



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 5 May 2022

in Case No. 2021-32-0103

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, and Anita Rodiņa,

having regard to Aivars Lemberg's constitutional complaint,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 1), as well as Section 19² and Section 28¹ of the Constitutional Court Law,

at the court hearing of 5 April 2022 examined in written procedure the case

“On Compliance of Paragraph 10 of Section 13 (1) of the Law on the Procedures for Holding under Arrest and of Paragraph 10 of Annex 4 to the Cabinet of Ministers Regulation of 27 November 2007 No. 800 “Internal Procedure Regulations of Remand Prisons” with the First Sentence of Article 101 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 22 June 2006, the *Saeima* adopted the Law on the Procedures for Holding under Arrest, which entered into force on 18 July 2006. Para 10 of Section 13 (1) of the Law on the Procedures for Holding under Arrest provides that an arrested person has the right “to use personal small-scale household

appliances – a TV set (the size of the screen up to 50 cm cornerwise) and the video games to be connected thereto, and also a refrigerator, water heating appliances, transistor radio (without the possibility of voice recording). The total weight of the household appliances to be used in individual use shall not exceed 30 kilograms”.

On 27 November 2007, the Cabinet adopted Regulation No. 800 “Internal Procedure Regulations of Remand Prisons” (hereafter – Regulation No. 800), which entered into force on 1 December 2007. Annex 4 to Regulation No. 800 defines the objects and food products, which an arrested person has the right to keep. Para 10 of this Annex includes a small-scale TV set (the size of the screen up to 50 cm cornerwise), video games to be connected to the TV, as well as a small-size refrigerator, and a transistor radio.

2. The applicant – Aivars Lembergs (hereafter – the Applicant) , at the moment of submitting the application, was a councillor of a local government council and, until 1 July 2021, also its chairperson. At the local government election of 5 June 2021, the Applicant was re-elected to the local government council.

By the judgement of 22 February 2021 of the first instance court, which has not entered into effect, the Applicant has been sentenced, *inter alia*, to deprivation of liberty. Likewise, the applied security measure – prohibition of certain employment – has been revoked by the aforementioned judgement, and another security measure had been applied – arrest. While being under arrest, he had asked the head of the remand prison permission to use his personal computer hardware with Internet access in order to perform his duties of the councillor and chairperson of the local government council. The Applicant’s request had been dismissed, on the basis of Para 10 of Section 13 of the Law on the Procedure for Holding under Arrest (hereafter – the contested provision of the law) and Para 10 of Annex 4 to Regulation No. 800 (hereafter – the contested provision of the regulation). The Applicant holds that the contested provision of the law and the contested provision of the regulation (hereafter also – the contested provisions), insofar they prohibit an arrested person, to whom arrest has been applied by a convicting judgement,

which has not entered into effect, from using personal computer hardware with Internet access, in order to perform the duties of a councillor, are incompatible with the right to participate in the work of the State and local government, included in the first sentence of Article 101 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*), as well as the right, included in the first sentence of Article 106 of the *Satversme*, to freely choose one's employment.

It is contended that, in order to participate in the sittings of the local government council and perform other functions of the councillor and the chairperson of the council, the Applicant needs the permission to communicate remotely only with the local government council. A local government councillor is said to have not only the right to participate in the work of the local government council, sittings of its committees and to vote during them, but the law "On Local Governments" and the Regulation of the particular council, specifically, guarantee the right to exercise this right remotely.

The contested provisions are said to be contrary also to the principle of good legislation because the *Saeima* and the Cabinet had failed to respond to the development of social reality and technologies, as well as the consequences of Covid-19 pandemic and had not considered the possibility of allowing the arrested person to work remotely, by using personal computer hardware with Internet access.

The restriction on fundamental rights, included in the contested provisions, is said to have a legitimate aim – protection of public security, and this aim can be reached by them. However, the Applicant holds that alternative measures for reaching the legitimate aim of the restriction on fundamental rights exists. Differentiation should be made between the cases when arrest as the security measure has been applied to a person and active investigation is ongoing in the criminal proceedings, and the cases when investigatory activities already have been completed and the person has been sentenced and the sentence, however, has not yet entered into effect. Namely, if arrest has been applied during the pre-trial criminal proceedings, its purpose is to ensure unhindered course of investigation and adoption of an objective decision, precluding the suspected or accused person

from influencing witnesses and victims, hiding evidence. However, if arrest as a security measure has been applied to a person, who already has been sentenced, then the purpose of arrest is to ensure that the person will not escape execution of the punishment. Moreover, if arrest has been applied by a court's judgement, actually, the enforcement of the custodial punishment is commenced because the time spent under arrest is counted in the term of custodial punishment. Hence, an arrested person in cases, where the investigatory activities have been completed and he has been sentenced, should be equated to a sentenced person. In cases where the person already has been sentenced but the judgment has not yet entered into force, there are no grounds to set stricter restrictions for such an arrested person with respect to employment than for a sentenced person. Since sentenced persons have the right to keep personal computer hardware with Internet access, this right should also be defined for an arrested person who has been sentenced and whose judgement has not yet entered into effect. The legislator could envisage in the Law on the Procedure for Holding under Arrest the right of the prison administration to decide on case-by-case basis on the permission to an arrested person to use in a controlled way personal computer hardware with Internet access if he submits such a request. The Applicant also notes that, in many Member States of the European Union, persons in custody have the right to use, in a controlled manner, computer hardware with Internet access.

The public benefit from the restriction on fundamental rights, defined in the contested provisions, is said to be negligible compared to the damage inflicted upon the Applicant because, during the entire period of arrest, he is unable to work, gain income and participate in supporting the family. Local government councillors, elected by citizens, are said to be political officials who have been democratically legitimised and adopt decisions in the interests of their electors. Hence, in the case where the security measure – arrest – has been applied to a political official, a court's decision may not be placed higher than the trust expressed by voters during general election.

In his opinion on materials in the case, the Applicant notes that, in criminal proceedings, all evidence, including testimonies by victims and witnesses, are

recorded during the course of investigating the criminal case and are verified by the first instance court. A situation, where victims and witnesses who already have been interrogated during the pre-trial proceedings and at the first instance court, would change the testimonies, given by themselves, in favour of the accused and the appellate instance court would grant credibility to such, amended testimonies, is said to be impossible.

The solution that would suite the Applicant's interests also would be provision by the prison of the computer hardware with Internet access, paid for by the Applicant, thus, precluding the possibility of using unallowed software. Ensuring the stay of arrested persons in prison and controlling of these persons will always require certain financial and human resources. However, in a state governed by the rule of law, this circumstance may not serve as a justification for not striving to ensure such humane circumstances to an arrested or a convicted person that would allow him later to return to society as a full-fledged member of it, *inter alia*, with digital skills. Moreover, there are no grounds to consider that ensuring control over computer hardware and the Internet in the prison would require incommensurate financial resources.

One can agree that a person in custody may not leave freely the prison, and it follows from the nature of custody that the respective person may not do on-site work outside the prison. Whereas remote working is compatible with the nature of custody, and the opinion that application of custody to a person would deny it the possibility to work is said to be unfounded.

3. The institution that issued the contested act – the *Saeima* – holds that the contested provision of the law is compatible with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*.

The restriction on fundamental rights, included in the contested provision of the law, is said to be established by a law, adopted in due procedure. The Applicant's considerations regarding the incompatibility of the contested provision of the law with the principle of good legislation because it had not been revised in accordance with the development of social reality, technologies and the

circumstances of Covid-19 pandemic are said to lack legal relevance. I.e., whether the legislator has an obligation, derived from the *Satversme*, to ensure to the Applicant the possibility to use personal computer hardware with Internet access so that he would be able to participate in the local government council's work, should be verified by examining the restriction on fundamental rights on its merits.

The restriction on fundamental rights, included in the contested provision of the law, is said to ensure order and security in prisons and unhindered course of criminal proceedings, thus, protection of other persons' rights and public security are said to be the legitimate aims of this restriction.

The chosen measure is said to be suitable for reaching the legitimate aims of the restriction on fundamental rights, included in the contested provision of the law, because general prohibition for arrested persons to use personal computer hardware with Internet access eliminates any risk that it could be used for engaging in such activities, which, possibly, were directed against order and security in the prison or are linked to hindering the judicial proceedings, evasion of enforcing the court's judgement or using unlawful methods and influencing witnesses.

Allegedly, there are no more lenient measures that would allow reaching the legitimate aims of the restriction on fundamental rights in, at least, the same quality because if arrested persons were granted personal computer hardware with Internet access they would gain the possibility to hinder the course of criminal proceedings; moreover, control of activities undertaken on the Internet is said to be complicated and time-consuming, and would require not only additional human but also additional financial resources.

