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On Certain Issues Encountered by the Courts in Consideration of Administrative Cases pertaining to Violation of Detention Conditions of Persons in Detention Facilities

With regard to issues encountered by the courts during consideration of administrative cases pertaining to violation of detention conditions in detention facilities, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", hereby rules to provide the following explanations:

1. The right to freedom and personal inviolability is an inalienable right of every human being, which predetermines the existence of constitutional guarantees of safeguarding and protection of personal dignity, the prohibition of torture, violence, other violent or degrading treatment or punishment (Articles 17, 21 and 22 of the Constitution of the Russian Federation).

The possibility of limiting the aforementioned right is admissible only to the extent to which it pursues the aims set in the Constitution of the Russian Federation, is performed in the manner stipulated in law, in compliance with the universal legal principles and based on criteria of necessity, reasonability and adequacy, so that the essence of this right itself remains unaffected.

Coercive measures limiting the freedom and personal inviolability, which are used when it is necessary to isolate a person from the society, keep a person within a limited space, are stipulated in legislation on administrative offences, criminal legislation, criminal procedure legislation, legislation on enforcement of criminal punishments, other federal laws and in particular include escorting [*доставление*]; compelled appearance [*привод*]; convoying [*конвоирование*]; transfer (sending) [*перевод (направление)*] of a convict to a different correction facility; other movement (e.g. to locations where investigative actions or court sessions are conducted, or to medical organisations); as well as administrative detainment [*административное задержание*]; administrative arrest; disciplinary arrest; temporary placement of a foreign citizen (stateless person), subject to expulsion from the Russian Federation, deportation or readmission, into a special institution; placement of an underage into a temporary detention centre for underage offenders of an internal affairs body or to a special custodial educational institution; detainment [*задержание*]; placement in custody [*заключение под стражу*] and remand in custody [*содержание под стражей*]; arrest; deprivation of liberty [*лишение свободы*].

The aforementioned measures are performed through compulsory placement of natural persons, as a rule to designated (allocated) institutions, premises of state bodies, their territorial bodies, structural units, other facilities in which the possibility of voluntary leave is excluded, as a result of orders (actions) of authorised persons (hereinafter – detention facilities), forced movement of natural persons in transport vehicles.

Although the grounds and manner of application of the aforementioned measures may differ, the placement of natural persons into detention facilities and their movement in transport vehicles must be performed without violation of detention conditions of persons subjected to such measures (hereinafter referred to as persons deprived of liberty), guaranteed by the Constitution of the Russian Federation, the universal principles and norms of international law, international treaties of the Russian Federation (in particular, the International Covenant on Civil and Political Rights of 16 December 1966, ratified by Decree of the Presidium of the Supreme Soviet of the USSR No. 4812-VIII of 18 September 1973; the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ratified by Federal Law No. 54 of 30 March 1998; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, ratified by Decree of the Presidium of the Supreme Soviet of the USSR No. 6416-XI of 21 January 1987), federal laws (e.g. the Code of the Russian

Federation on Administrative Offences (hereinafter referred to as the CAO RF), Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", the Code on the Execution of Sentences of the Russian Federation (hereinafter referred to as the CES RF) and other normative legal acts.

When the manner of realisation of coercive measures limiting freedom and personal inviolability is disputed, the courts may in particular take into account the documents of the United Nations (hereinafter – the UN) and of the Council of Europe, applicable to organisation of detention of persons deprived of liberty (in particular, the Universal Declaration of Human Rights of 10 December 1948; the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by UN General Assembly resolution 70/175 of 17 December 2015; the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly resolution 60/147 of 16 December 2005; the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly resolution 37/194 of 18 December 1982; the Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979; Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules, adopted on 11 January 2006; Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted on 27 September 2006; the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

2. The detention conditions of persons deprived of liberty should be understood as conditions in which the rights and duties of those persons are realised with due regard to the totality of requirements and restrictions stipulated in law (hereinafter – the regime of detention facilities). The aforementioned rights and duties are stipulated in the Constitution of the Russian Federation, in the universal

principles and norms of international law, the international treaties of the Russian Federation, federal laws and other normative legal acts, and include:

