



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

On behalf of the Republic of Latvia

in Riga, on 15 January 2021

in the Case No. 2020-21-01

The Constitutional Court of Latvia, comprised of the Chairperson of the Court hearing Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

with regard to the constitutional complaints lodged by Artjoms Zablockis, on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Section 16, clause 1, Section 17, paragraph 1, clause 11, Sections 19² and 28¹ of the Constitutional Court Law,

on 16 December 2020, heard by way of written proceedings the case

“On the compliance of the first sentence of Section 45, paragraph 5 of the Sentence Execution Code of Latvia with Article 96 of the *Satversme* of the Republic of Latvia”.

Facts

1. Pursuant to amendments to the Sentence Execution Code of Latvia (hereinafter: “the Code”), which entered into force on 9 December 2004, Section 45 of the Code was supplemented by a new fourth paragraph, worded as follows: “Convicted persons may not meet arrested persons and the persons who are serving a sentence in other prisons.” Pursuant to amendments of 14 July 2011, this paragraph of the section was supplemented by the text providing that that the head of the prison has the right to prohibit a convicted person to meet a specific person due to security reasons, as well as by a regulation on contesting and appealing

against such a decision. Conversely, after the entry into force of the amendments of 20 December 2012, the previous fourth paragraph is considered the fifth paragraph. As of 14 July 2015, the fifth paragraph of Section 45 has been in force in the following wording: “Convicted persons may not meet arrested persons and the persons who are serving a sentence in other prisons. The head of a prison may, by a decision, prohibit a convicted person to meet a specific person due to security reasons.”

2. The Applicant—Artjoms Zablockis (hereinafter: “the Applicant”)—submits that the first sentence of Section 45, paragraph 5 of the Code (hereinafter: the contested norm) does not comply with Article 96 of the *Satversme* of the Republic of Latvia (hereinafter: “the *Satversme*”).

The Applicant, whilst serving a sentence in a prison, asked its head to allow a long-term meeting with his mother, who was then serving a sentence in another prison, but had received permission from the head of that prison to temporarily leave its territory. The head of the prison where the Applicant served his sentence refused to grant his request on the basis of the contested norm.

The right to inviolability of private life, protected by Article 96 of the *Satversme*, also implies the positive obligation of the state to help a person to maintain relations with relatives during imprisonment, thus reducing the negative consequences of imprisonment. When deciding on its positive obligations, in each individual case the state must find a fair balance between the public interest on the one hand, and the interests of the person concerned on the other.

One of the international instruments applicable to the present case is Recommendation Rec(2006)2 of the Committee of Ministers to Member States of 11 January 2006 entitled “European Prison Rules” (hereinafter: “the European Prison Rules”). According to these rules, prisoners should be allowed to meet and communicate with family member as often as possible in order to strengthen family relationships. In addition, the arrangements for meetings should be such as to enable prisoners to maintain and strengthen their family relationships under the most normal conditions possible. In Latvia, too, the planning documents for the

resocialisation policy of persons sentenced to imprisonment contain a statement that any kind of communication between convicts which has a positive effect is also desirable.

The restriction of the right to inviolability of private life, which is contained in the contested norm, has been established by law, and it has a legitimate aim—protection of public security. However, the principle of proportionality has not been observed. The Applicant, assessing the proportionality of the restriction of rights included in the contested norm, indicates that such a restriction could be justified in certain cases, when there is suspicion that the meeting of prisoners could give rise to the possibility of committing a new criminal offence. However, not all contact between prisoners leads to a threat to public security. In addition, the contested norm currently creates an absurd situation where prisoners may meet each other in the same prison on a daily basis but may not meet when serving a sentence in different prisons, although in the first case the risk of a new criminal offence being committed is greater. The application asserts that the contested norm does not sufficiently take into account the rights of the child and their significance contained in the legal acts of Latvia and international legal acts binding on Latvia, as well as the best interests of child.

In addition, the contested norm is incompatible with the second sentence of Section 45, paragraph 5 of the Code, which provides the head of the prison with the discretion to decide whether the prisoner should be prohibited from meeting with a specific person. The contested norm contains such a prohibition even without the assessment by the head of the prison.

The legitimate aim of the prohibition contained in the contested norm can be achieved by a means less restrictive of the rights of an individual. Such a means would be a decision based on an assessment of individual circumstances, considering the impact of the intended meeting on public safety, as well as whether the particular meeting endangers the purposes of the sentence and the child's development. In the event of a decision unfavourable to the convicted person, the refusal should be justified and reasoned. The meeting of prisoners

serving sentences in different prisons would, in any event, be possible only if one of them had been granted the right to temporarily leave the territory of the prison.

