

On the basis of the given normative instructions it is possible to draw a conclusion that the Public chamber realizes the function of organization and coordination of public control in the penitentiary sphere.

Another subject of public control over ensuring the rights of convicts is the Public Council under the Federal penitentiary service of Russia, as well as public councils under the territorial bodies of the Federal penitentiary service of Russia. The councils consist of representatives of the public, have a formally defined structure and a list of powers related to the implementation of advisory, integrative, supervisory functions.

Public councils are established and operate in accordance with the Order of the President of the Russian Federation No. 842 (adopted on 4.08.2006) “On the procedure for the formation of public councils at Federal ministries, Federal services and Federal agencies, which are managed by the President of the Russian Federation, at Federal services and Federal agencies subordinated to these Federal ministries»; Resolution of the Government of the Russian Federation No. 481 (adopted on 2.08.2005) “On the procedure for the formation of public councils under Federal ministries, which are managed by the Government of the Russian Federation, Federal services and Federal agencies subordinated to these Federal ministries, as well as state committees, Federal services and Federal agencies, which are managed by the Government of the Russian

Federation”; the article 20 of the Federal law No. 32 (adopted on 4.04.2005) “On Public chamber of the Russian Federation “.

In accordance with the provisions of these normative documents, the Federal penitentiary service issued order No. 542 (adopted on 1.10.2013) “On the establishment of the Public Council under the Federal penitentiary service on the problems of the activities of the penitentiary system and the approval of its council membership.” The Council is a permanent Advisory body to the FPS of Russia. It carries out its work on the basis of the principles of legality, respect for human and civil rights and freedoms, non-interference in operational-search, criminal-procedural and penal activities, as well as in proceedings on administrative offences. The main objective of the Council is to involve the public in solving the problems facing the penal system, to protect the rights of officers, employees and veterans of the penal system, as well as convicts and persons suspected and accused of committing crimes in pre-trial detention facilities.

The competence of the Council includes work in the following areas:

- informing the public and the media about the activities of the Federal penitentiary service of Russia for the formation of the population an objective image of the institutions and bodies executing criminal penalties;
- assistance to convicts in obtaining education, social rehabilitation of persons released from serving their sentence;
- assistance in establishing relations between the FPS of Russia and the management of commercial enterprises to obtain orders for the development of production in the institutions of the FPS of Russia, improving the labor adaptation of convicts and their professional training;
- participation in discussions with public authorities improving the legal framework for the rights and legitimate interests of employees, veterans of the penal system, convicted and remand prisoners in institutions of the penal system;

– participation in the public discussion of normative legal acts and other documents, including software, developed by the FPS of Russia;

– creation (on the questions referred to competence of Council) the commissions and working groups which structure can include in coordination with the management of the FPS of Russia the public civil servants, representatives of public associations and organizations;

– propagating the positive experience of the institutions and bodies of the penal system in the solution of questions on protection of the rights and legitimate interests of the prison staff, prisoners and remand prisoners in institutions of the penal system.

It should be noted that the term “public control” does not appear in the text of the Regulation, but the control function follows from the normative act. Thus, paragraph 3.1.1, 3.1.6 traces the idea of focusing efforts on ensuring the rights of convicts. In accordance with paragraph 3.3.6 the Council has a duty to inform the leadership of the Federal penitentiary service of Russia on violations of prisoners’ rights. It would be logical to assume that information on violations of the rights of convicted persons should be obtained as a result of control measures.

The main subject of public control over ensuring the rights of convicts today are the public monitoring commissions (PMC). The issues of their establishment and functioning are regulated by the Federal law of No. 76 (adopted on 10.06.2008) “On public control over ensuring human rights in places of detention and on assistance to persons in places of detention”, as well as other normative documents.