- the right to personal safety and healthcare (in particular, Articles 20, 21, 41 of the Constitution of the Russian Federation, Items 2, 8 of Part 1 of Article 7, Articles 9, 14 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Items 2, 9 of Article 17, Articles 19, 24 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Parts 3, 6, 6.1 of Article 12, Articles 13, 101 of the CES RF, Part 2 of Article 35.1 of Federal Law No. 115 of 25 July 2002 "On the Legal Status of Foreign Citizens in the Russian Federation", Sub-item 1 of Item 9 of Article 15 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System");
- the right to receive qualified legal assistance and, where necessary, to use the assistance of an interpreter (e.g. Part 2 of Article 26, Article 48 of the Constitution of the Russian Federation, Part 5 of Article 14 of Federal Law No. 3 of 7 February 2011 "On Police", Part 1 of Article 25.1 of the CAO RF, Article 11 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Article 16, Items 3, 7 of Part 4 of Article 46, Items 7, 8, 9 of Part 4 of Article 47, Articles 49, 50, 51 of the Criminal Procedure Code of the Russian Federation, Parts 5, 8 of Article 12 of the CES RF, Item 2 of Article 8 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System");
- the right to address state bodies and local self-government bodies, public monitoring commissions (Article 33 of the Constitution of the Russian Federation, Article 2 of Federal Law No. 59 of 2 May 2006 "On the Manner of Consideration of Addresses of Citizens of the Russian Federation", Item 2 of Part 1 of Article 15 of Federal Law No. 76 of 10 June 2008 "On Public Control over Human Rights Compliance in Detention Facilities and on Assistance to Persons in Detention Facilities", Item 4 of Part 1 of Article 7 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Item 7 of Article 17 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Part 4 of Article 12, Article 15 of the CES RF, Item 2 of Article 8 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System");
- the right to access to justice (Article 46 of the Constitution of the Russian Federation);

- the right to receive information directly affecting one's rights and freedoms, in particular information necessary for their realisation (Part 2 of Article 24 of the Constitution of the Russian Federation, Article 8 of Federal Law No. 149 of 27 July 2006 "On Information, Information Technologies and Protection of Information", Item 7 of Part 1 of Article 7 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Item 6 of Article 17 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Part 1 of Article 12 of the CES RF, Item 2 of Article 8 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System");
- the right to freedom of conscience and religious worship (Article 28 of the Constitution of the Russian Federation, Item 14 of Part 1 of Article 7 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Item 14 of Part 17 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Article 14 of the CES RF, etc.);
- the right to material and welfare support, provision of living, sanitary conditions and meals, walks (in particular, Parts 1, 2 of Article 27.6 of the CAO RF, Articles 7, 13 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Articles 17, 22, 23, 30, 31 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Articles 93, 99, 100 of the CES RF, Item 2 of Article 8 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System", Part 5 of Article 35.1 of Federal Law No. 115 of 25 July 2002 "On the Legal Status of Foreign Citizens in the Russian Federation", Article 2 of Federal Law No. 52 of 30 March 1999 "On the Sanitary and Epidemiological Well-Being of the Population");
- the right to self-education and spare time, to creation of conditions for labour, preservation of socially useful relations and further adaptation to life in the society (Article 7 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Articles 16, 27, 30, 31 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Part 5 of Article 35.1 of Federal Law No. 115 of 25 July 2002 "On the Legal Status of Foreign Citizens in the Russian Federation", Article 8 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System", etc.).

3. Detention of persons deprived of liberty in the designated facilities, their movement in transport vehicles must be performed in accordance with the principles of legality, fairness, equality of all before the law, humanism, protection from discrimination, personal safety and healthcare of citizens, which excludes torture, other cruel or degrading treatment and, accordingly, does not allow illegal pressure upon human beings, either physical or mental (hereinafter referred to as prohibited treatment). Anything different constitutes violation of detention conditions of persons deprived of liberty.

The fact that certain persons are provided with unlawful privileges and preferences based on sex, race, nationality, language, origin, property or employment status, place of residence, attitude to religion, convictions, membership in public associations or any other circumstances may also be a sign of violation of the aforementioned requirements (Part 2 of Article 6, Article 19 of the Constitution of the Russian Federation).

4. Violation of detention conditions constitutes grounds for the persons deprived of liberty to apply for court protection, if they believe that the actions (failure to act), decisions or other acts of state bodies, their territorial bodies or institutions, officials and state servants (hereinafter referred to as bodies or institutions, officials) violate or may violate their rights, freedoms and lawful interests (Article 46 of the Constitution of the Russian Federation).