3. The institution that has issued the contested norm—the *Saeima*— submits that the contested norm complies with Article 96 of the *Satversme*.

The first, second, and third paragraphs of Section 45 of the Code provide prisoners with two types of meetings with relatives and other persons—short-term and long-term meetings. The former promotes the maintenance and restoration of socially useful ties, and the latter—the maintenance of familial ties. The contested norm prohibits the prisoner from meeting with arrested persons and persons serving a sentence in other prisons. It does not provide for a different regulation in cases where convicted persons who are relatives of each other are serving a sentence at the same time in different prisons. Thus, the contested norm restricts the rights enshrined in Article 96 of the *Satversme*. However, deprivation of liberty inherently includes certain restrictions on fundamental rights.

In the view of the *Saeima*, the restriction of fundamental rights contained in the contested norm is established by law. This restriction also has a legitimate aim—protection of public safety and the rights of other persons. The contested norm is also closely related to the resocialisation of convicted persons, as the prohibition of mutual meeting of prisoners during the sentence directly supports resocialisation. In order for the resocialisation process to be as successful as possible, it is important to prevent or reduce the risks of criminal behaviour during the sentence. The prohibition of mutual contact between prisoners during the sentence helps the prisoner to break the link with the criminal environment and the persons who have previously influenced the commission of a criminal offence or promoted the formation of an anti-social personality.

Interaction between anti-social members of society increases the risk of recidivism after serving a sentence and does not promote the correction of the person, and it also may jeopardise the order in prisons. Therefore, in order to maintain security and order in prisons, classification of prisoners is implemented. Thus, undesirable association is prevented, as is the circulation of information,

such as that concerning the situation in different prisons or plans to commit violations of the penitentiary regime or criminal offences, that could potentially jeopardise the internal order of the prison and public safety in general amongst prisoners.

If several members of the same family are serving a sentence in a prison, such a family can be considered to adhere to anti-social and questionable values. Such relatives may also have committed criminal offences together. Therefore, mutual contact between such prisoners is not desirable, as it does not promote the resocialisation of the prisoner and may jeopardise both the internal order of the prison and the society as a whole. This also applies to prisoners meeting with detainees on remand.

The restriction contained in the contested norm is appropriate for achieving a legitimate aim. The legitimate aim cannot be achieved by means of an individual assessment. Allowing prisoners to meet with detained and convicted persons in other places of detention may lead to a situation where two persons convicted or suspected of having committed one criminal offence meet. Similarly, should such an authorisation be provided for, it should be decided how such meetings should be organised. Allowing prisoners to move independently from one place of imprisonment to another would endanger public safety, and it is not clear by what means the prisoner's travel expenses would be covered. Ensuring escorting would place an additional burden on the state police and prisons. Both solutions would require a disproportionate investment from the state.

Finally, it should be taken into account that prisoners can communicate with each other by sending and receiving letters, as well as by calling. Certain categories of prisoners already have the opportunity to communicate via video calls.

4. The invited person—the Ministry of Justice—considers that the contested norm complies with Article 96 of the *Satversme*.

The right to inviolability of private life enshrined in Article 96 of the *Satversme* includes the right to form and maintain relationships with family

members and other people, including when a person is imprisoned. However, that right is not absolute.

The restriction of fundamental rights created by the contested norm has been established by law. When considering the legitimate aim of the restriction, it should be taken into account that the main task of a custodial sentence is the resocialisation of prisoners—the implementation of a set of measures during the sentence that promotes the convicted person’s ability to comply with the societal norms and not to commit criminal offences after returning from prison. Resocialisation helps to break the link with the criminal environment, with persons who have directly or indirectly influenced the commission of a criminal offence, as well as with persons who have influenced or promoted the formation of an anti-social (criminal) personality or perception of life. In contrast, it is necessary to promote socially positive and essential for the resocialisation process contact with family members that have a positive influence on the convicted person.

The Ministry of Justice draws attention to research conducted abroad, which has established that a criminal offence committed by a close relative has a direct impact on a person’s individual risk of criminal behaviour. This conclusion confirms that a family with several prisoners is dominated by criminal values and anti-social attitudes. Thus, face-to-face meetings of prisoners, which is the closest form of contact, cannot be supported, as a prisoner who has not made significant progress in the course of resocialisation may have a very significant influence on the other prisoner’s desire to change.

5. The invited person—the Ombudsman of the Republic of Latvia—holds that the contested norm does not comply with Article 96 of the Satversme.

The Ombudsman points out that the restriction contained in the contested norm is considered to be determined by law and has legitimate aims—protection of public safety and rights of other persons. The restriction is set in order to prevent various threats to order and security that may arise when two persons meet each other and are serving their sentences in different prisons.

