



Man and Law
25 Zrubina str., Yoshkar-Ola
zakon@manandlaw.info



Citizens' Watch
87 Ligovsky Ave., 191040,
St Petersburg
citwatchspb@gmail.com



**European Prison
Litigation Network**
21 ter, rue Voltaire, 75011 Paris
contact@prisonlitigation.org

UNITED NATIONS HUMAN RIGHTS COUNCIL

To the Human Rights Council Working Group on the Universal Periodic Review
4th UPR Cycle, 44th Session, Review of the Russian Federation

Joint Submission
from non-governmental organisations

**Dismantling of Public Monitoring Commissions and the lack of transparency
of the Russian penitentiary system**

Submitted by Man and Law
jointly with
Citizens' Watch and
European Prison Litigation Network

5 April 2023

Introduction

1. This joint submission is intended to draw the attention of the United Nations Human Rights Council and the United Nations Member States to the problem of the lack of transparency of the prison system in Russia, the undermining of independence and effectiveness of public monitoring commissions (public detention monitoring committees), and the problems related to effective reporting on cases of torture in the penitentiary institutions by victims and civil society actors.

2. The submission is in particular related to Recommendations nos. 147.133, as well as recommendations 147.7-10, concerning the Russian Federation's ratification of the Optional Protocol to the Convention against Torture and establishment of a national preventive mechanism, as required under the Protocol.¹

Recommendation 147.133 (Switzerland)

Ensure that public detention monitoring committees are independent, adequately resourced and that their members are selected in a transparent manner;

3. The submission is prepared and lodged by:

Man and Law, a Russian interregional public human rights organisation founded in 1999. It is engaged in legal education, develops and conducts educational courses in the field of human rights for members of public monitoring commissions and civil servants, engages in public control of closed institutions, and protects human rights. *Man and Law* hold consultative status with ECOSOC.

jointly with

Citizens' Watch, a human rights NGO founded in 1992 by a group of Russian human rights activists, lawyers, journalists, and deputies of the Russian Parliament and the St. Petersburg City Council. Its activities are focused on the protection of the right to fair trial. Its strategic priority is to bring the Russian legislation related to human rights and the practice of its application closer to international legal standards.

European Prison Litigation Network (EPLN), an international NGO holding a participatory status with the Council of Europe, which focuses its activities on enhancement of the judicial protection of the fundamental rights of prisoners in the

¹ Report of the Working Group on the universal periodic review. Russian Federation. A/HRC/39/13, 12 June 2018, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/212/09/PDF/G1821209.pdf?OpenElement>

Member States of the Council of Europe.

Lack of preventive control: the dismantling of the Public Monitoring Commissions (PMCs)

4. The Prosecutor General of the Russian Federation admitted that one of the reasons behind the cruel treatment of convicts is the insufficient openness of the penitentiary system and the low efficiency of the internal audits.²

5. The shortcomings in the appointment of members of the PMCs and the difficulties faced by them undermine their independence and impartiality.³ The authorities are taking no measures to support the PMCs and are removing inconvenient PMCs' members replacing them with former law-enforcement officers. To date, the national preventive mechanism has not been created in Russia. Russian places of detention formally can be visited and/or monitored by:

- Members of the Public Councils under the Federal Penitentiary Service (the FSIN) and the Ministry of Internal Affairs (with the consent of these authorities). Members of these councils are appointed by the heads of the FSIN and the Interior, respectively. That leads to the absence of members who would criticize the shortcomings in places of detention and oppose torture. Deputies of the State Duma can also visit places of detention, but they never make recourse to this power;
- Federal and regional Ombudspersons, who have status of civil servants and are dependent on the federal authorities;
- Members of the Presidential Human Rights Council. In 2022 all human rights defenders were removed from the Council. The only current member who is acquainted to the prison problems is journalist and publicist Eva Merkacheva.