Herewith, the courts should take into account that when an appeal is filed, the following procedural decisions are verified in the manner stipulated in the procedural legislation of the Russian Federation as regards their grounds and procedure of adoption:

- decisions on application (selection) of measures of procedural compulsion (e.g. compelled appearance (Part 2 of Article 168 of the Civil Procedure Code of the Russian Federation, Article 120 of the Code of Administrative Judicial Procedure of the Russian Federation (hereinafter – the CAJP RF), Article 113 of the Criminal Procedure Code of the Russian Federation (hereinafter – the CrPC RF), including the provisional measures in cases on administrative offences (Chapter 27 of the CAO RF) and pre-trial restriction measures [*меры пресечения*] (Chapter 13 of the CrPC RF);
- decisions on appointment of punishment in cases on administrative offences or in criminal cases;

– decisions adopted during obligatory judicial control over the observance of human and civil rights and freedoms in realisation of certain authoritative demands to natural persons (in particular, Chapters 28, 30, 31 of the CAJP RF).

Herewith, persons deprived of liberty may challenge, under the rules of the CAJP RF, the actions (failure to act), decisions or other acts of bodies or institutions, officials that violate or may violate the detention conditions in execution of the aforementioned procedural decisions (Chapters 21, 22 of the CAJP RF).

5. When determining territorial jurisdiction over administrative cases pertaining to violation of detention conditions of persons deprived of liberty, the courts should take into account that when the administrative defendant is a federal executive body, its territorial body, the administrative statement of claim may be submitted to the court of the district, on the territory of which the powers in the form of challenged actions (failure to act) were executed (not executed), or on the territory of which the challenged decision is being executed. For example, an administrative statement of claim challenging a failure to act pertaining to non-provision of minimum meal standards in a correction facility is submitted to the district court, on the territory of which such a facility is located (Part 2 of Article 22 of the CAJP RF).

If a second administrative defendant is drawn to participation in the case, this does not entail the transfer of the case to a different court, if the court initially accepted the case for proceedings in compliance with the rules of jurisdiction.

6. Administrative statements of claim pertaining to the violation of detention conditions of persons deprived of liberty may be submitted directly by a person deprived of liberty or her/his representative, who has higher legal education, which is confirmed by the corresponding documents regarding education (Articles 54 and 55 of the CAJP RF), as well as by other persons, who believe that the aforementioned decisions and other acts, actions (failure to act) violate or may violate their rights, freedoms and lawful interests, create obstacles for the realisation of their rights, freedoms and lawful interests or illegally impose any duties upon them (Part 1 of Article 4 of the CAJP RF).

For example, pursuant to Chapter 22 of the CAJP RF, a person that is a defence lawyer in accordance with the criminal procedure legislation of the Russian

Federation may challenge an action (failure to act) of an official that precludes a visit to a convicted person deprived of liberty. A person that is a representative of an underage person placed into a temporary detention centre for underage offenders of an internal affairs body or to a special custodial educational institution has a similar right.

Herewith, in such situations the court draws the person deprived of liberty to participation in the case in the capacity of an interested person. Moreover, the person deprived of liberty may upon its own initiative join the proceedings as an administrative co-plaintiff (Part 2 of Article 41 of the CAJP RF).

Persons deprived of liberty, whose detention conditions are violated or may be violated, may also apply to court with a collective statement of claim (Article 42 of the CAJP RF).

7. During prosecutor's oversight, in particular when a prosecutor checks the enforcement of laws by the administration of bodies and institutions executing punishment and court-appointed compulsory measures, by the administration of facilities where detained persons and persons in custody are held, a prosecutor may apply to court with an administrative statement of claim, in particular for the protection of rights and lawful interests of persons deprived of liberty, which includes a claim to comply with detention conditions, in particular a claim to ensure minimum meal standards, due material and welfare support (Part 1 of Article 39 of the CAJP RF, Article 35 of Federal Law No. 2202-I of 17 January 1992 "On the Prosecution Service of the Russian Federation").