In assessing the necessity of restriction of rights in a democratic society, it should be noted that imprisonment itself restricts a person's opportunities to enjoy the right to inviolability of private and family life without interference. However, no restriction should go beyond what is strictly necessary to achieve the objective for which it is intended. The prison regime needs to include ways to compensate for the dissocialising consequences of imprisonment.

The Ombudsman points out that he understands the security considerations that formed the basis for determining the prohibition contained in the contested norm. Although in some cases the meetings in question should not be desirable, it should be borne in mind that in a penitentiary system, the restriction of a person's rights must be based on an individual assessment.

The prohibition contained in the contested norm is disproportionately broad, as it also prohibits meetings which in themselves would not pose a threat to public security or rights of other persons. If the regulatory enactments do not provide for the possibility to perform an individual assessment in connection with the convicted person's request to allow him to meet with another convicted or imprisoned person, then the interests of the society and the particular individual are not balanced at all.

The Ombudsman has repeatedly expressed the opinion to the *Saeima* that the contested norm should be excluded from the Code. Judgments of the European Court of Human Rights (hereinafter: "ECtHR") and the Constitutional Court, which emphasise the need for individual assessment, should also be taken into account. Providing for an individual assessment would not mean that the convicted person will be able to meet with any other convicted or imprisoned person. The Code already provides for the possibility for the head of a prison to prohibit a convicted person from meeting with a specific person for security reasons. Thus, an individual assessment would not impose an unpredictable and disproportionate administrative burden on the prison administration.

In addition, in cases where the convicted persons are serving sentences in different prisons, their meeting is possible only if one of the convicted persons has been allowed by the head of the prison to temporarily leave the prison after

assessing all the risks associated with such a meeting. Such an authorisation is granted with a view to the possibility of a threat to public security. Moreover, there is no reason to believe that the security measures for such meetings should be significantly higher than for other types of meetings.

Finally, the ability to call and correspond cannot be equated with a real meeting.

6. The invited person—the Prison Administration—holds that the contested norm complies with Article 96 of the *Satversme*.

The Code defines the circle of persons who may visit the convicted person in prison, as well as provides for cases when visitation is prohibited. These are cases when a person has been convicted, has a security measure—detention—imposed on him, or the meeting can jeopardise security.

It can be concluded from the norms of the Code that the convicted persons who have received the permission of the head of the prison to temporarily leave the territory of the prison are not legally considered to be temporarily released from serving a sentence. Thus, such persons are still subject to the restriction contained in the contested norm, which prohibits them to visit other prisons in order to meet with the persons imprisoned there.

In any case, the execution of a custodial sentence is inextricably linked to the restrictions on the rights and contact opportunities of convicted persons. It should be taken into account that other forms of communication—correspondence and calls—are not prohibited. The argument of the Applicant regarding the absurdity of the situation, which he sees in the fact that the convicted persons are allowed to meet each other in the particular prison, is not substantiated. Such mutual daily contact is inevitable and cannot be considered as a meeting of convicted persons within the meaning of the Code. The Prison Administration also points out that it is not clear why the adult Applicant mentions the rights of parents and children in his application.

Meeting with family members can promote resocialisation of the convicted person only if a certain social benefit of the connection with these persons can be

discerned. Such benefit cannot be discerned if the family members of the convicted person violate the law themselves.

In examining the cases where representatives of several generations have served a custodial sentence in prisons, it must be concluded that the scale of social and moral values in the respective families has been degraded to absurdity. Such anti-social families living outside the law make it difficult and often even completely paralyse the process of resocialisation. This is a very clear indication of the overall threat to society. Therefore, the contact with such persons should be kept to a minimum and subject to strict control for preventive purposes and for the safety of the rest of the public.

7. The invited person—the Latvian Centre for Human Rights—indicates that the contested norm, insofar as it applies to family members and persons who are comparable to relatives in terms of emotional ties, does not comply with Article 96 of the *Satversme*.

The contested norm envisages an absolute prohibition for the convicted persons to meet with arrested persons and persons serving a sentence in other prisons. However, taking into account the need to maintain the convicted person's family ties, it is important to distinguish between his meetings with family members and meetings with other persons.

Execution of a custodial sentence is inevitably linked to restrictions on human rights, but those restrictions should not lead to societal and familial exclusion. The goals of the execution of a criminal sentence—prevention, resocialisation, and behaviour compliant with the rule of law after serving the sentence—are not achievable without providing the convicted persons with contact with family members and the outside world. In addition, family ties should be maintained regardless of where the family members are located. To do otherwise would be to separate families, which is not in line with the principle of legal equality. Differentiating the protection of the familial institution according to the actions of the family members would mean distrust of the penitentiary

system established by the state. By completely forbidding the convicted person to meet with a family member, he is not socially reintegrated, but isolated.