Legal regulation of PMC activities is carried out in accordance with the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties of the Russian Federation, the Federal constitutional law No. 1 (adopted on 26.02.1997) “On the Commissioner for

human rights in the Russian Federation”, the Penal code of the Russian Federation No. 1 (adopted on 8.01.1997), Federal laws No. 32 (adopted on 4.04.2005) “On the Public chamber of the Russian Federation”, No. 76 (adopted on 10.06.2008) “On public control over the protection of human rights in places of detention and on assistance to persons in places of detention”, No. 103 (adopted on 15.07.1995) “On the detention of suspects and accused persons in the commission of crimes”, as well as the Law of the Russian Federation No. 5473-I (adopted on 21.07.1993) “On institutions and bodies executing criminal penalties in the form of deprivation of liberty”.

In accordance with these normative documents, PMC is a public formation that is not a legal entity, acting on a permanent basis, in accordance with the procedure established by the legislation of the Russian Federation, in order to promote the implementation of the state policy in the field of human rights in places of detention. The PMC has three main tasks:

– implementation of public control over ensuring human rights in places of detention located in the territory of the subject of the Russian Federation in which the public monitoring commission is formed;

– preparation of decisions in the form of opinions, proposals and appeals on the results of public control;

– promote cooperation of public associations, socially-oriented noncommercial organizations, administrations of places of detention, state power bodies of constituent entities of the Russian Federation, bodies of local self-government, other bodies carrying out within the territory of the Russian Federation of powers to ensure the legitimate rights and freedoms, as well as the conditions of detention of persons in places of deprivation of liberty.

The article 15 of the Federal law “On public control over the protection of human rights in places of detention and on assistance to persons in places of detention” establishes the main forms of activity of public monitoring commissions, and article 16 – their authorities.

The first and most important activity of the PMC is to visit places of detention for public control. It is carried out without special permissions, but with the obligatory preliminary notification of the management of the relevant territorial authority of the FPS of Russia.

Visits to correctional facilities are carried out by members of the PMC consisting of at least two persons. Upon arrival at the correctional institution, members of the Commission are met by the head of the institution or the person entrusted with the escort. In order to enter the territory of the correctional institution, the members of the Commission must present the mandates of the established pattern and documents proving the identity of the members of the Commission. In the implementation of their powers, members of the PMC must comply with the provisions of the regulations governing the activities of correctional institutions, as well as comply with the legal requirements of representatives of the administration of the institution.

Members of the PMC have the right to visit living spaces, punishment cells, stationary departments, libraries, canteens, penal and disciplinary isolators, premises for ensuring the personal safety of convicts, and other premises, with the exception of objects and structures for which the consent of the administration of the institution is required, namely – objects and structures ensuring the safety and security of the institution. Filming, photo and video recording of sensitive facilities are carried out with the written permission of administration of correctional institution or territorial authority of FPS.

During the visits, PMC members can talk to prisoners in conditions that allow representatives of the prison administration to see them but not to hear them. The requirement on location of talking convicts and members of the PMC within sight of representatives of the administration of the institution is also established in the article 18 of the Federal law “On public control over ensuring human rights in places of detention and on assistance to

persons in places of detention.” Only the written permission of convicted persons is required for filming, photo and video recording, interviewing of convicts.

The administration of correctional institutions is responsible for facilitating and ensuring the activities of public observers during visits. In accordance with the Provisions of the article 11 of the Order of the FPS of Russia No. 652 (adopted on 28.11.2008) “On approval of the Regulations on the procedure of visiting establishments of the penal system by members of public monitoring commissions” the administration of the penal system institutions are required:

- to carry out explanatory work with suspects, accused and convicted persons on the purposes, tasks and forms of activity of the commissions; to post on bulletin boards the names of members of the Commission, including their mailing addresses;

- to appoint persons ensuring the maintenance and safety of members of the Commission during a visit to the institutions of the FPS;

- to provide an opportunity for PMC members to talk to convicts, including the provision of premises for individual interviews and receiving complaints, equipped with the necessary furniture, office supplies, as well as with an alarm button;

- to provide the opportunity for members of the Commission to participate in collective events (questions & answers evenings, cultural and sports events).