The Commissioner for Human Rights in the Russian Federation, the commissioner for human rights in a constituent entity of the Russian Federation, the Presidential Commissioner for the Rights of the Child, the commissioner for the rights of the child in a constituent entity of the Russian Federation, the Presidential Commissioner for Entrepreneurs' Rights, the commissioner for entrepreneurs' rights in a constituent entity of the Russian Federation may also apply to court for the protection of rights and lawful interests of persons deprived of liberty, stating claims pertaining to violation of those persons' detention conditions (Part 1 of Article 40 of the CAJP RF, Articles 21, 29 of Federal Constitutional Law No. 1 of 26 February 1997 "On the Commissioner for Human Rights in the Russian Federation", Item 4 of Part 5 of Article 4, Item 2 of Part 3 of Article 10 of Federal Law No. 78 of 7 May 2013 "On Commissioners for Entrepreneurs' Rights in the

Russian Federation", Item 7 of Part 1 of Article 10 of Federal Law No. 212 of 21 July 2014 "On the Basics of Public Control in the Russian Federation", etc.).

8. By virtue of Item 2 of Part 1 of Article 126 of the CAJP RF, an administrative statement of claim must be accompanied, as a rule, by a document confirming the payment of the state fee in the stipulated manner and amount or confirming the right to relief from payment of the state fee, or a motion for postponement of payment, payment by instalments or decrease of the amount of the state fee and by documents indicating that there are grounds for this (Articles 103, 104 of the CAJP RF).

If the decrease of the amount of the state fee, postponement of payment (payment by instalments) are insufficient to ensure unobstructed access of the person deprived of liberty to justice, e.g. when the case concerns a convicted person sentenced to deprivation of liberty and placed into an institution of the penitentiary system, who is unemployed and does not have sufficient monetary funds in her/his personal account, the court, pursuant to Item 2 of Article 333.20 of the Tax Code of the Russian Federation and proceeding from the property status of such a person, may exempt her/him from payment of the state fee upon that person's motion.

9. Taking into account that the person participating in the case pertaining to violation of detention conditions is a person deprived of liberty, the court should take all the measures within its powers, which help that person enjoy her/his rights stipulated in Article 45 of the CAJP RF, as well as additionally explain to her/him the right or duty to conduct the case through a representative (Part 1 of Article 54, Part 9 of Article 208 of the CAJP RF).

Herewith, the administrative plaintiff her-/himself determines the person that will participate in the court sessions in the capacity of a representative (advocate), at the plaintiff's own expense, except when Part 4 of Article 54 of the CAJP RF applies.

Taking into account the situation of a person deprived of liberty, he/she must be timely handed all the copies of documents referred to in the CAJP RF, including the copies of judicial acts; provided with time necessary to conclude a contract with the representative, prepare and forward her/his explanations, objections to the court, present the evidence confirming her/his claims (where available), as well as to exercise other procedural rights.

10. The right of persons deprived of liberty to be heard in court must be ensured; in particular, it may be realised through the use of videoconferencing (Parts 1, 2 of Article 142 of the CAJP RF).

Herewith, the person deprived of liberty must be provided with the opportunity to realise her/his procedural rights stipulated in Article 45 of the CAJP RF – in particular to apply for recusals, to pose questions to other participants of court proceedings, to provide explanations to the court, state her/his arguments regarding all the issues raised during the trial, to object against motions and arguments of other persons participating in the case.

In this regard, the court should explain to the person deprived of liberty the right to participate in the court session with the use of videoconferencing systems. This explanation should be contained in a court decree, for example in the court decree regarding the acceptance of the case for proceedings.

If the corresponding motion is received, the issue of ensuring the right of the person to be heard in court may be resolved on the stage of preparation of the administrative case for the trial by adoption of a court decree forwarded to the address of that person, taking into account that he/she should be provided with reasonable time to prepare for participation in the court session.

Witnesses deprived of liberty may also be questioned with the use of videoconferencing.

Moreover, by virtue of Article 66 of the CAJP RF, the court may instruct a court at the location of the person deprived of liberty to obtain that person’s explanations regarding the facts of the case or to perform other procedural actions necessary for the consideration and adjudication of the administrative case.

11. If there exists a real threat to the life or health of the person deprived of liberty, the court should take all the measures within its powers to consider the administrative case pertaining to the violation of that person’s detention conditions as quickly as possible (Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part 4 of Article 135 of the CAJP RF) and (or) to issue a court decree regarding preliminary protection measures (e.g. to transfer that person into a different facility without changing the

regime of detention, to conduct a medical examination) (Article 85 of the CAJP RF).