The public benefit from the restriction on fundamental rights, included in the contested provision of the law, is said to be significant because it prevents the possibility that an arrested person, by using personal computer hardware and access to the internet, might hinder the course of criminal proceedings or escape execution of the court's judgement. Likewise, the possibility that the arrested person might attempt to take unlawful actions to influence victims and witnesses is also prevented. Society may develop certainty that an objective ruling will be adopted, which will provide fair regulation on criminal law relations. Finally, the

restriction on fundamental rights, included in the contested provision of the law, eliminates the possibility that the arrested person, by using a computer with Internet access, might endanger the order and security in the prison. The Applicant's fundamental rights are restricted only for the period of applying arrest, and the term for applying such a security measure has been limited by law, and alternative forms of communication and employment are ensured to the arrested person.

4. The institution that issued the contested act – the Cabinet – notes in its written response that the contested provision of the regulation is compatible with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*.

Allegedly, the Criminal Procedure Law and the Law on the Procedures for Holding under Arrest do not differentiate between arrested persons depending on whether a convicting judgement has already been passed and it has not yet entered into effect. Pursuant to the Law for the Procedures of Holding under Arrest, all arrested persons have identical status. Hence, the Cabinet holds that the Applicant's statement that an arrested person, with respect to whom a convicting court's judgement has already been passed in criminal proceedings, which has not yet entered into force, could be compared to a person who already has been convicted by a court's final judgement and is serving the sentence of deprivation of liberty is unfounded

In an open prison, sentenced persons have the possibility to study or work with an employee outside the institution for deprivation of liberty to facilitate their integration in society.

Therefore, this group of sentenced persons has the right to request permission to use personal computer hardware with Internet access if it is needed for work or studies. However, this group of sentenced persons is said to be an exception because for them the process of executing the punishment and of resocialisation already has entered the final stage when closer ties with society

need to be restored. In general, persons in custody do not have the right to keep computer hardware with Internet access.

By transferring to a person in custody computer hardware with Internet access, the possibility that he would continue planning criminal offences, exert unwelcome influence would increase significantly, abiding by the restrictions imposed upon persons in custody would be jeopardised, and the need for control measures would increase notably. Hence, it would be hard to gain full confidence regarding the effectiveness of the control measures and that the prohibitions regarding the content of websites or running of software, established in the prison, are not circumvented.

The Applicant is linking the use of computer hardware exactly with the use of the internet, which is an open type of communication. Presently, the Internet comprises also the possibility of transferring voice and images and the possibility to conduct various activities remotely. Although activities conducted on the Internet are traceable and, also, various websites and installation of software also can be blocked, however, it is alleged that it is almost impossible to make such control sufficiently swift or effective. There are many methods for circumventing the aforementioned control measures. Mobile internet in a computer cannot be controlled also, *inter alia*, because normative regulation does not impose an obligation upon communication services operators to conduct on-demand filtration of websites.

The contested provision of the regulation is said to have been adopted in due procedure. The restriction, which prohibits an arrested person to use personal computer hardware with Internet access, had been established to ensure order and security in a remand prison. The arrested person could use the computer to conduct such activities, which might jeopardize reaching the purposes of criminal proceedings, as well obtaining prohibited information or influencing witnesses. Hence, the legitimate aim of the contested provision of the regulation is said to be protection of public security and the order of a democratic state.

The general prohibition for an arrested person to use personal computer hardware with Internet access, allegedly, eliminates any risk that it could be used

for conducting such activities, which, possibly, are aimed against order and security in the prison or influence the course of criminal proceedings. Thus, the restriction on fundamental rights, envisaged in the contested provision of the regulation, is said to be suitable for reaching the legitimate aims – protection of public security and the order of a democratic state.

If, in a remand prison, an arrested person were allowed to use personal computer hardware with Internet access, the administration of the remand prison would need to check not only whether prohibited objects are not kept in the computer but also inspect the entire information stored in it. Inspection of computer hardware, in particular, the content within it and the activities conducted with it, would require long time, as well as involvement sizeable personal and technical resources. Hence, inspection of the computer hardware, kept by an arrested person, as well as activities conducted by it, would be linked to disproportionate use of the remand prison's resources; moreover, such mandatory inspection, inevitably, would hinder the Applicant in the performance of his job-related duties. Hence, there are no other measures that would restrict the rights of an arrested person to a lesser extent but would allow reaching the legitimate aims in the same quality.

The Cabinet draws attention to the fact that remote work at the sittings of a local government council and committees is not admissible and is not a traditional way of organising work but is possible only as an exception in special, concrete situations, indicated in the law “On Local Governments”. By being away from the council's premises for a prolonged period, moreover, being in another place where many restrictions exist, a councillor is unable to perform all of his duties in full.

5. The summoned person – the Ministry of Justice – subscribes to the reasoning provided in the written response by the *Saeima* and the Cabinet and holds that the contested provisions are compatible with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*.

The legislator has differentiated between the conditions of executing criminal punishment, i.e., deprivation of liberty, and arrest as a security measure.

The grounds for executing criminal punishment and for applying arrest have been defined by different laws, and their aims are said to be different. Namely, the purpose of executing criminal punishment – deprivation of liberty– is to apply effectively to the sentenced person the rules for execution of punishment, set out in the Criminal Code, thus, ensuring the person's resocialisation and lawful conduct after the punishment has been enforced. Arrest, however, is applied to ensure security of society and some persons, to ensure objective inquiry in the case and adoption of an objective ruling, as well as making the guilty person criminally liable. Before the sentence has entered into force and criminal proceedings in the particular case have not been closed, it is possible that the accused person might influence it. Arrest, similarly to other security measures, is applied by the official in charge of criminal proceedings to prevent obstacles to the course of criminal proceedings that a person might cause, as well as to prevent new violations of law from occurring.

In general, legal provisions do not envisage the right of prisoners to keep computer hardware or mobile communication devices. Moreover, storage and use of a mobile phone, its spare parts and SIM card is a gross violation of internal rules both in remand prisons and facilities where the sentence of deprivation of liberty is served. These restrictions are aligned with the provisions that set out control of correspondence and phone conversations as one of the measures for ensuring regime within prisons.

Staff members of a remand prison control the arrested person's correspondence and phone conversations. If the content of correspondence or a phone conversation endangers the rights of other persons, democratic state system, public security, welfare and morals, establishing the truth in criminal proceedings, as well as the security of prisons, correspondence is impounded or the phone conversation is interrupted, and the reason for impounding the correspondence or interrupting the phone conversation is explained to the arrested person. Allegedly, such actions cannot be taken if the correspondence takes place on the Internet or by using means of communication, available on the Internet.

Regulatory enactments provide strict regulation on the process of employing an arrested person – its aim, the admissible types of employment, and other matters. Employment, similarly to general, vocational and interest-related education, educational activities and psychological care are said to be measures for social rehabilitation of an arrested person. The work of a prison inmate should be seen as a socially useful activity, and its primary aim is not gaining income in order to satisfy daily needs but opening the possibilities for social rehabilitation so that this person would not lose his social and job -related skills. It follows from the purpose of arrest that a person's possibilities to continue his employment and to keep the existing job are significantly restricted, i.e., an arrested person does not have the same right to freely choose one's employment and place of work in accordance with one's abilities and qualification as the persons who are free.

6. The summoned person – the Latvian Prison Administration – subscribes to the arguments presented in the written responses by the *Saeima* and the Cabinet and holds that the contested provisions comply with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*.

7. The summoned person – the Office of the Prosecutor-General of the Republic of Latvia – holds that the contested provisions comply with the first sentence of Article 1010 and the first sentence of Article 106 of the *Satversme*.

The restriction on fundamental rights, included in the contested provisions, has been established by law, adopted in due procedure, it has legitimate aims – protection of other persons' rights and public security; likewise, the restriction is said to be proportional to its legitimate aims.

Legal provisions, which regulate the rights of a person held under arrest, if the grounds for placing this person under arrest is the application of the respective security measure in criminal proceedings, cannot be viewed in isolation from the area of criminal law, where the State fulfils its obligation to ensure public security and achieve just regulation of criminal law relations. In view of the provisions

made in regulatory enactments, it should be recognised that application of security measures is not punishment of a person.