The second form of activity of PMC is the consideration of proposals, applications and complaints of convicts and other persons who became aware of the violation of the rights of convicts. When receiving offers, statements and complaints of convicted persons and other persons who became aware of violation of the rights of convicted persons, PMC conducts their consideration in the course of which the Commission:

- provides objective, comprehensive and timely consideration of the appeal, if necessary

with the participation of the person who sent the appeal;

- requests documents and materials necessary for consideration of the appeal in state bodies, local governments and other officials, except for courts, bodies of inquiry and bodies of preliminary investigation;

- takes measures aimed at restoring or protecting the violated rights, freedoms and legitimate interests of the citizen;

- notifies a citizen of the direction of his appeal for consideration to another state body, local government or other official in accordance with their competence.

In accordance with paragraph 2 of the article 91 of the PC of the Russian Federation, correspondence of convicts with public observers is not subject to censorship. This rule applies to both outgoing and incoming correspondence.

After visiting the correctional institutions and considering the appeals of convicted persons, the preparation and adoption of PMC decisions is carried out. They shall be adopted in accordance with the rules of the Commission by a majority vote of the number of presented members. Decisions of the public monitoring Commission are advisory.

As a result of the implementation of control measures, materials are sent in accordance with the established requirements. They are sent to the relevant state bodies of the Russian Federation, local self-government bodies, territorial bodies of Federal executive authorities, public associations and other bodies where it is possible to consider issues related to ensuring the rights of convicted persons.

Materials are sent to the Commissioner for human rights in the Russian Federation, the Commissioner for human rights in the relevant subject of the Russian Federation, to the Public chamber of the Russian Federation, the public chamber of the relevant subject of the Russian Federation, the administration of places of detention, public associations that have nominated candidates for members of the public monitoring Commission, the media, the

FPS of Russia and its territorial bodies, local governments, as well as to other competent state bodies or their officials. Materials are also sent to the Commissioner at the President of the Russian Federation for the rights of the child, the Commissioner for the rights of the child in subjects of the Russian Federation within the relevant territories, following the results of implementation of public control ensuring the rights of the juveniles, pregnant women and women having children who are in places of detention.

PMC cooperates and have the right to appeal on the issues of ensuring the rights of convicts in the state authorities of the Russian Federation, the state bodies that are not public authorities, local self-government bodies and their officials, the Commissioner for human rights in the Russian Federation, the Commissioner at the President of the Russian Federation for the rights of the child, the Commissioner for human rights in subjects of the Russian Federation, the Commissioner for the rights of the child in subjects of the Russian Federation, Public chamber of the Russian Federation, public chambers of subjects of the Russian Federation, public associations, mass media, the public monitoring Commissions formed in other subjects of the Russian Federation, and other subjects at its discretion.

In addition, the PMC have the right to request from the administrations of the institutions of the penal system and receive from them the information and documents necessary for monitoring activities and preparation of conclusions and proposals.

Also, PMC participate in the work of the commissions of correctional institutions in deciding on the transfer of convicts from one condition of serving a sentence to another. The condition of presence necessity of the public representatives at meetings of the commissions is fixed in provisions of the Concept of development of the penal system of the Russian Federation till 2020.

PMC may hold public discussions and hearings on its activities.

Among the subjects of public control over ensuring the rights of convicts in Russia can also be attributed to public associations of human rights orientation. Unlike public-state subjects of control, such public associations are the most independent from the state. Public associations of human rights orientation have a number of characteristic features that distinguish them from other public formations:

- their main goal is to protect human rights and freedoms;
- their activities are not aimed at profit or other own benefit;
- they do not support political parties or movements;
- they have sources of financing independent from the state (Chayka, Yu. Ya. (ed.) 2002, p. 490).

The possibility of participation of public associations in the control over ensuring the rights of convicts follows from the article 30, which guarantees the freedom of activity of public associations, as well as the article 32 of the Constitution of the Russian Federation, according to which Russian citizens have the right to participate in the management of state affairs. The main normative document directly regulating the activities of public associations is the Federal law No. 82 “On public associations” (adopted on 19.05.1995). The article 5 of this document gives the concept of a public association. This is a voluntary, self-governing, non-profit formation created on the initiative of citizens united on the basis of common interests for the implementation of common goals specified in the Regulations of the association.