12. When checking compliance with the three-month term for applying to court, stipulated in Part 1 of Article 219 of the CAJP RF, the courts should act on the premise that violation of detention conditions of persons deprived of liberty may be of continuous nature. Therefore an administrative statement of claim to recognise as unlawful the failure to act of a body or institution, official, pertaining to violation of detention conditions of persons deprived of liberty, may be filed during the whole term, within which the body or institution, official has the duty to perform a certain action, as well as within three months after that duty ceases to exist.

13. By virtue of Parts 2 and 3 of Article 62 of the CAJP RF, the burden to prove that the detention conditions of persons deprived of liberty are observed lies on the administrative defendant – the corresponding body or institution, official, who should confirm the facts on which their objections are based.

Herewith, in the text of the administrative statement of claim, as well as during the consideration of the case, the administrative plaintiff, prosecutor, as well as other persons applying for the protection of rights, freedoms and lawful interests of other persons or of the general public, should submit to the court the information regarding (inform the court about) what rights, freedoms and lawful interests of the person applying to court or of the person, in whose interests the administrative statement of claim was filed, were violated, or regarding the reasons that may result in their violation, should present the arguments on which the stated claims are based, should attach the corresponding documents they have in possession (in particular, the descriptions of detention conditions, medical conclusions, addresses sent to state bodies and institutions and responses to such addresses, documents containing information about the persons who performed public control, as well as about the persons deprived of liberty, who may be questioned as witnesses, if available) (Articles 62, 125, 126 of the CAJP RF).

Taking into account the objective complications of gathering of evidence regarding the violation of detention conditions of persons deprived of liberty, the court supports the administrative plaintiff in realisation of its rights and takes the measures stipulated in the CAJP RF, in particular to discover and request the evidence upon its own initiative (e.g. requests the available materials resulting from exercise of public control by public monitoring commissions, as well as the

materials of checks performed within the framework of prosecutor's oversight or internal control).

In order to realise the tasks of administrative judicial procedure, the court may in particular oblige the administrative defendant to conduct video-, photo recording and (or) to submit video recordings, photos of the premises of detention facilities (indications must be made as to when, by whom and in what circumstances those recordings were made), information regarding the exact measurements of the premises, air temperature and illumination inside them, other written and material evidence, which is attached to the materials of the administrative case (Articles 70, 72, Part 1 of Article 76 of the CAJP RF).

Persons that conducted video and photo recording, provided other evidence requested by the court, as well as persons engaged in public control, in particular members of public monitoring commissions, may be questioned as witnesses.

Moreover, the court may appoint a sanitary and epidemiological expert examination or a different expert examination of detention conditions in the detention facility. The court decree appointing the expert examination is binding for all public authorities, local self-government bodies, officials without exception and is subject to strict observation (Part 1 of Article 6 of Federal Constitutional Law No. 1 of 31 December 1996 "On the Judicial System in the Russian Federation", Article 16 of the CAJP RF).

Obstruction of execution of the corresponding court decree may entail criminal liability for the guilty persons (Article 315 of the Criminal Code of the Russian Federation).

The facts confirming that detention conditions are unsatisfactory, if acknowledged by the administrative defendant, or if an agreement is reached by the parties in that regard, may be accepted by the court as facts that require no further proof (Article 65 of the CAJP RF).

14. Detention conditions of persons deprived of liberty must meet the requirements stipulated in law, with due regard to the regime of the detention facility. Therefore, significant departures from such requirements may be regarded by the court as violation of said conditions.

Thus, the courts should take into account that, for example, the following may serve as evidence of violation of detention conditions of persons deprived of liberty: overcrowding of cells (premises), lack of possibility to freely move between pieces of furniture, absence of individual beds, of natural light or artificial illumination sufficient for reading, lack of or insufficient ventilation, heating, lack of or failure to provide the possibility of spending time in the open air, obstructed access to common facilities corresponding to the detention regime, in particular to sanitary facilities, lack of sufficient privacy in such facilities (where this is not due to safety requirements), lack of possibility to sustain the necessary level of personal hygiene, violation of requirements to the microclimate of premises, quality of air, food, drinking water, to protection of persons deprived of liberty from noise and vibrations (e.g. Article 7 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Articles 16, 17, 19, 23 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Article 99 of the CES RF).