The prohibition for an arrested person to use one's personal computer hardware with Internet access, set out in the contested provision, restricts his right to communicate. Pursuant to the Law on the Procedures for Holding under Arrest, an arrested person has the right to communicate in writing with persons outside the remand prison, as well as use the phone of the remand prison at least once per week. The purpose of such measures that restrict communication is preventing threats to prisons or public security. Likewise, it should be taken into account that, before the final ruling enters into force in the particular criminal proceedings, the arrested person has the right to meet and communicate with other persons; however, this right is restricted by the need to receive the permission of the official in charge of the proceedings. This allows concluding that the scope and the procedure of exercising the right to communicate, set out in law, are not suitable for engaging in remote work, but arrest as a security measure *per se* prohibits the arrested person's free and uncontrolled communication with other persons.

In making the decision on allowing communication, the legal grounds for applying arrest as a security measure are taken into account, since they may differ in different criminal proceedings, being, *inter alia*, also such that do not allow the arrested person's communication with other persons. There are no grounds for equating an arrested person, to whom arrest has been applied simultaneously with a convicting sentence, with a sentenced person, who has been punished by deprivation of liberty, because examination of the case on its merits is still ongoing in the first instance. Hence, an arrested person may attempt to use unlawful methods to hinder the course of legal proceedings, influence witnesses or victims with the aim of achieving a favourable outcome in the case, thus infringing upon the right of victims to just regulation of the criminal proceedings, as well as impacting the witnesses' right and obligation to give truthful testimony, whereas a sentenced person no longer is able to do it.

Due to these reasons, legal basis that would expand the right, in accordance with the proposal made in the application, and would at the same time guarantee

that all accused persons, held under arrest, are ensured, in uncontrolled way, with means of communication, could have adverse impact upon reaching the aim of criminal proceedings and achieving just regulation of criminal law relations in some criminal proceedings.

8. The summoned person – the Ombudsman – holds that the contested provisions are compatible with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*.

The restriction on fundamental rights, included in the contested provisions, has been established by law, adopted in due procedure, it has legitimate aims – protecting other persons' rights and public security. The Ombudsman is of the opinion that the restriction follows from the nature of arrest and the regime for enforcing it, and it is proportionate. An arrested person's right to choose one's employment, in the meaning of the first sentence of Article 106 of the *Satversme*, is restricted and includes only such work that can be done in a remand prison. Likewise, such work should be appropriate and commensurate with the purpose and nature of arrest, as well as compatible with the pre-conditions for enforcing arrest and the regime in a remand prison; moreover, feasible in practice.

An arrested person has the duty to abide by the daily regime established in a remand prison, approved by the head of the remand prison. The applicant had requested permission to use personal computer hardware with Internet access every day from 9.00 till 18.00, however, such duration is incompatible with the enforcement of arrest. Being in a remand prison means that the person must mandatorily abide by the daily regime, established in the remand prison, equally to other persons held under arrest, but not the working hours defined by a local government council.

A measure that would restrict a person's rights to a lesser extent would be regular control and inspection of computer hardware with Internet access; however, such a measure would impose disproportionate burden on the prison, moreover, it would influence the rights of other arrested persons, the exercise of which, clearly, depends on the human resources of the prison.

Undeniably, the significance of the Internet is increasing in society, it is a way for a person to obtain quickly the needed information, including such that is necessary for protecting one's rights and interests. Thus, it is clear that the issue of accessing the Internet in prisons will become more relevant. However, each situation should be assessed both individually and in interconnection with the State's possibilities to ensure appropriate control and supervision.

9. The summoned person – “Latvian Association of Local and Regional Governments” – notes that the Law on the Status of the Councillor of the Local Government Council explains exhaustively both the rights and obligations of a councillor and the guarantees for his activities. Although the law does not set out clearly how a councillor should act in case he is held under arrest, laws should be applied in line with their meaning.

Arrest is said to be an individual security measure; hence, the court must examine each case separately. The conditions of arrest should be such that prevent threats, which the person might cause for public security, however, should not restrict excessively a person's right to continue the chosen employment, *inter alia*, hold the office of a councillor. Without contesting the statements made in written replies that additional resources might be needed for supervision and adjustment of personal computer hardware with Internet access, as well as that this possibility could be used to hinder the course of criminal proceedings, it should be considered whether there are no other ways that would allow ensuring an arrested person's right to participate in the remote sittings of the council and its committees.

Already since 2012 the modernisation of courts has been ongoing to allow holding remote court hearings, in the form of a video conference. Prisons also have the equipment needed to ensure video conferences. Thus, the possibility to use this equipment to ensure a councillor's participation in remote sittings should be considered.

The local government councillors fulfil their obligation of meeting inhabitants in various ways – both by receiving them on-site in the council's premises and otherwise. Meeting with the visitors is regulated, by indicating

specific visiting hours or agreeing on time. Pursuant to the provisions of the Law on the Procedures for Holding under Arrest, visits are permissible in controlled circumstances with the permission of the head of the prison, and the arrested person may meet only such persons who are his relatives, spouse, children or persons with whom he has shared household. An arrested person also has the right to correspondence. This means that, in order to acquaint oneself with the agenda of the Council's or the committee's sitting, issues to be reviewed at the sitting and explanatory materials, an arrested person may use also postal services.

10. The summoned person – *Dr. sc. pol. Iveta Reinholde, Professor at the Faculty of Social Sciences, the University of Latvia*, – notes that, pursuant to Article 7 of the European Charter of Local Self-Government, self-governments are called upon, to the extent possible, to ensure to their members the necessary premises, equipment and technical support, needed for exercise of their functions, irrespective of their political affiliation. The aim of this regulation is to encourage States to ensure to the deputies of self-governments proper working conditions, motivating inhabitants to stand for elections and, thus, develop local democracy. However, support for the development of local democracy cannot be infinite and there is a series of restrictions imposed upon elected officials. The aim of the European Charter of Local Self-Government is to achieve that remuneration to elected self-government officials is determined in compliance with the principle of equality and the principle of remuneration in the public sector. Deputies of self-governments should be included in the system of social protection, in compliance with the provisions of the national legal acts and equally with the employees in other sectors. If, on the basis of objective legal considerations, restrictions on the performance of a deputy's obligations have been defined in national legal acts, then these restrictions should be abided by when the respective conditions set it. Also in the context of the particular case, equal treatment is applicable to deputies of the self-government, i.e., the same treatment as the one applied to all other persons subject to particular restrictions. Thus, a person who has been elected to a local government council, is subject to the same restrictions that have been

imposed upon arrested persons, irrespective of their gender, employment or other considerations, if these restrictions are legally valid.

The Findings

11. The Applicant requests recognising the contested provisions as being incompatible with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme* because they, allegedly, prohibit an arrested person from using and keeping for individual use personal computer hardware with Internet access, which is needed for fulfilling the official duties of a local government councillor.

3. The contested provision of the law provides that an arrested person has the right to use and keep objects approved for individual use – personal small-scale household appliances – a TV set (the size of the screen up to 50 cm cornerwise) and the video games to be connected thereto, and also a refrigerator, water heating appliances, transistor radio (without the possibility of voice recording). The total weight of the household appliances to be used in individual use shall not exceed 30 kilograms.

The first sentence of Section 4 (1) of the Law on the Procedures for Holding under Arrest provides that arrest is executed in the remand prison. Section 4 (2) of the aforementioned law, in turn, provides that the internal rules of procedure of remand prisons are governed by the Cabinet.

Regulation No. 800 defines the internal rules of procedure of remand prisons, and definite objects and food products, which an arrested person has the right to keep, have been set out in Annex 4 to the Regulation. The contested provision of the regulation allows an arrested person to keep a small-scale TV set (the size of the screen up to 50 cm cornerwise), video games to be connected to the TV, as well as a small-size refrigerator, and a transistor radio. Thus, the contested provisions define those items of small-scale household appliances, which an arrested person may use at the time, defined in the daily regime, in the

cell or in common rooms, – a personal transistor radio, a fridge, a kettle, a TV and video games connected to it.

Hence, it can be concluded that both the contested provision of the law and the contested provision of the regulation define those objects, which an arrested person has the right to keep, and both these provisions prohibit an arrested person from keeping personal computer hardware with Internet access.

Therefore, in the present case, the Constitutional Court will review the compatibility of the contested provisions as uniform regulation with the *Satversme*.

12. The Applicant holds that the contested provisions infringe upon his fundamental right, guaranteed in the first sentence of Article 101 of the *Satversme*, i.e., the right to participate in the work of the State and of local government, as well as the fundamental right, defines in the first sentence of Article 106 of the *Satversme*, i.e., the right to freely choose one's employment and workplace according to one's abilities and qualifications.