The right of the convicted persons to meet with family members is enshrined in a number of international human rights instruments. These documents do not directly determine the right of several convicted persons—members of one family—to meet, but conceptually such meetings are not different from others.

The contested norm prohibits an individual assessment, which could be performed by taking into account the individual characteristics of a person, the severity of the sentence imposed, the behaviour in the prison, the state of health of the family member, and other circumstances. Although the restriction of a mutual contact of convicted persons has a legitimate aim—to prevent the possibility of new criminal offences—the state may not introduce general restrictions without providing the possibility to make sure that the respective restriction is appropriate and necessary in each specific case. Thus, the restriction of a mutual meeting of convicted persons, although such may be necessary for the sake of security, cannot be recognised as compliant with the *Satversme* until all other means of achieving this goal less restrictive of fundamental rights have been reasonably refuted. Due to its imperatively absolute nature, the contested norm does not comply with the principle of proportionality, failing to ensure a balance between the objectives of criminal punishment and the right of prisoners to inviolability of private and family life, as well as negatively affecting the resocialisation of prisoners.

Findings

8. The Applicant has requested to recognise that the contested norm does not comply with *Satversme* because it prohibits a convicted person who is serving a sentence in a prison from meeting with his mother, who is serving a sentence in another prison, but has received permission from the head of the prison to temporarily leave the territory of the prison.

The contested norm provides that convicted persons are not allowed to meet with arrested persons and persons serving a sentence in other prisons. Thus, in terms of legal consequences, such a prohibition applies equally to a convicted person who wishes to meet a person in custody and to a convicted person who wishes to meet a person serving a sentence in another prison. In addition, such a prohibition is imposed regardless of the relationship between the two persons and of whether one of the convicted persons has been granted permission to temporarily leave the territory of the prison.

When examining a case initiated pursuant to a constitutional complaint, the Constitutional Court must take into account the requirements of the Constitutional Court Law and assess the constitutionality of the contested norm to the extent necessary for the protection of the fundamental rights of the submitter of the constitutional complaint. The court must also observe the principle of equality and assess the situation of all persons who are in equal and comparable conditions with the submitter of the constitutional complaint. If the legal norm contested in the constitutional complaint is applicable to several different situations, the Constitutional Court must specify to what extent it will assess the contested norm (*cf. see, e.g., Judgment of 13 June 2014 by the Constitutional Court in the Case No. 2014-02-01, para. 9*).

8.1. The contested norm applies to a wide range of different situations. Thus, in specifying the boundaries of the case, the Constitutional Court will first confirm whether the constitutionality of the contested norm is also to be examined in the part which prevents the convicted person from meeting with the person in custody.

The Constitutional Court has concluded that if a case has been initiated pursuant to a constitutional complaint, significant importance must be attached in particular to the factual circumstances of the case in which the contested norm has violated the applicant's fundamental rights (*cf. see, e.g., Judgment of 25 October 2011 by the Constitutional Court in the Case No. 2011-01-01, para. 12*). As mentioned above, the Applicant has filed an action with the court with a view to the situation that the convicted person, whilst in a prison, wishes to meet with a

person serving a sentence in another prison. The views of the invited persons obtained in the case also relate mainly to such situations.

It must be borne in mind that the purpose of detention as a precautionary measure is different from that of a custodial sentence, and that the situations in which it is applied are also different. In addition, a person may be detained only for as long as it is necessary to ensure the normal course of criminal proceedings, but not longer than is permitted by the Criminal Procedure Law in connection with the specific criminal offence specified in the decision on recognition of the person as a suspect or criminal prosecution of the person (*see Sections 277–279 of the Criminal Procedure Law*), and not longer than the maximum term of imprisonment that a court may impose for a criminal offence for which a person is accused or a term of imprisonment imposed by a court in a criminal conviction (*see Section 277, para. 10 of the Criminal Procedure Law*). The length of detention as a precautionary measure is, in most cases, less than the length of the custodial sentence.

The purpose of detention is to ensure the protection of the safety of the public and of individuals—to prevent a person suspected or accused of committing an offence from interfering illegally in criminal proceedings and from committing a new offence—and thus to ensure an objective investigation of the case and the adoption of an objective decision, as well as the prosecution of the guilty person (*cf. see, e.g., Judgment of 28 June 2019 by the Constitutional Court in the Case No. 2018-24-01, para. 16*). In contrast, the purpose of the penalties provided for in the Criminal Law, including custodial sentences, is, in accordance with the second paragraph of Section 35 of the Criminal Law, to protect public safety, restore justice, punish the perpetrator, resocialise the convicted person, and ensure that the convicted person and other persons abide by law and refrain from committing criminal offences. The permissibility of different human rights restrictions on detainees and persons serving a custodial sentence is evidenced by the case law of the ECtHR, which states that during criminal investigation detainees' contact with the outside world may be restricted to a greater extent than after investigation has been completed (*cf. see ECtHR Grand Chamber Judgment*

of 25 June 2019 in the case “Khoroshenko v. Russia”, Application No. 41418/04, para. 124).