Legal guarantees of participation of public associations in control over ensuring the rights of convicted persons are contained in the PC of the Russian Federation. Although article 23 of the criminal code defines PMC as the only source of public control, and public associations are only allowed to assist correctional institutions and participate in the correction of convicts, article 12 gives convicts the right to send their appeals to public associations. This provision

indicates the possibility of considering public associations as a full-fledged subject of public control over ensuring the rights of convicts.

Special attention should be paid to the activities of the mass media to monitor the rights of convicted persons. The great influence of the mass media in society is due to the fact that “they serve as a powerful and relatively independent means of communication between all other elements, state bodies, public organizations” (Naumkin, Yu. V. 2003, p. 63).

The mass media are the link between society and the penal system. The mass media inform the society, at the same time create a common information base, unite norms and values of different parts of society, spread models and experience of behavior in different situations, transmit this information baggage in time, from generation to generation (Fomicheva, I. D. 2002, p. 46). The mass media produce and disseminate information influencing the formation of public opinion and influencing various processes within society. Also, the mass media perform a communicative function and are means of communication and exchange of information in society. Mass communications, especially television, significantly change the system of socio-cultural perception of information, allow to quickly orient the recipients of information in the right direction and influence the assessment and opinions of people and contribute to the formation of the image (Halipov V. F. (ed.) 1998, p. 46).

Under the participation of mass media in the activities of the penal system to understand any of the information activity of the mass media, aimed at improving and developing the information integration of society and the penal system, as well as ensuring the openness of the penitentiary system.

The normative basis for the participation of the media in monitoring the rights of convicts is the Constitution of the Russian Federation. The article 29, paragraph 5, guarantees freedom of the mass media and the prevention of censorship. The Federal law No. 2124-1

(adopted on 27.12.1991) “On mass media” is the main normative act regulating the activities of mass media. Thus, the article 1 establishes that the search, receipt, production and distribution of mass information are not subject to restrictions, except in cases provided for by law. That is, the receipt and dissemination of information about the activities of the penal system may be limited in cases provided for in the article 4 of the Federal law “On mass media”. Such circumstances include the use of the mass media to commit criminal offences, the disclosure of information constituting a state or other secret specially protected by law, the conduct of extremist activities, the dissemination and promotion of pornography, extremism, drug addiction, the cult of violence and cruelty. It is also prohibited to disseminate information about a juvenile who has suffered as a result of illegal actions (inaction), including the names, patronymic names, his photo and video images, his parents and other legal representatives, the date of his birth, audio recording of his voice, his place of living or temporary residence, and place of study or work.

Summarizing the information provided on the legal regulation of the activities of various subjects of public control in the penitentiary sphere, it should be noted that for such subjects as public chambers and public councils under the bodies of the Federal penitentiary service of Russia control activities are not the main focus of work. The powers of public associations allow them to implement public control in the form of consideration of convicts’ appeals without the possibility of inspections in the territory of correctional institutions. The media usually perform a control function only when the most resonant violations of the rights of convicts are detected. Today, the most effective tool of public control over ensuring the rights of convicts in Russia is the activity of the PMC. These social groups are endowed with a wide range of control powers and are sufficiently free from the influence of state bodies, which allows them to effectively detect violations of the rights of convicted persons.

Features of legal regulation of public control over ensuring the rights of convicts in Belarus

The broad desire to involve public forces in the resocialization of persons serving sentences is reflected in international instruments. Thus, the paragraph 61 of the Standard minimum rules for the treatment of prisoners states that “social organizations should be involved wherever possible in cooperation with the staff of institutions in order to return prisoners to life in society”. A similar recommendation is contained in the UN Minimum standard rules for non-custodial measures: “efforts should be made to make the public aware that it plays an important role in the application of non-custodial measures” (art. 18.4).

The public plays an important role in the work of penitentiaries in Belarus. The main tasks of public participation in the activities of penitentiary institutions include the promotion of correction of convicts and resocialization of persons who have served their sentences, as well as monitoring the rights of convicts.

Under the control of the activities of the bodies and institutions executing the punishment, it is necessary to understand the system of monitoring and verification of their activities compliance with the requirements of the penal legislation and other regulatory legal acts in order to identify and eliminate existing violations and prevent them in the future.