6. PMCs, established in accordance with Federal Law No. 76-FZ of 10 June 2008 "On Public Monitoring over Guarantees of Human Rights in Places of Compulsory Detention and on Assistance to Persons in Places of Compulsory Detention", cannot fulfil the role of the national preventive mechanism, due to the lack of independence (functional, personal, and institutional), insufficient resources (human, financial, and technical), the lack of professional expertise, powers, and guarantees (including the lack of unobstructed access to places of detention), as well as the absence of immunities for their members allowing them to freely criticise prison administration, without taking risks of possible repercussions.

² The Insider, "Commission impossible. How the Kremlin destroyed the PMC", 21 October 2019, available at: <https://theins.ru/obshchestvo/182995>

³ Communication from EPLN to the CMCE in the case of Buntov v. Russia, 22 August 2022, available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)901E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)901E)

7. In 2022-23 Man and Law monitored the formation of the compositions of the PMCs. The procedure of their formation was completely non-transparent, ungrounded, and unpredictable. The Civic Chamber of Russia, which forms the PMCs, rejected candidates who had experience in human rights or worked at the PMCs before and, on the contrary, gave preference to candidates who had never visited places of detention, even while working as PMC members previously.

8. Not a single human rights activist, who could counteract torture in places of detention, was elected to the PMCs. The Civic Chamber paid particular attention to the candidates' potential links to NGOs declared foreign agents, in order to prevent them from being elected to the PMCs. The Civic Chamber also adopted a code of ethics for PMCs' members, based on which any member can be expelled from the PMC.

9. An excessive set of documents was required from NGOs to nominate candidates to the PMCs. This excessive formalism was accompanied by a general discriminatory policy with respect to NGOs declared foreign agents: they were not allowed to nominate candidates (Article 10 § 3 of Federal Law No. 76-FZ), and candidates who had collaborated or worked for foreign agent NGOs were rejected by the Civic Chamber.⁴ Any current member of a PMC can now be expelled in view of her/his affiliation with an NGO declared "foreign agent" (Section 10 § 3 of Federal Law no. 76-FZ), and the number of such NGOs is constantly increasing.⁵ These NGOs are thus arbitrarily excluded from the public scrutiny of penitentiary facilities.

10. Regional Civic Chambers preferred not to nominate candidates who had experience in human rights related to places of detention. The Federal Civic Chamber gave preference to candidates nominated by NGOs whose activities were not related to human rights and who did not specialise in prison issues (trade unions, motorists, youth NGOs, etc.).

11. Independent human rights defenders who remained on the PMCs were promptly expelled from them (Olimpiada Usmanova in 2020, Marina Litvinovich in 2021).⁶ This is often done through pressure on the NGOs that nominated them, or by referring to alleged violations of the "code of ethics." However, the provisions of the code are vague, arbitrary, and overly broad, allowing them to be used to expel "undesired" members of PMCs.

⁴ The Constitutional Court of Russia rejected a complaint of NGO Citizens' Watch about the refusal to include to PMC a candidate from an NGO-foreign agent and found the relevant provisions of Federal Law No. 76-FZ compliant with the Constitution of Russia (Decision of 21 July 2022 no. 1813-O, available at: <http://doc.ksrf.ru/decision/KSRFDecision632414.pdf>)

⁵ Currently there are 81 NGOs and 11 unregistered organisations on the Foreign Agents list. See: Inoteka, available at: <https://inoteka.io/ino/foreign-agents-en>

⁶ Meduza. Марину Литвинович исключили из ОНК (как и ожидалось) (Marina Litvinovich was expelled from the public monitoring commission (as expected)), 7 April 2021, available at: <https://meduza.io/episodes/2021/04/07/marinu-litvinovich-kak-i-ozhidalos-vygnali-iz-onk-kogda-to-ona-rabotala-na-putina-a-teper-stala-odnoy-iz-samyh-izvestnyh-pravozaschitnits-v-rossii>

12. Thus, the membership of independent candidates – human rights defenders – in PMCs is almost completely impossible, which undermines their potential as a mechanism for preventing torture and violations of prisoners’ rights. Public control over places of detention has become fictitious and formal. Places of detention are left without actual external independent monitoring by civil society, which increases the risk of inhumane and degrading treatment and torture of prisoners.