At the same time, when resolving administrative cases, the courts may take into account the facts that proportionately compensate for the committed violations and improve the situation of persons deprived of liberty (e.g. an insignificant departure from the statutory floor area per person inside the premises may be compensated by creation of conditions for useful activities (in particular, for education, sports and spare time, labour, professional activities) outside of the premises).

15. Based on the legal status of certain categories of persons deprived of liberty (e.g. pregnant women, nursing mothers, disabled persons, underage persons), the courts should take into account concrete circumstances, in particular the age, state of health, ability to care for oneself, as well as the conclusions of experts that performed medical expert examinations, if they show that these persons are in need of specific detention conditions.

For example, if a person that is unable to move on her/his own or is suffering from a life-threatening illness (condition) is put in detention without regard to her/his health features and does not receive due care from the employees of the body or institution (in particular, assistance in moving and hygienic procedures), this may be a sign of violation of detention conditions (Part 1 of Article 20, Article 21 of the Constitution of the Russian Federation, Part 2 of Article 90, Parts 5, 6 of Article 99, Article 100, Parts 6, 7 of Article 101 of the CES RF, Part 3 of Article 62 of the CAJP RF).

16. When assessing whether the right to access to qualified legal assistance was ensured, the courts should take into account, within what time from the moment of restriction of liberty the person was provided with an opportunity to exercise this right, in particular through communication with a defence lawyer (advocate) over telephone, the duration and confidentiality of conversation with the defence lawyer (advocate), depending on the regime of the detention facility (Part 3 of Article 27.3 of the CAO RF, Part 5 of Article 14 of Federal Law No. 3 of 7 February 2011 "On Police", Part 2 of Article 11 of Federal Law No. 67 of 26 April 2013 "On the Manner of Serving Administrative Arrest", Part 4 of Article 89 of the CES RF, etc.).

The court should also study whether the relatives and close ones of the detained person were immediately informed about the fact of restriction of liberty (e.g. Parts 7, 8, 14 of Article 14 of Federal Law No. 3 of 7 February 2011 "On Police", Parts 3, 4 of Article 27.3 of the CAO RF, Item 2 of Article 8 of Federal Law No. 120 of 24 June 1999 "On Basic Principles of Child Neglect and Underage Offences Prevention System", Part 3 of Article 46 of the CrPC RF, Part 3 of Article 62, Part 1 of Article 63 of the CAJP RF).

17. When considering administrative cases pertaining to non-provision or undue provision of medical assistance to a person deprived of liberty, the courts, with due regard to the constitutional right to healthcare and medical assistance, should take into account the legislation on healthcare of citizens and should also act on the premise that the necessary medical service provided in detention facilities should be of proper quality, with due regard to the regime of detention facilities, and should be in compliance with the rules of rendering of medical assistance, binding on the territory of the Russian Federation for all medical organisations, as well as in compliance with the medical assistance standards (Article 41 of the Constitution of the Russian Federation, Article 4, Parts 2, 4 and 7 of Article 26, Part 1 of Article 37, Part 1 of Article 80 of Federal Law No. 323 of 21 November 2011 "On the Basics of Healthcare of Citizens in the Russian Federation").

When assessing whether the medical service provided to persons deprived of liberty corresponded to the stipulated requirements, the court, taking into account the principles of healthcare of citizens, may in particular take into account the following: whether such service was accessible (whether there were pharmaceuticals with corresponding expiration dates available); whether the diagnostics were conducted timely and correctly; whether the provided medical assistance was tantamount to the state of health; whether treatment had therapeutic

and prophylactic aims, was consecutive, regular and uninterrupted; whether confidentiality was ensured, and the patient was informed; whether documentary evidence exists; whether the medical personnel was professionally competent; whether the person deprived of liberty was provided with technical means of rehabilitation and with the services stipulated in the individual programme of rehabilitation or habilitation of a disabled person (Article 4 of Federal Law No. 323 of 21 November 2011 "On the Basics of Healthcare of Citizens in the Russian Federation", Part 7 of Article 101 of the CES RF).