12.1. The first sentence of Article 101 of the *Satversme* provides: "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service."

Article 101 of the *Satversme* guarantees to every citizen of Latvia with full rights, as well as a citizen of another Member State of the European Union the right to participate in the local government elections in the procedure, defined in the Law on Election of Local Government Councils, and, thus, creates pre-conditions for participation of the said persons in the work of local government (*compare, see Judgement by the Constitutional Court of 5 February 2015 in Case No. 2014-03-01, Para 14*). A citizen's participation in the work of local government should be, first and foremost, understood as the right to participate in the formation of a local government council, by voting and by standing for election (*see Judgement by the Constitutional Court of 7 November 2013 in Case No. 2012-24-03, Para 13*). The State has the obligation not only to guarantee to a citizen a formal right to participate but also to create the pre-conditions, allowing a citizen

to participate in the work of the State and of local government, moreover, knowingly and understanding the essence of participation (*see: Kusiņš G. 101. panta komentārs. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Rīga: Latvijas Vēstnesis, 2011, 384.–385. lpp.*).

Article 101 of the *Satversme* introduces, *inter alia*, the principle of local government and creates the legal basis for the institutional existence and functional activities of local governments. In accordance with this principle, in institutional terms, local government is a special form of public administration or of governing public affairs – self-governance, the supreme body of which – the council – has been directly democratically legitimised, i.e., is elected by citizens. Whereas in functional terms, in accordance with the principles of democracy and self-governance, public administration must be organised in a subsidiary way – governance of important needs and interests of local nature should be transferred as close as possible to residents themselves, to self-government, organised by them (*see Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-32-05, Para 11*). The decision-making body of the local government – the council – is elected in accordance with the Law on Election of Local Government Councils (*see Section 1 of the Law on Election of the Councils of State Cities and Municipalities*). The local government council is comprised of councillors, whose rights and obligations have been defined in the Law on the Status of the Councillor of the Local Government Council (*see Section 9 and Section 10 of the Law on the Status of the Local Government Council*).

A councillor of a local government council is a representative of the inhabitants of the particular local government's territory. A councillor of a local government council represents the inhabitants of its territory as a whole and not individual interests of some inhabitants. A councillor is subject neither to his or her party, nor any other organisations but only one's own awareness of the interests of the inhabitants in the local government (*compare, see Judgement by the Constitutional Court of 19 June 2018 in Case No. 2017-32-05, Para 19*).

Thus, a councillor of a local government council adopts decisions in the interests of local inhabitants. Performing the official duties and exercising the rights of a councillor is implementing public power in society's interests, and the office of a councillor of a local government council is an office subject to public law.

Hence, it can be concluded: if a person has been elected to the local government council then Article 101 of the *Satversme* is applicable also to the right to hold the office of a local government councillor.

12.2. The first sentence of Article 106 of the *Satversme* provides: "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications."

The Constitutional Court has recognised repeatedly that the first sentence of Article 106 of the *Satversme* does not guarantee directly the right to work but the right to freely choose employment and workplace. The right to freely choose employment comprises also such an essential element as keeping one's current employment, which, in turn, includes the right to continue this employment also in the future (*see, for example, Judgement by the Constitutional Court of 21 December 2015 in Case No. 2015-03-01, Para 14.2., and Judgement of 25 March 2021 in Case No. 2020-36-01, Para 12*). The right to freely chose one's employment comprises also the right to actually carry out this employment, namely, it would be meaningless to protect a person's right to choose employment if the person, due to restrictions established by the State, the person would be unable to carry out this employment. Freedom of employment guarantees responsible existence of the individual and personal development and determines the social status (*see Judgement by the Constitutional Court of 27 April 2022 in Case No. 2021-27-01, Para 15*). Employment is always both necessity and freedom of a person, and these aspects are inseparable (*see: Schneider H. P. Artikel 12 GG – Freiheit des Berufs und Grundrecht der Arbeit. Der Verwaltungsvorbehalt. Berlin; New York: de Gruyter, 1985, S. 15*). The term "employment", included in the first sentence of Article 106 of the *Satversme*, should be understood as such type of work that requires appropriate training and

is the source of existence for a person, as well as vocation, closely related to each individual's personality as a whole (*see Decision by the Constitutional Court of 23 November 2016 on Terminating Legal Proceedings in Case No. 2016-02-01, Para 6*). The term "employment" can be attributed to employment both in the public and private sector, moreover, also to such vocations, in which legal labour relations are not established on the basis of a contract, regulated by the Labour Law (*see Judgement by the Constitutional Court of 18 December in Case No. 2003-12-01, Para 7, and Judgement of 25 March 2021 in Case No. 2020-36-01, Para 12*). The State has the obligation to refrain from creating such conditions that would hinder a person in exercising the right to freely choose one's employment (*compare, see Judgement by the Constitutional Court of 25 March 2021 in Case No. 2020-36-01, Para 12*).

Thus, Article 106 of the *Satversme* protects also a person's right to hold the office of a local government councillor.

12.3. The following finding has been enshrined in the Constitutional Court's judicature: if the compliance of legal provisions with several provisions of the *Satversme* has been contested then the Constitutional Court, by taking into account the merits of the case, must determine the most effective approach to reviewing the constitutionality thereof (*see Judgement by the Constitutional Court of 8 March 2017 in Case No. 2016-07-01, Para 14.2.*).

At the moment when arrest was applied to the Applicant, he was a councillor of a local government council and, until 1 July 2021, – also the chairperson of the local government council, whereas at the local government election of 5 June 2021, the Applicant was re-elected to the local government council. The Applicant was held under arrest from 22 February 2021 until 25 February 2022. While being under arrest, the Applicant was not allowed to use personal computer hardware with Internet access in order to perform the duties of the councillor and the chairperson of the local government council remotely. Hence, the Constitutional Court concludes that the restriction, established in the contested provision, applies also to the right to hold the office of a local government councillor.

Summarising all of the above, it can be concluded that the compliance with the *Satversme* of such legal provisions, due to which an arrested person cannot participate in the sittings of a local government council and its committees remotely, has been contested in the present case. The rights defined in the first sentence of Article 101 and in the first sentence of Article 106 of the *Satversme*, cover also the right to hold the office of a local government councillor. Hence, in the present case, the Constitutional Court will examine the compliance of the contested norms with the first sentence of Article 101 of the *Satversme* in conjunction with the first sentence of Article 106 of the *Satversme*.

Therefore, in the present case, the Constitutional Court will examine the compliance of the contested norms with the first sentence of Article 101 of the *Satversme* in conjunction with the first sentence of Article 106 of the *Satversme*.

13. A local government council's work is done in its sittings and committees. Decisions and proposals, submitted, *inter alia*, by the chairperson of the council, committees of the council and councillors, are examined at the council's sitting (*see Section 22, Section 33 and Section 34(3) of the law "On Local Governments"*). All councillors have the right to vote on all matters, examined at the council's sittings, *inter alia*, participate in discussions, ask questions and provide statements (*see Section 5 of the Law on the Status of the Councillor of the Local Government Council*). Likewise, every councillor must be a member of at least one committee (*see Section 55 (1) of the law "On Local Governments"*).

A council's sitting may take place if more than half of the councillors participate in it. The chairperson of the council (council's committee) may determine that videoconferencing (transmitting of image and sound in real time) is used during the sitting, if this possibility has been envisaged in the regulation of the local council and if the councillor is elsewhere during the sitting or due to health status or a business trip cannot come to the place where the council's sitting is held, as well as in the case where emergency situation has been declared in the

respective territory or the State has imposed restrictions on gathering. A councillor is to be deemed as being present at the sitting of the council (council's committee) and eligible to vote, while not being present at the place where the sitting is held, if he has registered for participating in the sitting of the council (council's committee) in the procedure set out in the local government's regulation, if he has been ensured technical possibility to participate in the sitting through videoconferencing and digital online voting has been ensured (*see the first and the second part of Section 34 and Section 56 (2) of the law "On Local Governments"*).

Ventspils City Council, on the basis of the first and the second part of Section 34 and Section 56 (2) of the law "On Local Governments", on 13 November 2020, adopted binding regulation No. 18 "Amendments to Binding Regulation of Ventspils City Council of 23 April 2007 No. 3 "Regulation of Ventspils Local government"". These amendments introduced to Binding Regulation of Ventspils City Council of 23 April 2007 No. 3 "Regulation of Ventspils Local Government" the possibility to hold sittings of the council and council's committees remotely, as well as established the procedure, in which a participant of the sitting could register for the respective sitting and vote at it.