It does not follow from the materials obtained in the case that the parties to the case or the invited persons have expressed an opinion on the aforementioned differences between the purpose of detention and the purpose of imprisonment and the impact of these differences on the assessment of the constitutionality of the contested norm. Thus, taking into account, inter alia, the arguments contained in the application, it can be concluded that there are no grounds to examine the case in the part concerning the fact that the contested norm prohibits a convicted person to meet with a person in custody.

8.2. The contested norm applies to cases when the convicted person wishes to meet with any other person who is in custody or in another prison. In its reply, the *Saeima* also acknowledges that the contested norm does not separately highlight the cases when the persons who wish to meet are relatives (*see reply of the Saeima at Case Materials, Vol. 1, p. 82*). However, it follows from the application that the Applicant objects not to the fact that all types of meetings with persons in other prisons are prohibited, but only to the fact that the contested norm prohibits him to meet a close family member—a mother who is serving a sentence in another prison. The *Saeima* in its reply and the invited persons in their opinions have also primarily commented on this aspect.

Thus, taking into account the arguments contained in the application and other materials of the case, it can be concluded that the main issue is whether the contested norm, according to which the convicted person is not allowed to meet with persons serving a sentence in other prisons, complies with the right to privacy insofar as it does not permit the convicted person to meet with family members.

8.3. In addition, an important circumstance in the situation of the Applicant is that one of the persons has received the permission of the head of the prison to temporarily leave the territory of the prison. That is, the present case does not concern situations where none of the persons has received such permission.

The *Saeima* in its reply and the Ministry of Justice in its opinion point out that allowing a convicted person to meet with a family member serving a sentence

in another prison would require making a decision, for example, on escorting the convicted person or on who should cover the transport ticket expenses (*see reply of the Saeima at Case Materials, Vol. 1, pp. 87 and 88 and the opinion of the Ministry of Justice, Case Materials, Vol. 1, p. 117*). However, the Constitutional Court emphasises that in the present case there is no dispute regarding the positive obligations of the state, namely, the obligation to provide persons serving sentences in two different prisons with the opportunity to meet by transporting persons to each other, covering transport ticket expenses, or in some other way. In the case under review, the contested norm is applied to situations when the meeting of such persons is prohibited even if one of the persons has received the permission of the head of the prison to temporarily leave the territory of the prison. That is, the case under review concerns the negative obligation of the legislature, which prevents the state from arbitrarily interfering in a person's private and family life.

Thus, in the case under review the Constitutional Court will assess whether the contested norm, insofar as it determines that a convicted person is prohibited from meeting with a family member if that family member is a person serving a sentence in another prison and has received permission from the head of the respective prison to temporarily leave the territory of the prison, complies with Article 96 of the *Satversme*.

9. The Applicant has indicated that the contested norm disproportionately restricts his fundamental rights enshrined in Article 96 of the *Satversme*, as it prohibits meeting with a family member—mother.

Article 96 of the *Satversme* provides: “Everyone has the right to inviolability of his or her private life, home, and correspondence.”

The Constitutional Court has previously indicated, specifying the right to inviolability of private life enshrined in Article 96 of the *Satversme*, that these rights cover several aspects (*see Judgment of 6 March 2019 by the Constitutional Court in the Case No. 2018-11-01, para. 16.1*). The term “private life” used in Article 96 of the *Satversme* is broad and includes, inter alia, family life, as well as

inviolability of home and correspondence. In addition, the right to inviolability of private life also includes the right to establish and develop relationships with other people (*see Judgment of 23 April 2009 by the Constitutional Court in the Case No. 2008-42-01, paras. 8 and 10*).

9.1. The Constitutional Court has concluded that the purpose of the execution of a custodial sentence is to effectively apply all elements of the sentence to the convicted person within the time provided by the judgment of the court, thus ensuring his resocialisation and behaviour compliant with the rule of law after release from imprisonment (*see Judgment of 9 June 2011 by the Constitutional Court in the Case No. 2010-67-01, para. 11.1*). The enforcement regime applied to the convicted person must also be aimed at developing a socially positive understanding of the values of the convicted person. Therefore, a person serving a sentence in a prison retains his or her fundamental rights, including the right to inviolability of private life (*cf. see Judgment of 21 October 2008 by the Constitutional Court in the Case No. 2008-02-01, para. 9.1*).