Control and participation of public associations in the work of bodies and institutions executing punishment and other measures of criminal responsibility are carried out in accordance with the requirements of the article 21 of the Penal code of the Republic of Belarus (PC of the Republic of Belarus). Public associations take part in the correction of convicts, as well as assist in the work of bodies and institutions executing punishment and other measures of criminal responsibility. According to paragraph 3 of this article, correction of convicts, as well as the implementation of public control over the activities of bodies and institutions executing sentences and other

criminal liability measures, is organized by Supervisory commissions at local executive and administrative bodies, and in respect of juvenile convicts — commissions on juvenile affairs. The order of the activities of these committees are governed by the provisions of the PC of the Republic of Belarus and the regulations on the supervisory commissions at the regional (Minsk city), district, city executive committees, local administrations, approved by the Order of the President of the Republic of Belarus No. 460 (adopted on 28.08.2001), the regulations on the procedure of formation and activity of commissions on juvenile affairs, and the approved resolution of Council of Ministers of the Republic of Belarus No. 1599 (adopted on 10.12.2003).

The monitoring functions of these commissions have much in common. The main difference is that the competence of the monitoring commissions relates to the activities of correctional institutions where adult convicts are serving their sentences, and the juvenile commissions to correctional colonies.

The main tasks of the supervisory commissions are:

- monitoring of the activities of the bodies executing the punishment, the procedure and conditions of serving the sentence, the use of preventive measures against them, the detection of violations and assistance in their elimination;

- assistance to the bodies executing the punishment in the organization of the correctional process in respect of convicts and their readaptation, and to the local executive and administrative bodies in ensuring the resocialization of persons released from serving the sentence.

The activity of the commissions under consideration is one of the forms of social control over the work of the bodies and institutions executing punishment. In accordance with the requirements of the legislation, the commissions are obliged to keep records and monitor those who released from punishment, to check the validity of refusal of employment,

to assist them in employment. The Commission on affairs of juveniles, in addition to this, work with a juvenile, exempted from punishment, and teenagers under the age of criminal responsibility, but committing the offense.

In order to carry out their functions, the supervisory commissions and commissions for minors have certain powers. Members of these commissions have the right to inspect the activities of the bodies and institutions executing sentences in these areas, to demand the submission of documents and certificates, to get acquainted with the personal files of convicts, to receive them, to receive complaints and statements.

At their meetings, the commissions periodically hear reports of heads of institutions, information of heads of enterprises on issues within the competence of the commissions, make proposals to the administration of the relevant executive and administrative bodies. The Commission shall also have the right to direct the heads of the institutions of representation about elimination of the revealed deficiencies, to improve work with prisoners. They can independently make decisions on the elimination of shortcomings in the activities of colonies, remand centers and prisons, enterprises and institutions that allow violations in the employment of released convicts, do not take educational measures to these persons, as well as other convicts working in enterprises.

To implement the assigned tasks, the Supervisory commissions have the right:

- to conduct (in agreement with the administration of the authority executing the punishment) convicted prisoners on issues relating to punishment, to accept and consider proposals, applications and complaints;

- to request together with the administration of the body executing the punishment for pardon of convicted persons;

- to consider at its meetings the information of the administration of the body executing the punishment on the work to correct convicts and make proposals to eliminate shortcomings in the work;

to submit for consideration of the relevant local executive and administrative bodies of the offer on improvement of correctional process in the bodies executing punishment;

to study the possibility of employment of released from prison persons, who have served a sentence in the form of restriction of liberty;

to make proposals to the local executive and administrative bodies on the formation of a jobs limit for the employment of persons released from places of deprivation of liberty;

to apply on their own initiative with the submission to the court for release from punishment, mitigation of punishment or other improvement of the situation of the convicted person due to the entry into force of the criminal law having retroactive effect;

to coordinate the submission of the administration of the correctional institution to the court on the change of the type of correctional institution;

to give consent to the administration of the correctional institution to transfer a convicted person serving a sentence in prison from the general regime to the strict regime, as well as from the strict to the general regime;

to coordinate the decision of the administration of the correctional institution to stay outside the colonies of convicted women for the period of their release from work on pregnancy and childbirth, as well as until the child reaches the age of three;

to give consent to the administration of the medical correctional institution to transfer the convicted person in the case of unsuccessful application of disciplinary action to a specialized chamber for a period of up to six months;

to participate through their representatives in the consideration by the courts of issues about parole, the replacement of the unserved part of the punishment with a milder punishment, the change of the type of correctional institution;

The consent of the Commission on juvenile affairs is required when transferring a convicted person who has reached the age of 18 from an educational colony to a correctional colony, as well as for detention a convicted person who

has reached the age of 18 in an educational colony.