Hence, sittings of the council and its committees are held on-site, but the possibility to use videoconferencing during the sittings of the council and its committees is envisaged only as exception in situations referred to in the law "On Local Governments". The Applicant has pointed out that he could have participated in the sittings of the council and its committees remotely at the time when an emergency situation had been declared in the respective territory or the State had introduced restrictions on gathering.

Throughout the entire period when the Applicant was held under arrest, restrictions on gathering had been established in the State due to the spread of Covid-19 infection (*see the Cabinet Regulation of 9 June 2020 No. 360 "Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection" and Regulation of 28 September 2021 No. 662 "Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection"*) and an emergency situation had been declared (*see the Cabinet's Order of*

6 November 2020 No. 655 and Order of 9 October 2021 No. 720). Likewise, during the period while the Applicant was held under arrest, several sittings of Ventspils City Council and its committees were held remotely, using videoconferencing (*see: www.ventspils.lv*).

Pursuant to Para 2 of Section 3 (1) of the Law on the Status of the Councillor of the Local Government Council, the mandate of a councillor expires before term, *inter alia*, on the day when a court judgement of conviction of the councillor has entered into legal effect. Whereas pursuant to Section 4¹ (1) of the aforementioned law, if a councillor has not participated in the council meetings for three months in succession due to the procedural compulsory measure applied in accordance with the procedures specified in the Criminal Procedure Law or the state of health, his or her mandate may be suspended, taking a relevant decision of the council, or it may be suspended if it is requested by the submitter of the list of candidates from which the relevant councillor has been elected to the council.

This means that a local government councillor, until a convicting judgement has entered into force, in any criminal procedural stage, retains his mandate and the application of a security measure – arrest – does not prohibit him from retaining the mandate of a local government councillor.

Thus, it can be concluded that the contested provisions restrict a local government councillor's right to participate in remote sittings of the council, its committees, as well as of other such institutions, to which the local government has elected or appointed him, as well as to speak and vote at such sittings. The contested provisions, by prohibiting the use of personal computer hardware with Internet access, limits the possibility for a local government councillor to speak at the remote sittings of the council and its committees, *inter alia*, provide more extensive substantiation of one's proposals or questions to be asked, as well as to put questions and obtain information. A local government councillor is deprived of the most important rights, related to his participation in the local government's work, i.e., the right to participate in the sittings of the local government council and its committees, exercising one's right to vote.

Hence, the contested provisions restricts a person's right, guaranteed in the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*, to hold the office of a local government councillor.

14. In reviewing the constitutionality of a restriction on fundamental rights it must be verified, whether it has been established by law, whether it has a legitimate aim and whether it complies with the proportionality principle (*see Judgement by the Constitutional Court of 11 June 2021 in Case No. 2020-50-01, Para 14*).

15. To examine, whether the restriction on fundamental rights, included in the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*, has been established by law, adopted in due procedure, the Constitutional Court must verify:

1) whether the law has been adopted in compliance with the procedure set out in regulatory enactments;

2) whether the law has been promulgated and is accessible in accordance with requirements set out in regulatory enactments;

3) whether the law has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from it and to forecast the consequences of application thereof (*see, for example, Judgement by the Constitutional Court of 17 December 2020 in Case No. 2020-18-01, Para 16 and Judgement of 25 March 2021 in Case No. 2020-36-01, Para 14*).

The restriction on fundamental rights should be established in such legislative process that complies with the principle of good legislation (*see Judgement by the Constitutional Complaint of 28 January 2021 in Case No. 2020-29-01, Para 19, and Judgement of 25 March 2021 in Case No. 2020-36-01, Para 14*). However, only substantial procedural violations are the grounds for recognising the adopted act as legally void (*see Judgement by the Constitutional Court of 7 January 2022 in Case No. 2021-06-01, Para 16*).

Initially, the Law on the Procedures for Holding under Arrest was adopted in the procedure set out in former Article 81 of the *Satversme* as the Cabinet Regulation of 11 April 2006 No. 288 “Law on the Procedure for Holding under Arrest.” It follows from information, available from the legislative database of the *Saeima*, that, on 18 April 2006, the Cabinet submitted this Regulation for review by the *Saeima*. This Cabinet Regulation, as a draft law, was examined in accordance with the Rules of Procedure of the *Saeima* and was adopted in the third reading on 22 June 2006. The Law on the Procedure for Holding under Arrest, in its initial wording, was promulgated on 4 July 2006 in the official publication “*Latvijas Vēstnesis*”. Also the law “Amendments to the Law on the Procedure for Holding Under Arrest”, by which the contested provision was expressed in the wording to be reviewed in the present case, was examined by the *Saeima* in three readings, was promulgated on 28 July 2011 in the official publication “*Latvijas Vēstnesis*” and entered into force on 11 August 2011.

The Cabinet adopted Regulation No. 800 on 27 November 2007, it was published in the official publication “*Latvijas Vēstnesis*” on 1 December 2007, and entered into force on 1 December 2007. The Cabinet Regulation of 1 November 2011 No. 848 “Amendments to the Cabinet Regulation of 27 November 2007 No. 800 “Internal Procedure Regulations of Remand Prisons””, by which the contested provision of the regulation was expressed in the wording currently in force, was published in the official publication “*Latvijas Vēstnesis*” on 8 November 2011, and entered into force on 9 November 2011.

Participants in the case and summoned persons have not expressed objections regarding the procedure of adopting and promulgating the contested provisions, and neither does the Constitutional Court develop doubts as to whether the contested norms had been adopted and promulgated in the procedure set out in the *Satversme* and the Rules of Procedure of the *Saeima* and are accessible in accordance with requirements set out in regulatory enactments.

The Applicant has noted that, although the contested provisions had been formally adopted in compliance with due procedure, they are incompatible with the principle of good legislation because the *Saeima* and the Cabinet have not

responded to the development of social reality and technologies, as well as the consequences of Covid-19 pandemic and had not considered the possibility of allowing the arrested persons work remotely, by using personal computer hardware with Internet access.

The *Saeima*, in turn, has pointed out that this argument should be examined by reviewing the compliance of the restriction on the Applicant's fundamental rights with the *Satversme* on its merits.

The Constitutional Court already has concluded previously that the legislator's obligation to ensure effective protection, respect and ensuring of fundamental rights cannot be regarded as completely fulfilled, with the adoption or coming into force of the respective legal regulation. Also after the legal provisions have entered into force, the legislator must, to the extent possible, follow, whether in the practice of applying law these provisions, indeed, fulfil effectively their objective. If it is found that, within the practice of applying law, legal provisions do not function, they must be improved. The legislator is obliged to consider, after a certain term, whether the respective legal regulation is still effective, suitable and necessary and whether it should not be improved in any way (*see Judgement by the Constitutional Court of 6 June 2012 in Case No. 2011-21-01, Para 9*).

The contested provisions have not been amended or reviewed for more than a decade; however, the written responses by the *Saeima* and the Cabinet allow concluding that the contested provisions, in their opinion, continue to be effective, suitable and necessary. Hence, whether the *Saeima* and Cabinet has the obligation, which follows from the *Satversme*, to allow the Applicant to use, while being held under arrest, personal computer hardware with Internet access, in order to participate in sittings of the local government council and its committees, which are held by using videoconferencing, must be verified, by examining the restriction on fundamental rights on its merits.

In view of the above, the Constitutional Court concludes that the contested provisions had been adopted in compliance with the procedure, set out in

regulatory enactments, and that no substantial procedural violations can be found in the procedure of adoption thereof.

Thus, the restriction, included in the contested provisions, with respect to the right to hold the office of the councillor of a local government council has been established by law.

16. Any restriction on fundamental rights should be based upon circumstances and arguments proving its necessity, i.e., the restriction has to be established for the sake of important interests – a legitimate aim. If a restriction on rights has been established then, in the legal proceedings before the Constitutional Court, the obligation to indicate and substantiate the legitimate aim of this restriction, first and foremost, falls upon the institution, which has issued the contested act (*see, for example, Judgement by the Constitutional Court of 28 June 2019 in Case No. 2018-24-01, Para 13*).

The *Saeima* points out that the contested provision of the law is aimed at ensuring order and security in the prison and prevent hindering the course of criminal proceedings. Hence, the legitimate aims of the restriction on fundamental rights, included in the contested provision of the law, is protecting other person's rights and public security (*see Case Materials, Vol. 2, pp. 57–59*).