13. From June 2023, amendments to Article 9 of Federal Law No. 76-FZ of 10 June 2008, are coming into effect, under which funding of PMCs’ members will be provided by Regional Civic Chambers (and not NGOs), making PMCs fully dependent on regional authorities.

14. In 2021 the Constitutional Court of Russia approved the practice of administration to interrupt interviews of prisoners by members of PMCs, if they “discuss issues that are not relevant to ensuring the rights of prisoners in places of detention”.⁷ The confidentiality of such interviews is not ensured, and the prison administration has *de facto* unlimited discretion in determining the issues to be discussed during the interview.⁸

15. Despite numerous situations of interference with the work of PMCs or obstructions to their activities by the FSIN and the Interior, there are no cases instituted under Article 19.32 of the Code of Administrative Offences of Russia against law enforcement officers (which provides for their responsibility for the breaches of legislation on public control in places of detention). This situation indicates the virtual absence of judicial guarantees of protection of public control mechanism.

Limitations on the use of recording devices by the PMCs during visits in the places of detention. Collection of evidence of torture

16. Audio and video devices are the essential equipment needed to record testimonies and document traces of torture and ill-treatment. However, the possibility of using recording devices in penitentiary institutions has been restricted in the last few years. Since 2019, during prison visits PMCs’ members may only use photo or video cameras provided by the prison administration (Order of the FSIN no. 652 of 28 November 2008, §§13-15.3, as amended). However, photos and videos taken during visits are often not given to PMC members for several months. Moreover, prison officers are entitled to check recordings/photographs and

⁷See decisions of the Constitutional Court nos. 2167-O and 2168-O of 26 October 2021: in both cases the interviews were interrupted as soon as the use of force against the detainees by the police during their arrests was mentioned.

⁸ See the relevant recommendations of the European Committee for the Prevention of Torture: CPT Report on the visit to Russia from 21 May to 4 June 2012 (CPT/Inf (2013) 41), § 14, <https://rm.coe.int/1680697bd6>

determine their “relevance to the protection of the rights of detainees”.⁹

17. Similarly, Article 89 § 4 of the Penitentiary Code was supplemented with a provision prohibiting legal counsels and representatives of prisoners from bringing into correctional colonies audio or video recording equipment (Federal Law no. 217-FZ of 11 June 2021), which further limited the possibility to independently collect evidence of torture and ill-treatment in penitentiary institutions.¹⁰ In relation to remand prisons, a similar prohibition is provided for in Section 18 of Federal Law No. 103-FZ of 15 July 1995.

18. Another problem is that all video recordings made on the territory of the penitentiary institution by the prison administration are in its sole possession. The prison administration has a monopoly on the entire archive, all evidence of torture. There are no mechanisms allowing external supervisory bodies to have access to this video content. Even investigators and prosecutors do not have direct access to this evidence.

19. Members of public monitoring commissions in various regions of Russia have often observed improper recording of injuries of inmates by medical personnel of places of detention (especially at night, when there are no doctors in the institutions). Another problem is that prisoners’ medical records can be easily compromised, records can disappear or be altered. Such situations, in particular, are related to the fact that medical histories in colonies and investigative facilities are not recorded in an electronic database (as it is done in civilian health care institutions to eliminate the possibility of unauthorised changes to medical records). Furthermore, lawyers and human rights defenders are not able to obtain prisoners’ medical records in the event of their death, as the medical records can be provided only with the consent of the prisoner himself.

20. A separate, albeit related problem concerns the often practice when a person’s relatives and lawyers are not informed about her/his detention or transfer from one detention facility to another. Such information is often concealed by the law-enforcement officers.¹¹ In this respect, the creation of a unified on-line database of detainees could serve as a preventive measure against the use of torture. At the Special (126th) Meeting of the Presidential Council for the Development of Civil Society and Human Rights (2018), the recommendation was made to create regional unified databases accessible to attorneys, relatives of detainees, PMC

⁹Communication from EPLN to the CMCE in the case of Buntov v. Russia, 22 August 2022, available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)901E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)901E)

¹⁰According to a former prosecutor, MP AnatoliyVyborny, the real purpose of the draft law was to prevent lawyers and human rights defenders from documenting and reporting traces of torture on detainees. (12.05.2021), <https://www.advgazeta.ru/novosti/pod-predlogom-ispolneniya-postanovleniya-espch-zashchitnikam-khotyat-zapretit-pronosit-telefony-v-ik/>.