Commission acts are mandatory. Most of the Commission members work on a voluntary basis, free of charge, in their free time. All this makes it possible to determine the legal basis for the control of monitoring commissions and commissions on juvenile affairs as state and public control.

In addition to the list of powers, the Regulation also contains a list of prohibitions. A member of the PMC is prohibited:

- to prevent the implementation of official duties by employees of bodies and institutions executing punishment and other measures of criminal responsibility;

- to get acquainted with the materials of operational and service activities, personal files of convicts, other documents relating to the execution of punishments and other measures of criminal responsibility in respect of specific convicts;

- to provide access to the complex of engineering and technical means of ensuring protection and supervision of convicts in correctional institutions;

- to transfer of correspondence, money and other property to convicted persons in correctional institutions;

- to carry out film, photo, video and audio recording;

- to accept written addresses from the convicts serving punishment in the form of arrest, imprisonment or life imprisonment.

In case of violation of the above prohibitions, as well as violations of the requirements of the penal enforcement legislation, a member of the Commission may be excluded from the PMC by providing a foreign state, foreign or international organization, the mass media with false information about the activities of bodies and institutions executing punishment and other measures of criminal responsibility, committing acts disorganizing the work of institutions, inciting convicted persons to disobey the lawful demands of employees and committing other illegal actions. The decision on exclusion is

made by the Minister of justice or the head of the regional department of justice on the recommendation of the heads of corrections departments of the Ministry of Internal Affairs in the regions.

The subjects of participation of public associations in the activities of bodies and institutions executing punishment and other measures of criminal responsibility are:

- public monitoring commissions;
- the public associations registered in accordance with the established procedure which coordinated actions for rendering assistance with administration of the bodies and organizations executing punishment and other measures of criminal responsibility.

Participation of public associations in the activities of bodies and institutions executing punishment and other measures of criminal responsibility is carried out:

- 1) in the following areas:
 - improvement of conditions of detention and health care of convicted persons in institutions;
 - participation in the organization of work, leisure, training of convicts;
 - participation in moral, legal, cultural, social, labour, physical education and development of convicts;
 - ensuring freedom of conscience and freedom of religion of convicted persons in institutions;
 - assistance to convicts in preparation for release, solution of living conditions, employment, medical care and social security, social and psychological rehabilitation and adaptation;
 - strengthening of the material and technical base of the bodies and institutions executing punishment and other measures of criminal responsibility;
- 2) taking into account the commissions' recommendations in the following forms:
 - provision of gratuitous (sponsorship) assistance to the bodies and institutions executing punishment and other measures of criminal liability;

- financing of assistance programmes for bodies and institutions executing punishment and other criminal sanctions;

- in other forms not prohibited by legislative acts.

Public associations may provide free (sponsorship) assistance to such bodies and institutions in accordance with the procedure established by legislative acts of the Republic of Belarus.

Speaking about the organizational and logistical support of PMC activities in Belarus, we can say that it has a mixed nature. That is, the Ministry of justice of the Republic of Belarus and its regional offices implement organizational support for the PMC activities, provide them with meeting rooms, computer and other equipment for the preparation of necessary documents, and provide methodological assistance.

The administration of the bodies and institutions executing punishment and other criminal liability measures also assists the commissions in the implementation of public control. At the same time, the Regulation establishes that the Public Association that nominated a member of the PMC has the right to reimburse the member of the Commission for the costs associated with the implementation of its activities. Only the actual costs directly related to the implementation of control activities can be reimbursed, but the activities of PMC members are organized on a voluntary basis and cannot be paid.