The Cabinet, in turn, notes that the restriction, which prohibits an arrested person from using personal computer hardware with Internet access, had been established to ensure order and security in a remand prison. An arrested person could use the computer for engaging in such activities that would jeopardise reaching the aims of criminal proceedings, as well as for obtaining prohibited information or, for example, influencing witnesses. Hence, the legitimate aim of the restriction, established in the contested provision of the regulation, is said to be protection of public security and democratic state order (*see Case Materials, Vol. 2, p. 42*).

The Applicant holds that the aim of ensuring security and order in the prison is legitimate, however, doubts, whether the restriction is necessary for protecting public security (*see Case Materials, Vol. 1, p. 22*).

The summoned person – the Office of the Prosecutor-General – notes that the legitimate aims of the restriction, included in the contested provisions, is protection of other persons’ rights and public security, whereas, in the opinion of the Ministry of Justice, the legitimate aim of this restriction is protection of other persons’ rights and of the democratic state order (*see Case Materials, Vol. 3, pp. 50–51, and Vol. 4, p. 116*).

The Constitutional Court has recognised that the legitimate aim of the restriction on fundamental rights – protection of other persons’ rights – can be established in cases where the legal regulation protects other persons against individual infringements on the rights of these persons (*see Judgement by the Constitutional Court of 14 December 2018 in Case No. 2018-09-0103, Para 13*).

Whereas protection of public security, as the legitimate aim of a restriction on fundamental rights, is to be linked to the protection of the democratic state order and is recognised as admissible, predominantly, in cases pertaining to issues of threats to the national or public security. In such a case, an objectively existing or potentially possible link between the adoption of the particular legal regulation and reinforcing the public security, preventing or diminishing the threat to security must be established (*see Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 12.2.*).

The European Court of Human Rights also has recognised that restriction that prohibit a prison inmate from using various objects, including computers, are aimed at ensuring order in the prison and preventing new criminal offences from being committed (*see Judgement by the European Court of Human Rights of 18 June 2019 in Case “Mehmet Resit Arslan and Orhan Bingöl v. Turkey” (Applications No. 47121/06, 13988/07 and 34750/07), Para 60*).

The Constitutional Court concurs that the prohibition for an arrested person to use personal computer hardware with Internet access has been established in public interests, to prevent threats to order and security, as well as to ensure unhindered course of the criminal proceedings. Unhindered course of the criminal proceedings, *inter alia*, protects the victims’ right to just course of criminal proceedings, as well as the witnesses’ right and obligation to give a true testimony.

These protected rights and interests are interconnected and partially overlap, therefore cannot be examined in isolation. Thus, both the public security and other persons' rights are protected by the restriction on fundamental rights, included in the contested provisions.

Thus, the restriction on fundamental rights, included in the contested provisions, has legitimate aims – protecting other persons' rights and public security.

17. In assessing the proportionality of a restriction on fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are suitable for reaching the legitimate aim, i.e., whether the legitimate aim can be reached by the chosen measure;

2) whether such action is necessary, i.e., whether the legitimate aim could not be reached by measures that are less restrictive upon an individual's rights;

3) whether the restriction is appropriate, i.e., whether the benefit, gained by society, outweighs the damage inflicted upon an individual's rights.

If it is recognised that the restriction on fundamental rights is incompatible with even one of these criteria than it is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement by the Constitutional Court of 16 May 2007 in Case No. 2006-42-01, Para 11, and Judgement of 14 December 2018 in Case No. 2018-09-0103, Para 18*).

18. The measures, chosen by the legislator, are suitable for reaching the legitimate aim if this aim is reached by the particular regulation (*see, for example, Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 13*).

The Applicant notes that the measures, chosen by the legislator, are suitable for reaching the legitimate aims because the legitimate aims can be reached by the prohibition to an arrested person to use personal software hardware with Internet access. The *Saeima*, the Cabinet and the Ministry of Justice also subscribe to this opinion (*see Case Materials, Vo. 12, p. 42, pp. 59–60, and Vol. 3, p. 51*).

General prohibition for an arrested person to use personal computer hardware with Internet access eliminates any risk that it could be used for engaging in such activities, which, possibly, are directed against the order of a remand prison or the purposes of the applied security measure – arrest. Thus, the restriction on fundamental rights, set out in the contested provisions, is suitable for reaching the legitimate aims – protecting public security and other persons’ rights.

Hence, the chosen measure is suitable for reaching the legitimate aims.

19. Restriction on fundamental rights is necessary if there are no other measures that would be as effective and, if chosen, would restrict persons’ fundamental rights to a lesser extent (*see, for example, Judgement by the Constitutional Court of 26 April 2018 in Case No. 2017-18-01, Para 21.3.2.*).

A more lenient measure is not just any other measure but only such that would allow reaching the legitimate aim in at least in the same quality and does not require from the State and society disproportionately large investment (*see, for example, Judgement by the Constitutional Court of 25 March 2021 in Case No. 2020-36-01, Para 19.3.3.*). Verifying whether there are no alternative measures, which would infringe upon persons’ fundamental rights, established in the *Satversme*, to a lesser extent, falls with the Constitutional Court’s jurisdiction (*see, for example, Judgement by the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Para 19*).

The Applicant holds that the legitimate aims could be achieved by measures that are less restrictive upon an individual’s rights. A less restrictive measure would be such legal regulation that would envisage the prison administration’s right to decide on permission to use, in a controlled manner, personal computer hardware with Internet access, if the arrested person had submitted such a request. The Applicant notes that differentiation should be made between cases, where the security measure – arrest – has been applied to a person and active investigation is ongoing in the criminal proceedings, and cases, where investigatory activities already have been completed and the person has been convicted but the judgement has not yet entered into force. Namely, if arrest has been applied during the pre-

trial criminal proceedings its aim is to ensure unhindered course of investigation and adoption of an objective decision. Whereas if arrest as a security measure has been applied to a person who already has been convicted but the judgement has not yet entered into force, its aim is to prevent the person from evading execution of the punishment. A situation where the victims and witnesses, who already have been interrogated during the pre-trial proceedings and at the first-instance court, would, at the appellate-instance court, change their testimonies in favour of the accused person and the appellate-instance court would attach credibility to such, amended, testimonies, is said to be impossible. Thus, an arrested person, to whom arrest had been applied by a convicting judgement, which has not entered into force yet, can be equated to a convicted person and there are no grounds for setting more stringent restrictions upon him with respect to employment than upon a convicted person (*see Case Materials, Vol. 1, pp. 23–31*).

The *Saeima* notes that there are no more lenient measures that would allow reaching the legitimate aims of the restriction on human rights at least in the same quality because if an arrested person were granted the right to use his own computer hardware with Internet access an opportunity might arise for him to hinder the course of criminal proceedings; moreover, controlling activities taken on the Internet is said to be complicated, time-consuming and would require not only additional human resources but also additional financial resources (*see Case Materials, Vol. 2, p. 60*).

The Cabinet holds that if an arrested person were allowed to use personal computer hardware with Internet access at a remand prison then the administration of the remand prison would have to inspect regularly not only whether prohibited objects are not kept in the computer but also the entire information therein. Inspection of hardware, in particular, verification of its content and the activities conducted would require long time, as well as attracting sizeable human and technical resources. Hence, there are no other measures that would be less restrictive upon an arrested person's rights but would allow reaching the legitimate aims in equal quality (*see Case Materials, Vol. 2, pp. 43–46*).

The Ministry of Justice, the Office of the Prosecutor-General and the Ombudsman subscribe to the opinion expressed by the *Saeima* and the Cabinet that are no more lenient measures for reaching the legitimate aims of the restriction on fundamental rights (*see Case Materials, Vol. 3, pp. 51–54, and Vol. 4, p. 116 and p. 102*).

19.1. Arrest is deprivation of personal liberty, which may be applied to a suspected or accused person, on the basis of a decision by an investigative judge or a court's ruling, before the final ruling has entered into force in particular criminal proceedings if specific information about facts, obtained in criminal proceedings, cause justified suspicions that the person has committed a criminal offence, for which a custodial punishment is provided in the law and the application of another security measure may not ensure that the person will not commit another criminal offence, will not hinder or will not avoid the pre-trial criminal proceedings, court, or the execution of a judgement (*see Section 271 (1) and Section 272 (1) of the Criminal Procedure Law*).

The Criminal Procedure Law provides for additional cases when arrest may be applied to a person who is suspected or accused of committing of an especially serious crime and that the grounds for arrest may be a court's judgement on committing a serious or especially serious crime, for which a custodial sentence has been imposed (*see Section 272 (4) of the Criminal Procedure Law*).