The Applicant, the *Saeima*, and the Ministry of Justice refer to the European Prison Rules, including Article 24.1, which stipulates that a prisoner must be allowed to meet and communicate with other people, including family members, by correspondence, telephone communication, or other means of communication as often as possible.

A prisoner has the same fundamental human rights enshrined in the *Satversme* as other persons. However, they may be restricted in accordance with the meaning of imprisonment, and restrictions on fundamental rights in prisons arise from the necessary and inevitable consequences of imprisonment, as well as the situation of a particular prisoner (*cf. see Judgment of 10 June 2014 by the Constitutional Court in the Case No. 2013-18-01, para. 12*).

Due to the aforementioned restrictions, the opportunities of a person in a prison to maintain contact and relationships with other persons are diminished, therefore efforts should be made to reduce such negative consequences of imprisonment, which may take the form of alienation from family members, as much as possible (*cf. see Judgment of 23 April 2009 by the Constitutional Court*

in the Case No. 2008-42-01, para. 10, and Judgment of 7 November 2019 in the Case No. 2018-25-01, para. 26). Personal meetings with other persons, in particular family members, are an essential precondition for the exercise of the human right to privacy, as such meetings allow individuals to re-establish and strengthen their relationships, including family relationships. This right to privacy, which includes, *inter alia*, the possibility to meet family members, also applies to prisoners, including those who wish to meet with family members serving sentences in other prisons.

9.2. When specifying the content of fundamental rights enshrined in the *Satversme*, Latvia's international obligations in the field of human rights must also be taken into account. Article 89 of the *Satversme* provides that the state recognises and protects fundamental human rights in accordance with the *Satversme*, laws, and international agreements binding on Latvia. It follows from this Article that the aim of the legislature is to achieve harmony of the human rights norms enshrined in the *Satversme* with the norms of international law. International human rights norms binding on Latvia and the practice of their application at the level of constitutional law also serve as a means of concretisation to determine the content and scope of general legal principles, insofar as it does not lead to reduction of protection of fundamental rights enshrined in the *Satversme* (*see Judgment of 12 May 2016 by the Constitutional Court in the Case No. 2015-14-0103, para. 15.1*).

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "the Convention") enshrines the right to respect for private and family life. The ECtHR has clarified that the right to privacy also includes the right to establish and develop relationships with other people (*see ECtHR Judgment of 16 December 1992 in the case "Niemiets v. Germany", Application No. 13710/88, para. 29, and Judgment of 25 November 2008 in the case "Biriuk v. Lithuania", Application No. 23373/03, para. 34*). The right to inviolability of family life, on the other hand, means the right to maintain relationships with family members. In addition, the ability of parents and children to enjoy each other's company is an essential element of family life (*see, e.g.,*

ECtHR Judgment of 17 July 2008 in the case “X v. Croatia”, Application No. 11223/04, para. 36).

The Applicant has repeatedly referred to, inter alia, his rights as a child and to the priority of the rights and interests of the child, also referring to the United Nations Convention on the Rights of the Child of 20 November 1989 (hereinafter: “the Convention on the Rights of the Child”). Article 1 of the Convention on the Rights of the Child provides that a child is any person below the age of 18 years, unless under the relevant legislation the age of majority is lower. Thus, the rights and interests of the child are protected within a certain age, which follows from the regulatory enactments regulating the rights of the child. Taking into account the fact that the Applicant was 25 years old at the time of submitting the constitutional complaint, his case does not fall within the scope of regulatory enactments regulating the rights of the child.

With regard to any convicted person, the ECtHR has recognised that, although deprivation of liberty inevitably involves restrictions on a person’s private and family life, an essential precondition for the exercise of a prisoner’s right to family life is that the authorities allow the imprisoned person to maintain contact with close family members (*see, e.g., ECtHR Grand Chamber Judgment of 20 June 2015 in the case “Khoroshenko v. Russia”, Application No. 41418/04, para. 106, and the ECtHR Judgment of 28 November 2002 in the case “Lavents v. Latvia”, Application No. 58442/00, para. 139*). However, the ECtHR has also repeatedly recognised that some control over prisoner’s contact with the outside world may be necessary and does not in itself breach the right to privacy (*see, e.g., ECtHR Judgment of 4 December 2018 in the case “Michno v. Lithuania”, Application No. 29826/15, para. 69*).

The need for a convicted person who is in prison to renew ties with his or her family and relatives is also emphasised in the Order of the Cabinet of Ministers No. 580 “On the Guidelines for the Resocialisation of Prisoners 2015–2020” of 24 September 2015. It mentions the task of promoting the convict’s socially positive relationship with his family as one of the tasks that would help to achieve the goals of resocialisation policy.