¹¹Advgazeta.ru, “Эксперты"АГ"прокомментировалипозиции профильных ведомств порекомендации СПЧ” (The "AG" experts commented on the positions of the relevant agencies on the recommendations of the President’s Human Rights Council”), 5 February 2019, available at: https://www.advgazeta.ru/novosti/eksperty-ag-prokommentirovali-pozitsii-profilnykh-vedomstv-po-rekomendatsiyam-spch/?sphrase_id=181888

members, members of the Public Councils under the territorial bodies of the Federal Penitentiary Service of Russia and the Ministry of Internal Affairs of Russia.¹² However, this initiative has not been implemented.

Lack of confidential complaint mechanism for victims and persecution of human rights defenders reporting on torture

21. The situation is further complicated by the fact that there is no internal mechanism within the FSIN system that allows prisoners to report torture and not be persecuted at the same time.¹³ The CAT has put forth that individuals deprived of their liberty should be granted adequate access to an independent complaint mechanism allowing them to file confidential allegations of torture or ill-treatment to an independent investigative authority. It should take all the necessary measures to protect detainees alleging torture against reprisals, including countersuit.¹⁴

22. Despite this, the practice of repercussions against victims of torture in detention continues. In particular, in the end of 2021, in the Irkutsk region, a victim was arrested in a case of torture involving multiple colonies and detention centers and another prisoner was deprived of the status of a victim in a joint criminal case of mass torture. Human rights defenders and lawyers were subsequently no longer allowed into colonies and isolation wards to see other prisoners who complained of bullying. Human rights activists in the Saratov region reported that in the regional colonies, famous throughout the country for videos of torture and rape of prisoners, more than 300 victims have already retracted their statements¹⁵.

23. Despite the fact that under the law the letters of prisoners to the prosecutor's office, investigative bodies, Ombudspersons, and PMCs shall not be read by the prison administrations, there are no guarantees put in places preventing breaches of confidentiality of such correspondence. Members of the PMCs repeatedly revealed situations in which staff members read all the letters and complaints sent by detainees. In this case, complaints of

¹²Рекомендации 64-го специального (126-го) заседания Совета при Президенте Российской Федерации по развитию гражданского общества и правам человека на тему «Открытость и законность – главные гарантии уважения человеческого достоинства в учреждениях уголовно-исполнительной системы», 2018, *op. cit.*

¹³ For further details, see: Communication from the Public Verdict Foundation to the CCPR (136th Session (10 October – 4 November 2022) in relation to the eighth periodic report of the Russian Federation), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FCSS%2FRUS%2F47730&Lang=en

¹⁴ Committee Against Torture. Concluding observations on the sixth periodic report of the Russian Federation. CAT/C/RUS/CO/6, 28 August 2016, §§ 26, 27.

¹⁵Siberia.Realii, “They will imprison the victims.” How cases of torture are falling apart in Russia, 6 January 2022, available at: <https://www.sibreal.org/a/posadyat-poterpevshih-kak-v-rossii-razvalivayut-dela-o-pytkah/31634371.html>

torture entail a danger to the prisoners themselves, and their re-victimization.¹⁶ Prisoners' telephone conversations are also tapped by prison staff.¹⁷

24. In April 2021, a new Concept for the Development of the Penitentiary System until 2030 was approved.¹⁸ It provides, among other matters, for "relocation of penitentiary institutions outside of the cities," which will significantly complicate access to prisoners, both by relatives and by lawyers, human rights activists, and PMCs. The experts further criticise the plan to involve prisoners in the fulfillment of the FSIN contracts, both state and private.¹⁹ The Concept plans to expand the interaction between the Ombudsperson, Regional Ombudspersons, civil society institutions and public organizations, including the PMCs, in the matters of "control over the observance of the rights of convicts and detainees". However, no concrete measures to that end are specified in the Concept.