The application of arrest allows holding the person in a remand prison or in specially equipped police premises (*see Section 271 (2) of the Criminal Procedure Law*). A person may be held under arrest as long as it is necessary for ensuring normal course of criminal proceedings but no longer than the Criminal Procedure Law allows for the criminal offence referred to in the decision on recognising the person as being a suspect or for making a person criminally liable (*see Sections 277–279 of the Criminal Procedure Law*) and for no longer than the custodial term that a court may impose for the criminal offence regarding the committing of which such a person has been accused or for the term of the custodial sentence imposed by the court (*see Section 277 (10) of the Criminal Procedure Law*).

The procedure for holding under arrest is defined by the Law on the Procedures for Holding Under Arrest, and its purpose is to ensure commensurate conformity with the human rights and the interests of criminal proceedings in applying the security measure – arrest (*see Section 1 of the Law on the Procedures for Holding under Arrest*). The said law regulates the procedure, in which the arrested person is placed in a remand prison, defines the rights and obligations of an arrested person, care of and provisions for an arrested person, social rehabilitation, spiritual care, training and employment, as well as measures for ensuring the regime of a remand prison. Pursuant to the Law on the Procedures for Holding under Arrest, all arrested persons have equal status.

The Constitutional Court concludes that the Criminal Procedure Law and the Law on the Procedures for Holding under Arrest do not divide arrested persons into separate groups, depending on whether a convicting sentence has already been passed by the court with respect to them, although the sentence has not yet entered into force.

The purpose of arrest is to ensure security of society and individual persons – to prevent a new crime from being committed and a person, who is suspected or accused of committing a criminal offence, from interfering unlawfully in the course of criminal proceedings, and thus would ensure objective inquiry in the case and adoption of an objective ruling, as well as making the guilty person criminally liable (*see Judgement by the Constitutional Court of 28 June 2019 in Case No. 2018-24-01, Para 16*).

The procedure, in which criminal cases are heard, and their adjudication in three judicial instances have been defined in the Criminal Procedure Law. All facts of the case are assessed, evidence is verified and analysed, and the case is adjudicated on its merits in the first instance. The appellate instance court reviews the validity and legality of the ruling by the first instance court, *inter alia*, the appellate court has the right to interview witnesses repeatedly. The appellate instance court adjudicates the case on its merits, subscribing to the reasoning of the first court ruling or by passing a new ruling (*see Judgement by the*

Constitutional Court of 14 June 2018 in Case No. 2017-23-01, Para 12.2., and Section 560 (2) and Section 564 of the Criminal Procedure Law).

Thus, before criminal proceedings in the particular case have been completed, there is a possibility that the person, who is suspected or is accused, might influence them, thus jeopardising the interests of criminal proceedings and fair regulation of criminal law relations. In accordance with provisions made in regulatory enactments, arrest, similarly to other security measures, is to be applied for preventive purposes – to prevent obstacles that a person might cause for the course of criminal proceedings, as well as to prevent a new criminal offence from being committed – continuation of criminal activities, engaging in criminal activities or influencing other persons, involved in the criminal proceedings.

Hence, there are no grounds for legally differentiating between arrested persons, depending on the stage in criminal proceedings, during which arrest had been imposed to them.

19.2. The contested provisions prohibit an arrested person from using personal computer hardware with Internet access. Section 21 (3) of the Law on the Procedures for Holding under Arrest provides that the decision of the head of a remand prison to refuse to accept any objects which are not permitted to be received at the remand prison via consignments and parcels cannot be contested and is not subject to appeal. Similar regulation has been set put with respect to sentenced persons. Namely, sentenced persons also have been prohibited to use personal computer hardware with Internet access at all (*see Cabinet Regulation of 30 May 2006 No. 423 “Internal Regulation of a Prison Facility” Sub-para 43.1., Para 46, Annexes 1 and 11*). An exception is envisaged in the sixth part of Section 41 of the Sentence Execution Code of Latvia – with the permission of the head of the prison, convicted persons serving their sentence in open prisons are also allowed to keep personal computer hardware with Internet access, if its needed to ensure completion of education or employment of the convicted person, and also a personal mobile phone. The personal computer hardware and the mobile phone kept by convicted persons are subject to inspection. However, such an exception has been envisaged to give to convicted persons, serving their sentences in open

prisons, the possibility to study or to work with an employer outside the institution for deprivation of liberty.

The Constitutional Court has recognised that arrest as a security measure differs from the aim of a custodial punishment and, likewise, situations where it is applied differ. As concluded above, the aim of arrest is to ensure protection of society and individual persons, thus, promoting objective inquiry in the case and adoption of a decision, as well as making the guilty person criminally liable. When examining the case on its merits, the appellate instance court has the right to interrogate repeatedly persons who have already testified at the first instance court if the court has justified doubts regarding the completeness of the provided testimony or regarding the possible guilt of the accused in the incriminating prosecution (*see Section 560 (2) of the Criminal Procedure Law*).

Whereas the aim of sentences, envisaged in the Criminal Procedure Law, *inter alia*, the custodial sentence, is protection of public security, restitution of justice, punishing the guilty person for the committed criminal offence, resocialisation of the punished person, as well as achieving that the sentenced person and other persons abide by law and refrain from committing criminal offences (*see Judgement by the Constitutional Court of 15 January 2021 in Case No. 2020-21-01, Para 8.1.*).

Hence, the Applicant's opinion that the arrested person, with respect to whom a convicting sentence has already been delivered in criminal proceedings but has not yet entered into force is comparable to a sentenced person who is serving the custodial sentence is not valid.

19.3. The Applicant is linking the use of computer hardware exactly with using the Internet in order to be able to participate remotely in the work of the council and its committees.

In the case, information is provided by the Latvian Information and Communications Technology Association that the computer hardware with Internet access, currently available in the market, can be configured in a way allowing to conduct certain activities with it; i.e., access only few web resources, prohibit installation of software or make changes to the system parameters.

Likewise, by placing the computer hardware in an additional security frame, it is possible to ensure that no other devices can be connected to it. Solutions are also available that are used, specifically, in prisons, allowing to inspect the activities of the user both in real time and after they have been conducted (*see, Case Materials, Vol. 4, pp. 155–156*).

The Cabinet, in turn, has noted that the Internet *per se* is an open type of communication. Presently, the Internet includes also the possibility of voice and image transfer and of engaging in various activities remotely. Thus, the possibilities for using the Internet significantly exceed the ones for using mobile phones but mobile phones are strictly prohibited in prisons. Although activities conducted on the Internet are traceable and it is also possible to block websites and installation of software it is almost impossible to render such control sufficiently swift or effective. Allegedly, there are many techniques allowing to circumvent such control measures. It is impossible to control the mobile Internet in computer also because the normative regulation does not envisage the obligation of network operators to conduct on-demand filtration of websites (*see Case Materials, Vol. 2, p. 3*).

The Constitutional Court concludes that giving an arrested person computer hardware with Internet access for use might be contrary to the aim of the security measure – arrest, i.e., compliance of restrictions imposed upon persons in custody might be jeopardised, not allowing to gain sufficient assurance regarding the effectiveness of control measures and whether the prohibitions regarding certain Internet content or launching a software would not be circumvented. In such a case, also other restrictions imposed upon an arrested person become meaningless; for example, the fact that his contacts with persons outside the remand prison are restricted or contacting these persons may take place only in a way permitted in law.

Likewise, envisaging the right of prison administration to decide on permission to use personal computer hardware with Internet access in a controlled way, upon the request made by an arrested person, would require ensuring both adapted computer hardware and software, as well as supervision and control over

the actions conducted by the arrested person both in real time and after they have been taken. Such procedure would demand sizeable financial and also human resources.

Hence, such legal regulation that would envisage the right of prison administration to decide, upon the request of an arrested person, on permission for him to use, in a controlled way, personal computer hardware with Internet access cannot be regarded as a more lenient measure.

Hence, there are no more lenient measures that would allow reaching the legitimate aims of the restriction on fundamental rights at least in the same quality.

20. In assessing the compliance of a restriction on fundamental rights with the legitimate aims, it must be verified whether the adverse consequences, caused to a person as the result of their fundamental rights being restricted, do not outweigh the benefit that the entire society gains from this restriction. Namely, interests that need to be balanced must be identified, as well as those interests and rights that should be granted priority (*see, for example Judgement by the Constitutional Court of 7 March 2017 in Case No. 2016-07-01, Para 25*).

The Applicant notes that the public benefit from the restriction on fundamental rights, established in the contested provisions, is insignificant compared to the losses inflicted upon the Applicant because throughout the period of arrest he is unable to work, gain income and participate in providing for the family. Local government councillors, elected by citizens, are said to be political officials who have been democratically legitimised and make decisions in the interests of their electors. Hence, if the security measure – arrest – is applied to a political official, allegedly, a court's decision cannot be valued higher than the voters' trust in this official, expressed at general election (*see Case Materials, Vol. 1, pp. 34–37*).