PMC and their members may not receive material compensation for their activities in the implementation of public control from government agencies, organizations, regardless of ownership form and individual citizens.

One of the forms of public control over the activities of correctional institutions in the Republic of Belarus is the work of the boards of trustees. According to the article 105 of the Criminal code of the Republic of Belarus, they are established in correctional institutions,

as well as in the territorial and Republican bodies of correctional institutions to assist the administration of correctional institutions in the organization of the correctional process; in receiving general secondary, vocational education and training by convicts; in strengthening the material base of the correctional institution, the implementation of social protection of convicts, labor and household organization of convicts released from correctional institutions, and also for the purpose of the solution of questions of social protection of employees of correctional institutions and increase of their professional level.

Boards of Trustees are established on the rights of public associations and are registered in the manner prescribed by the Law of the Republic of Belarus № 3254-XII “On public associations” (adopted on 4.10.1994). The Board of Trustees may include representatives of state bodies, enterprises, institutions, organizations (regardless of the form of ownership), the mass media, public associations and religious organizations, scientists and cultural workers and individual citizens.

Summing up the results of the study of the organization and legal regulation of public control over the rights of convicts in the Republic of Belarus, it can be argued that the only mechanism for the implementation of the control function of civil society is the activity of the Supervisory commissions. They are, of course, a public-state entity, which is confirmed by the procedure for the formation and material and technical support of the activities of these bodies, as well as the powers of state bodies to terminate the powers of members of the Supervisory commissions. It should also be noted that the monitoring commissions have sufficient tools to carry out effective public control, including the possibility to visit correctional institutions, interview with convicts, send requests to state bodies and to send the results of the monitoring activities to the competent authorities.

Comparative legal analysis of normative regulation of public control over ensuring the rights of convicts in Russia and Belarus

From the analysis of the normative regulation of public control over ensuring the rights of convicts in Russia and Belarus, it becomes clear that in both countries the main subject of control in this area is the PMC. The commissions have a wide range of monitoring powers, the most important of which is the possibility of carrying out visits to penitentiary institutions. According to this, it seems appropriate to conduct a comparative legal analysis of normative regulation of the activities of these subjects of public control in the two states.

To clarify the legal nature of the control measures carried out by the PMC, a comparative analysis should be started by considering the procedure for the formation of these public bodies in Russia and Belarus. As already mentioned, the personal staff, as well as the candidacies of the PMC chairmen in Belarus are approved by the heads of the relevant justice bodies, while in Russia the personal staff of the PMC is approved by the Council of the Public chamber of the Russian Federation. This procedure for the formation of PMC in Belarus indicates a high degree of dependence on public authorities in contrast to the Russian PMC, which is formed not by the state body, but by another public structure. The high degree of dependence of the Belarusian PMC on public authorities is also due to the established procedure for suspension and termination of powers of PMC members, in which decisions on suspension or termination of powers are taken by the heads of the relevant justice bodies, while in Russia the Council of the Public chamber of the Russian Federation has these powers.

The analysis of the requirements for the identity of MPC member shows that the Russian legislation contains more restrictions for membership in the Commission. Thus, in Belarus, PMC members may be citizens who have reached the age of 25 years, who

are representatives of public associations registered in accordance with the established procedure, whose statutory purpose or activity is to protect the rights of citizens, including assistance in protecting the rights of convicted persons to penalties and other criminal liability measures, and other public associations. Members of the PMC may not be persons with an outstanding criminal record or recognized by a court as incapable or with limited legal capacity, as well as judges and lawyers. In Russia, the list of requirements is supplemented by the mandatory presence of experience in the field of protection of citizens' rights, as well as a ban on membership in the PMC for employees of the Prosecutor's office, persons substituting state positions of the Russian Federation, positions of the Federal public service, state positions of the subjects of the Russian Federation, positions of the State civil service of the subjects of the Russian Federation, positions of the municipal service, as well as persons substituting elected positions in local governments.