Thus, the scope of the right to inviolability of private life enshrined in Article 96 of the *Satversme* includes the right of a convicted person to form and maintain relationships with a family member even if he or she is serving a sentence in another prison.

10. The first, second, and third paragraphs of Section 45 of the Code provide for two types of meetings with other persons, including relatives, depending on the type of prison and the degree of the sentence, namely, short-term meetings and long-term meetings. The contested norm prohibits a convicted person from such meetings with a family member who is serving a sentence in another prison.

The ECtHR has recognised that a ban on a person in prison meeting with family members constitutes a restriction on the right to respect for family life (*see, e.g., ECtHR Judgment of 18 February 2020 in the case “Kungurov v. Russia”, Application No. 70468/17, para. 17*). The contested norm, which in essence prohibits a convicted person to meet with a family member, in this regard restricts the convicted person’s fundamental rights in those cases when this family member is serving a sentence in another prison.

Thus, the contested norm restricts the fundamental rights enshrined in Article 96 of the *Satversme* of a convicted person who wishes to meet with a family member serving a sentence in another prison.

11. The right to privacy may be restricted if such a restriction is provided for by a law that has been adopted in accordance with the due procedure, has a legitimate aim, and is proportionate.

Accordingly, in order to assess the compliance of the contested norm with Article 96 of the *Satversme*, it is necessary to, first of all, ascertain whether the restriction of fundamental rights has been established by a law adopted in accordance with the due procedure, namely:

- 1) whether the law has been adopted in accordance with the procedure provided for in regulatory enactments;

- 2) whether the law has been promulgated and is publicly available in accordance with the requirements set forth by regulatory enactments;
- 3) whether the law is formulated sufficiently clearly for a person to understand the content of the rights and obligations arising therefrom and to anticipate the consequences of its application (*see Judgment of 28 June 2019 by the Constitutional Court in the Case No. 2018-24-01, para. 11*).

The prohibition for a convicted person to meet with persons serving a sentence in other prisons was included in the Code by the law “Amendments to the Sentence Execution Code of Latvia”, which entered into force on 9 December 2004.

The parties to the case and the invited persons agree, and the Constitutional Court has no doubts, that the contested norm has been adopted in accordance with the procedure specified in regulatory enactments, has been promulgated and is publicly available in accordance with the requirements set forth by regulatory enactments, and is sufficiently clearly formulated.

Thus, the restriction of fundamental rights contained in the contested norm has been established by law.

12. By concluding that the restriction of fundamental rights has been established by a law adopted in accordance with the due procedure, the Constitutional Court must continue the assessment of the restriction, examining whether it has been established for the purpose of a legitimate aim.

Any restriction of fundamental rights must be based on circumstances and arguments why it is necessary, i.e., the restriction is established to serve important interests—a legitimate aim (*see, e.g., Judgment of 22 December 2005 by the Constitutional Court in the Case No. 2005-19-01, para. 9*).

If a legal norm prescribes restrictions of rights, then the burden of presenting and substantiating the legitimate aim of such restrictions in the Constitutional Court proceedings falls first and foremost to the institution that has issued the contested act, in this case, the *Saeima* (*cf. see, e.g., Judgment of 1 November 2012*

by the Constitutional Court in the Case No. 2012-06-01, para. 12, and Judgment of 1 December 2014 in the Case No. 2014-05-01, para. 18).

The written reply of the *Saeima* indicates that the restriction contained in the contested norm, as well as other restrictions automatically arising from the fact of deprivation of liberty, is aimed at preventing the convicted person from committing further criminal offences and ensuring that he wishes and is able to lead a law-abiding life upon returning to freedom, as well as at guaranteeing a lawful environment in prison. The restriction of fundamental rights contained in the contested norm follows both from the goal of resocialisation of the convicted person and from the aspects of the internal order of the prison and public security. Thus, the contested norm protects public safety and the rights of other persons. The fact that the legitimate aim of the contested norm could be the protection of public safety has also been indicated by the Applicant.

The Constitutional Court has acknowledged that the protection of public security as a legitimate aim of restriction of fundamental rights is related to the protection of the democratic state system and is recognised as acceptable mainly in cases where issues concerning threats to the state or public security are touched upon. In such a case, an objectively existing or potentially possible link between the adoption of the specific legal regulation and the strengthening of public security, prevention, or reduction of security threats must be established (*see Judgment of 7 October 2010 by the Constitutional Court in the Case No. 2010-01-01, para. 12.2*).