The *Saeima*, in turn, points out that the public benefit from the restriction on fundamental rights, included in the contested provisions, is significant because the possibility that the arrested person could hinder the course of criminal proceedings

or plan evading execution of the court's judgement, as well as influence victims and witnesses is eliminated. Society can gain assurance that an objective ruling will be passed, which will provide fair regulation of criminal law relations. Finally, the restriction on fundamental rights, included in the contested provisions, prevents the possibility that the arrested person could jeopardize order and security in the prison (*see Case Materials, Vol. 2, pp. 60–63*).

Dr. sc. pol. Iveta Reinholde has noted that, in the context of the specific case, the treatment of local government councillors should be equal, i.e., the same as of all other persons subject to specific restrictions. While being under arrest, a person elected to a local government council is subject to restrictions, which have been defined for arrested persons, irrespective of gender, employment or other considerations and if such restrictions are legally justified (*se Case Materials, Vol. 4, p. 121*).

The Constitutional Court finds that, in the present case, the right of a person to hold the office of a local government councillor must be balanced with the interests of protecting the rights of other persons and public security.

20.1. Article 101 of the *Satversme* enshrines not only a person's fundamental right to elect a local government and the right, following from it, to participate in the administration of public matters with the help of elected local governments, but also the general status of a local government as an elected institution of self-government (*see Decision by the Constitutional Court of 16 April 2008 on Terminating Legal Proceedings in Case No. 2007-21-01, Para 8*). The ways for exercising the right to participate in the work of local governments cannot be formal. They must be effective because only effective participation complies with the principle of the rule of the people (*compare, see Judgement by the Constitutional Court of 7 November 2013 in Case No. 2012-24-03, Para 13*). Formation of the representative body of the local government's inhabitants— the local government council – is one the primary aims in local government elections (*see Judgement by the Constitutional Court of 5 February 2015 in Case No. 2014-03-01, Para 20.2.*). The council is democratically directly legitimised, i.e., elected by the inhabitants of the local

government. Article 101 must be specified in conjunction with the European Charter of Local Self-government (hereafter – the Charter). Pursuant to the first part of Article 3 of the Charter, local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

Section 5 (1) of the Law on Status of the Councillors of the Councils of State Cities and Municipalities defined the principles of a councillor's activities, whereas Section 9 (2) provides that councillors exercise their rights without special authorisations. Pursuant to the provisions of this law, a local government councillor is the representative of the inhabitants of the territory of the specific local government. All local government councillors have the obligation to represent the interests of the inhabitants of the local government. A councillor's obligation to participate in the council's work follows from the obligation to represent the interests of local inhabitants (*compare, see Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-32-05, Para 20*).

Thus, in order for a local government councillor to participate in the council's work and represent the inhabitants' interests, he must have the possibility to exercise all his official rights and discharge official duties in full.

20.2. The security measure – arrest – is one of the procedural coercive measures, envisaged in the Criminal Procedure Law, and is considered to be the most severe security measure, which restricts right the most. I.e., arrest is deprivation of personal liberty, which, on the basis of an investigating judge's decision or a court's ruling, in cases set out in the Criminal Procedure Law, may be applied to a suspected or an accused person before the final ruling in the particular criminal proceedings has entered into force.

Arrest is applied to persons causing the greatest risk that they would attempt to hinder the course of criminal proceedings. Application of arrest is linked to various restrictions, which, as to their nature, are objective and, also, inevitable. Otherwise application of arrest would be meaningless because its aim would not

be achieved. The need to apply arrest is examined on case-by-case basis because the grounds for applying it must be identified.

The term of arrest is limited, and an arrested person has the right to request that the arrest is revoked or amended or request assessment the need for successive application of it (*see Section 277 and Section 281 of the Criminal Procedure Law*). Thus, also the rights restrictions, which follow from the nature or arrest, *inter alia*, the prohibition to use personal computer hardware with Internet access, are applied only for a certain period of time, while the grounds for applying arrest, defined in law, exist or until the maximum term of its application expires.

20.3. Arrest is enforced at a remand prison. A remand prison is a closed, specific environment where simultaneously several hundred arrested persons may be held (*see Case Materials, Vol. 2, p. 41*). The Law on the Procedures for Holding under Arrest regulates the rights and obligations of an arrested person, *inter alia*, an arrested person's duty to abide by the daily regime established in the remand prison. The daily regime includes working time and time for educational, training and regime activities, meals, roll calls, daily exercise, time for leisure, as well as for eight hours of uninterrupted sleep during the night. Moreover, in the remand prison, arrested persons are held in cells and persons from one cell are taken for exercise at the same time, the meal is provided for all persons held in one cell at the same time, and also roll calls are conducted at the same time. Escorting an arrested person for out-of-cell activities, for example, exercise, is ensured only by the presence of remand prison staff (*see Para 24 and Para 25 of Regulation No. 800*).

Pursuant to the Law on the Procedures for Holding Under Arrest, an arrested person has the right to communicate in writing with persons outside the remand prison, no less frequently than once a week use the phone of the remand prison. Likewise, an arrested person has the right, with the permission of the head of the remand prison, to one hour long meeting with other persons no less frequently than once per month to retain and promote socially useful contacts (*see Para 5 and Para 6 of Section 13 and Section 13¹ (4) of the Law on the Procedures for Holding under Arrest*).

It follows from the application that the Applicant had requested the permission from the head of the Riga Central Prison to use personal computer hardware with Internet access every business day from 9.00 till 18.00 in order to participate remotely in the work of the local government council and its committees (*see Case Materials, Vol. 2, pp. 3–4*).

A councillor has a series of rights within his constituency, *inter alia*, the right to be present in the institutions of public administration when they examine issues, which pertain to the interests of the respective local government or electors of his constituency, as well as inspect the work of local government capital companies and institutions, if tasked to do so by the Council or its bodies, to organise meetings with inhabitants (*see Section 9 (1) of the Law on the Status of a Councillor*). Likewise, in his constituency, the councillor has the duty to participate in controlling the execution of the decisions made by the respective council, to examine inhabitants' complaints and submissions and provide an answer within the procedure and term defined in law, as well as to organise reception of inhabitants no less frequently than once in two months (*see Section 10 of the Law on the Status of a Councillor*). Pursuant to the second sentence of Section 34 (2) of the law "On Local Governments", a councillor, while not being present at the place where the sitting is held, may not participate in voting on the candidates proposed for the office of a chairperson of the local government council, vice-chairperson, executive director, deputy executive director, head of a rural territory or town administration or deputy head of a rural territory or town administration.

Hence, it can be concluded that the time that the Applicant would need for working with computer hardware, utilising access to the Internet, is incompatible with enforcement of the security measure – arrest. I.e., being under arrest means that the person must mandatorily, equally with other arrested persons, comply with the daily regime, established in the remand prison, and with the restrictions on the right to communicate and not the procedure or working hours established by the local government council. Compliance with the procedures defined for enforcing arrest is a significant pre-conditions for reaching the purpose of arrest and ensuring within the remand prison an environment governed by the rule of law.

20.4. The restrictions on rights that follow from the nature of arrest, *inter alia*, prohibition to use personal computer hardware with Internet access, ensure effective course of criminal proceedings, order and security at the place of arrest, as well as protect the rights of victims and witnesses. Such a restriction on rights facilitates adoption of an objective ruling, aimed at fair regulation of criminal law relations. Taking into consideration also that both arrest and the restrictions on other rights that follow from it are limited in time and the need to apply them is regularly reviewed, and also the fact that a local government councillor, while being held under arrest, cannot exercise all his rights and obligations in full, the Constitutional Court finds that the adverse consequences that the person incurs as the result of applying the restriction on fundamental rights, included in the contested provisions, do not outweigh the benefit that society in general gains from it.

Hence, the contested provisions comply with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*.

The Substantive Part

On the basis of Sections 30–32 of the Constitutional Court Law, the Constitutional Court

held:

to recognise Paragraph 10 of Section 13 (1) of the Law on the Procedures for Holding under Arrest and of Paragraph 10 of Annex 4 to the Cabinet of Ministers Regulation of 27 November 2007 No. 800 “Internal Procedure Regulations of Remand Prisons” as being compatible with the First Sentence of Article 101 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement enters into force on the date it is published.

Chairperson of the court hearing

Aldis Laviņš