Human Rights Defenders prevented from acting

25. An important factor of impunity for torture and other human rights violations in the penitentiary system is the marked deterioration in the conditions for human rights defenders, without whom no case can be brought to public attention and litigated through to completion.

26. The criminal risks associated with human rights work have been increased by the recent legislative developments. In particular, Federal Law No. 538-FZ of 30 December 2020 provided for up to two years' imprisonment and a fine of up to 1 million roubles for publicly disseminating defamation, including through the media or the Internet. The maximum penalty is increased to 5 years' imprisonment and 5 million roubles fine for defamation combined with the accusation of a crime against the inviolability and sexual freedom or a serious or particularly serious crime.²⁰

¹⁶Man and Law, National Report "Protection of the right to access to court in the FSIN places of detention in Russia" [in Russian], available at: <https://manandlaw.info/wp-content/uploads/2021/12/dostup-k-sudu-1.pdf>
Victims of torture are also often restricted in their ability to access the assistance of human rights defenders who do not have the official status of a lawyer.

¹⁷Man and Law, "Realisation of the right to privacy of persons in detention facilities in Russia", annexed to this submission.

¹⁸Concept of the development of the system of execution of sentences until 20230. Approved the Decree of the Government of 29 April 2021, no. 1138-r, available at: http://www.consultant.ru/document/cons_doc_LAW_383610/

¹⁹Advokatskaya Gazeta, "The concept of development of the penitentiary system of Russia until 2030 has been approved", May 18, 2021: <https://www.advgazeta.ru/novosti/utverzhdjena-kontseptsiya-razvitiya-ugolovno-ispolnitelnoy-sistemy-rossii-do-2030-g/>

²⁰ As the Council of Experts on NGO Law have pointed out: "these penalties are not only disproportionate but are also likely to dissuade NGOs from exercising their duty of vigilance and information, particularly in cases involving state officials, judges (...). As a result, matters of public interest, such as exposures of corruption, the use of torture by (...) prison services (...) could be silenced because of the risk of being subjected to such draconian penalties" (CONF/EXP(2021)1, 19 February 2021 <https://rm.coe.int/expert-council-conf-exp-2021-1-opinion-amendments-to-russian-legislati/1680a17b75>). More broadly, the increase in administrative constraints in relation to the legislation on foreign agents and the reduction of the possibilities of access to foreign funding has led to a drastic reduction in the opportunities for action for the organisations concerned.

27. Human rights defenders are exposed to physical risks from prison staff involved in torture. For instance, in July 2018, the lawyer of the Public Verdict Foundation, Irina Biryukova, who handed over to Novaya Gazeta a video of the torture of prisoner Yevgeny Makarov in IK-1 in the Yaroslavl region, had to temporarily leave Russia due to threats against her.²¹

Recommendations

28. The submitting organisations respectfully ask the Human Rights Council and the UN Member States to take into consideration the information contained in the present submission and to recommend to the Government of Russia:

- To ensure independence and impartiality of the public monitoring commissions and to assist them in the effective exercise of their activities;
- To repel any discriminatory framework and regulations aimed at preventing human rights defenders from being elected to the PMCs based on their or their organisations' status of "foreign agents";
- To ensure transparency of the penitentiary system, in particular by expanding and supporting public scrutiny of places of detention and to ensure that PMCs, lawyers, and human rights defenders during their visits to places of detention are able to freely obtain, collect, and record information about human rights violations;
- To ensure that victims of torture, human rights defenders, and lawyers are able to freely report on the cases of torture without repercussions, including prosecution punitive civil actions.

Respectfully submitted,

Submitting organisations:

Man and Law – contact person: Irina Protasova, Director, zakon@manandlaw.info

Citizens' Watch – contact person: citwatchspb@gmail.com

EPLN – contact person: Hugues de Suremain, Director of Advocacy and Litigation, hugues.de-suremain@prisonlitigation.org

²¹Meduza, "Lawyer Who Released Video of Prisoner Torture Left Russia Due to Threats", 23 July 2018, available at: <https://meduza.io/news/2018/07/23/advokat-obnarodovavshaya-zapis-pytok-zaklyuchennogo-pokinula-rossiyu-iz-za-ugroz>