Herewith it should be noted that the state of health of the person deprived of liberty does not itself serve as evidence of the quality of rendered medical assistance. For example, medical examination acts and other medical documentation may serve as evidence of due realisation of right to medical assistance, including medical examination (in particular, when measures of physical coercion were used against the person deprived of liberty). The absence of information in regard of the necessary medical examination and (or) medical investigation may indicate that detention conditions were violated (Article 24 of Federal Law No. 103 of 15 July 1995 "On Remand of Persons Suspected and Accused of Crimes in Custody", Article 84 of the CAJP RF).

18. When the conditions of transportation of persons deprived of liberty are challenged, the courts should take into account that such transportation should always be carried out in a humane and safe way. Therefore, when assessing whether the transportation conditions were adequate, the court should in particular take into account: whether the transportation safety requirements applicable to the corresponding transport means were observed; the passenger capacity of the transport vehicle; the duration of stay of the aforementioned persons in the transport vehicle; the area per person, height, illumination and ventilation, air temperature in the transport vehicle; whether drinking water and hot meals were available during long transportation; whether the person was given an opportunity to take the documents necessary for realisation of procedural rights and duties stipulated in law; whether it was possible for that person to address the accompanying persons; whether the transportation conditions were adequate to the state of health of the transported person.

The court must conclude whether the transportation was humane and safe after studying the totality of the aforementioned facts (Part 1 of Article 20, Article 21 of the Constitution of the Russian Federation, Article 20 of Federal Law No. 196 of 10 December 1995 "On Traffic Safety").

19. The concrete location in which a convicted person will serve the criminal punishment in the form of deprivation of liberty cannot be determined or changed arbitrarily, this must be done in accordance with the requirements of the law. Herewith, the court should take into account the lawful interests of the convicted person, which guarantee her/his correction, as well as preservation, maintenance of socially useful family relations (Articles 73, 81 of the CES RF).

In this regard, when considering an administrative statement of claim of a convicted person, sentenced to deprivation of liberty, challenging the decision to send her/him to a correction facility located outside of the constituent entity of the Russian Federation in which he/she resided or was convicted, the court should establish whether at the moment when that person was sent there it was possible (impossible) to place her/him into a correction facility of the necessary type located within the corresponding constituent entity of the Russian Federation (Part 2 of Article 73 of the CES RF).

When adjudicating a case of challenge of a decision to send a person, referred to in Part 4 of Article 73 of the CES RF, to a correction facility, the court should clarify the reasons for which the administrative defendant chose that exact correction facility, in particular as regards its location.

Repeated transfers from one facility to another, where not based on the need to perform procedural actions stipulated in the legislation of the Russian Federation or to ensure the personal safety of the person deprived of liberty, may be a sign of prohibited treatment.

20. When assessing whether the use of physical force, special means and measures of mental, physical pressure was lawful, the courts should take into account, that if such coercion was used for lawful purposes, within the admissible limits and, accordingly, was an adequate (proportionate) measure, then even if such measures violated the right to personal inviolability (in particular, caused pain), this cannot be regarded as prohibited treatment (Chapter 5 of Federal Law No. 3 of 7 February 2011 “On Police”, Chapter V of the Law of the Russian Federation No. 5473-I of 21 July 1993 “On Institutions and Bodies Executing Criminal Punishment in the Form of Deprivation of Liberty”, Sub-item 2 of Item 10 of Article 15 of Federal Law No. 120 of 24 June 1999 “On Basic Principles of Child Neglect and Underage Offences Prevention System”, Article 86 of the CES RF).

Based on the above, the courts should take into account the regime of detention facilities; the grounds, conditions, aims and consequences of use of the aforementioned measures, their adequacy; whether their use terminated directly after the threat of violation of rights protected by law and of law and order was cleared; whether and how this was documented; where necessary – whether corresponding medical examination or treatment was provided timely.

No circumstances, including the instructions of higher bodies or officials and the grave nature of violations committed by a person, can be regarded as justification of prohibited treatment of that person (in particular, when unlawful actions (failure to act) occur in regard of persons deprived of liberty) or serve as grounds to exempt the guilty persons from liability (paragraphs 2, 3 of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

21. If during consideration of an administrative case pertaining to violation of detention conditions the court discovers elements of a crime in the actions (failure to act) of bodies or institutions, as well as of officials, it should forward the corresponding information (e.g. a copy of the minutes of a court session or an excerpt from it) to bodies of inquiry or preliminary investigation, so that a decision is made in the manner stipulated in the criminal procedure legislation of the Russian Federation (paragraph 1 of Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part 4 of Article 200 of the CAJP RF).