Another significant difference in the organization of PMC activities in the two countries is the presence of a Central PMC body in Belarus and the absence of a similar body in Russia. As already noted, the system of commissions in Belarus includes the Republican PMC under the Ministry of justice and regional PMC under the main departments of justice in the regions. Regional PMC interact with the Republican PMC in various areas of its activities to solve problems of the national level. The decisions taken at the meetings of the regional PMC are sent to the Republican Commission for discussion at its meetings. The Republican PMC may send proposals and conclusions of regional commissions to the Ministry of justice of the Republic of Belarus and the Ministry of Internal Affairs of the Republic of Belarus. In Russia, there is no Central PMC management and coordination body at the Federal level, but in fact these functions are assigned to the Public chamber of the Russian Federation.

One of the main criteria for assessing the effectiveness of building a national system of public control over ensuring the rights of convicts is the scope of control powers of public control subjects. PMC in both countries have the right to visit penitentiary institutions and conduct interviews with convicts, but a significant difference in the procedure for the implementation of these rights does not make it possible to talk about the equality of powers of the commissions in Russia and Belarus. Thus, the Russian PMC conducts visits to correctional institutions without special permits, but with the obligatory prior notification of the leadership of the relevant territorial authority of the FPS of Russia. Belarusian PMC to visit the institutions must submit a written request to the head of the regional Department of corrections of the Ministry of Internal Affairs, indicating the purpose of the visit and the number of members of the Commission who will participate in the visit. After receiving permission to visit the institution, the PMC must inform the head of the institution in advance of the date and time of the visit. The authorization procedure for visits in a significant extent restricts the control possibilities of PMC in comparison with the notification procedure or the conduct of surprise visits. This circumstance cannot but affect the objectivity of the control measures.

Another area of activity of the Russian PMC is the consideration of proposals, applications and complaints of persons in places of detention, and other persons who became aware of the violation of convicts rights. Belarusian PMC are not endowed with such powers, as the article 11 of the Regulations on the procedure for public associations to control the activities of bodies and institutions executing punishment and other criminal sanctions, contains a direct ban to take convicts' written appeals. This approach is due to the fact that in accordance with part 5 of article 10 of the criminal code of the Republic of Belarus convicts, including foreign citizens and stateless persons, have the right to apply to the administration of the body or institution executing punishment and

other criminal liability measures, the court, the Prosecutor's office with proposals, applications and complaints. At the same time, convicts, including foreign citizens and stateless persons, have the right to apply to state bodies and other organizations, to individual businesspersons in the manner prescribed by the legislation of the Republic of Belarus on appeals of citizens and legal entities.

Studying the issue of financial and logistical support of the PMC, it is impossible not to note the more favorable position of the Belarusian commissions. In the Russian legislation, the obligation to reimburse the expenses of PMC members related to the implementation of their powers, as well as assistance in material, technical and informational support is assigned to public associations that have nominated candidates for membership in the Commission. The expenses of the members of the Belarusian PMC related to the implementation of their powers are also entrusted by public associations, but the premises for meetings, computer and other equipment are provided by the relevant justice bodies. The courts of justice assist in the organization of meetings of the PMC and other training support.

A comparative analysis of the regulatory activities of PMC in Russia and Belarus reveals other, less significant differences. The revealed difference sufficiently characterizes the specifics of the public control organization in both states and allows us to focus on the advantages and disadvantages of the organization of PMC activities, which should be taken into account in the creation of a modern system of public control that meets the realities of the new reality.

Conclusion

In recent years, both in Russia and in Belarus, a huge amount of normative and law enforcement work has been done in the field of introducing the practice of public control over ensuring the rights of convicts. Today, public monitoring commissions show real positive results in their daily work, and further strengthening of the integration of penitentiary

services with civil society institutions is required to consolidate and improve these results.

It should be noted that the sphere of execution of criminal penalties remains one of those areas where the rights of citizens are most vulnerable and need special control by the state and the public. In this regard, it is extremely important to work on overcoming the crisis of trust of society, the search for new ways to take into account public opinion to assess the work of the penitentiary service. The first priority is to create more favourable conditions for public control over the activities of institutions executing the punishment of deprivation of liberty. Such work can and should make full use of the positive experience gained in the course of interaction between the penitentiary systems and social formations of the most developed states in this regard, as well as the positive experience of individual penitentiary institutions.

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