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Request for an opinion

In a petition to the Chancellor of Justice, a defence counsel of a person staying in prison explained that the counsel had wished to speak with their client but the client had no money in their prison account in order to call the counsel. The attorney themselves wanted to call their client but no such possibility exists in prisons.

Consequently, the counsel must personally go to the prison if their client has no money to call them. This, however, makes carrying out their duty as counsel much more inconvenient and time-consuming for an attorney (in comparison to keeping in touch with a client swiftly by telephone). In particular, if the client is in a prison located far away from the attorney's place of work. This also leads to an increase in travel and other procedural costs, which could be avoided or significantly reduced in case of maintaining contact by telephone.

In 2022, serious [signals](#) have been received that the state legal aid system works at the limit of its capacity and the state legal aid funding is insufficient. Making it difficult to provide state legal aid and legal assistance in general to a person in prison endangers a person's right to a fair trial (§ 15(1) [Constitution](#)) and the right of a criminal suspect to defence (§ 21(1) [Constitution](#); see the Chancellor of Justice opinion of 17 November 2022 [No 6-10/221608/2206035](#)). In such a situation, it seems excessive to spend the already scarce resources of state legal aid providers on travel to prison if legal advice could also be effectively provided, for example, by telephone.

Organising meetings with an attorney is also burdensome for prisons. The working time of prison officers is spent on receiving a counsel and escorting sentenced and remand prisoners to a meeting with their counsel.

Thus, the current procedure for phone calls in prisons leads defence counsels to choose slower and more costly solutions, puts pressure on the state legal aid system and compromises people's right of defence.

Under [§ 28](#) subsection (2) and [§ 96](#) subsection (2) of the Imprisonment Act, the use of the telephone takes place at the expense of a sentenced or remand prisoner. These provisions do not prohibit a sentenced or remand prisoner from calling at the expense of the receiver of the call (see e.g. Supreme Court judgment of 1 March 2007 [No 3-3-1-103-06](#), para. 10). Criminal proceedings-related communication costs of a party to proceedings may be covered by the concept of “other necessary costs” mentioned in [§ 175](#) subsection (1) clause 1 of the Code of Criminal Procedure (see E. Kergandberg, P. Pikamäe (compiled by), “Kriminaalmenetluse seadustik. Kommenteeritud väljaanne“ (Code of Criminal Procedure. Annotated edition), comments on § 175). Thus, the legislation does not prevent a person in prison from being given the opportunity to call a counsel at the counsel’s expense or a counsel to call the prison. It is also not prohibited to record the cost of telephone calls with counsel under procedural costs.

I ask the Ministry of Justice to express an opinion on this issue as well as an opinion on possible solutions by 17 February 2023 at the latest.

Yours sincerely,

/ signed digitally/

Ülle Madise