22. By virtue of Part 8 of Article 226 of the CAJP RF, the court is not bound by the reasons and arguments contained in the administrative statement of claim on recognition of a decision, action (failure to act) of a body or institution, official, pertaining to violation of detention conditions, as unlawful and clarifies the circumstances indicated in Parts 9 and 10 of the aforementioned Article in full volume.

In this regard, if the plaintiff renounces her/his administrative claim (in particular, when persons deprived of liberty, whose rights to adequate detention conditions were violated, apply to court with a collective administrative statement of claim), the court may refuse to accept such renunciation, if it contradicts the legislation, violates the rights and lawful interests of other persons, precludes the protection of public interests.

Taking into account the features of this category of administrative cases, the court should in every case take measures to establish the reasons for which the administrative plaintiff decided to renounce the administrative claim.

23. If a person deprived of liberty is transferred to another detention facility or released, this does not constitute grounds to terminate proceedings in the administrative case without studying, on the merits, whether adequate detention conditions were ensured, whether the rights and lawful interests of that person were observed prior to the transfer (release).

In order to remedy the committed violations of rights and freedoms of the administrative plaintiff, the court should in any case establish whether the challenged actions (failure to act) have been terminated, whether their negative consequences have been remedied.

24. When considering the administrative cases on challenge of decisions, actions (failure to act) of bodies or institutions, officials, pertaining to violation of detention conditions of persons deprived of liberty, the court, pursuant to Item 1 of Part 3 of Article 227 of the CAJP RF, takes all the necessary measures (in particular, requests the evidence necessary to determine the scope of duties that will be imposed upon the administrative defendant in the event of satisfaction of the administrative claim) and also stipulates a reasonable and sufficient term for the performance of certain actions, remedy of committed violations of rights, freedoms and lawful interests of the administrative plaintiff (interested person), taking into account the terms for performance of procedures stipulated in the Budgetary Code of the Russian Federation, the legislation of the Russian Federation in the sphere of procurement of goods, works, services for state and municipal needs on the one hand and, on the other hand, the need to effectively remedy the committed violations and (or) their consequences in exceptional circumstances (in particular, when there is a threat to the life, health of persons deprived of liberty).

25. When an administrative claim pertaining to the violation of detention conditions is satisfied, the incurred court costs (including the state fee) are subject to recovery from the administrative defendant, in particular when the latter is a state body, since the CAJP RF does not contain exceptions as regards reimbursement of court costs incurred by the party in whose favour the decision is adopted, in particular when the other party is exempt from paying the state fee by virtue of law (Part 1 of Article 111 of the CAJP RF).

26. If the administrative claim is satisfied, the administrative defendant must inform the court, the administrative plaintiff and the person, in whose interests the corresponding statement of claim was filed, about the execution of the court decision within one month since the day of its entry into force (Part 9 of Article 227 of the CAJP RF).

If within the aforementioned time the court is not informed about the execution of the decision subject to execution, in accordance with which the administrative defendant was obliged to perform certain actions (make a certain decision), as well as when the court decision must be executed within a shorter time, the decision is enforced by virtue of an enforcement document in the manner stipulated in the legislation on enforcement (Articles 1, 105 of Federal Law No. 229 of 2 October 2007 "On Enforcement Procedure").

The court may order immediate execution of the decision, if due to special circumstances a delay in the execution of the decision (in the part regarding the administrative defendant's duty to remedy the violations and (or) their consequences) may significantly harm public or private interests (Part 2 of Article 188 of the CAJP RF).

27. If during the consideration of an administrative case the court establishes that a body or institution, official failed to ensure the detention conditions stipulated in law, this may constitute grounds for adoption of a special court decree (Article 200 of the CAJP RF).

In order to safeguard and protect the rights, freedoms and lawful interests of persons deprived of liberty, the court may deem it necessary to publish the decision in the administrative case pertaining to violation of detention conditions of such persons in a printed publication at the court's discretion (Part 13 of Article 226, Item 4 of Part 3, Part 10 of Article 227 of the CAJP RF).

Chief Justice of the Supreme Court of
the Russian Federation V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation V.V. Momotov