The Constitutional Court agrees that the restriction contained in the contested norm, which prevents a convicted person from meeting with a family member who is serving a sentence in another prison, has been established with the aim of protecting public safety. The purpose of the restriction is both to prevent threats to order and security within the prison and to reduce the likelihood that such offences will be committed when the person leaves the territory of the prison, either after receiving permission to temporarily leave the prison or after serving a custodial sentence.

Thus, the restriction contained in the contested norm, which a convicted person from meeting with a family member who is serving a sentence in another prison, has a legitimate aim—protection of public safety.

13. When assessing the proportionality of the restriction of fundamental rights, the Constitutional Court must verify:

1) whether the selected means are appropriate for the achievement of the legitimate aim, i.e., whether the legitimate aim can be achieved by the selected means;

2) whether such action is necessary, i.e., whether the legitimate aim cannot be achieved by means less restrictive of the rights of the individual;

3) whether the restriction is appropriate, i.e., whether the benefit obtained by the public is greater than the damage caused to the rights of the individual.

If it is found that the restriction of fundamental rights does not comply with at least one of these criteria, then it does not comply with the principle of proportionality and is unlawful (*see, e.g., Judgment of 16 May 2007 by the Constitutional Court in the Case No. 2006-42-01, para. 11, and Judgment of 14 December 2018 in the Case 2018-09-0103, para. 18*).

14. The means selected by the legislator are appropriate for the achievement of the legitimate aim if the aim is achieved by the specific regulation (*see, e.g., Judgment of 7 October 2010 by the Constitutional Court in the Case No. 2010-01-01, para. 13*).

The contested norm ensures that the convicted person does not meet with other persons, including family members, who are serving a sentence in other prisons. Thus, the application of the contested norm ensures that by restricting the right of the convicted person to meet with such persons, the potential threat to public security is prevented. There is a possibility that during the meeting of such convicted persons there may be disorder, planning of new criminal offences to be committed both inside and outside the prison, as well as exchange of information with undesirable content. Persons who have previously committed criminal

offences can have a negative impact on each other. One can agree with the opinion of the Ministry of Justice that contact of such persons in at least a part of cases increases the risk of possible recurrence after serving the sentence, does not promote the person's correction, and jeopardises the internal order of the prison.

Thus, preventing a convicted person from meeting a person serving a sentence in another prison reduces the likelihood of jeopardising public safety.

Thus, the selected means is appropriate for achieving a legitimate aim.

15. Restriction of fundamental rights is necessary if there are no other means that would be equally effective and which would be less restrictive of the fundamental rights of persons (*see, e.g., Judgment of 26 April 2018 by the Constitutional Court in the Case No. 2017-18-01, para. 21.3.2*).

A more lenient measure is not any other means, but only such a means by which the legitimate aim can be achieved in at least the same quality (*see, e.g., Judgment of 7 October 2010 by the Constitutional Court in the Case No. 2010-01-01, para. 14*). The competence of the Constitutional Court is to examine whether there are no alternative means that would infringe on the fundamental rights of persons enshrined in the *Satversme* to a lesser extent (*see, e.g., Judgment of 24 November 2017 by the Constitutional Court in the Case No. 2017-07-01, para. 19*).

15.1. The Applicant considers that the legitimate aim can be achieved by means that are less restrictive of the fundamental rights of an individual. In particular, a less restrictive measure would be a legal framework which provides for an individual assessment of the circumstances of each situation, as a result of which the head of a prison, as is already provided for by the second sentence of Section 45, paragraph 5 of the Code, may decide to grant the pertinent authorisation, or, conversely, not to grant it.

The contested norm envisages that the legitimate aim of the restriction of fundamental rights included therein will be achieved by not allowing any convicted person located in a prison to meet with a family member who is serving a sentence in another prison. Unlike the second sentence of the fifth paragraph of

Section 45 of the Code, which provides for an individual assessment by the head of a prison when deciding on a prohibition of a convicted person meeting another person, the contested norm does not provide for such an individual assessment.

Pursuant to Section 7, paragraphs 2, 3, 4, and 5 of the Criminal Law, a person may be sentenced to imprisonment for both a criminal offence and a less serious crime, serious crime, or an especially serious crime. These criminal offences threaten various interests protected by the Criminal Law, and their degree of harm varies. They can be committed both intentionally and negligently. The prohibition contained in the contested norm is established regardless of the criminal offence committed by each of the family members.

That is, due to the absence of individual assessment, the type and severity of criminal offences committed by both persons are not considered (*cf. see Judgment of 18 September 2020 by the Constitutional Court in the Case No. 2019-32-01, para. 18.2*). Nor is it assessed whether the family members committed the offence together, the behaviour of both persons in custody, the length of the sentence served, and other factors which, in the case of an individual assessment, would allow the head of the prison to reach a reasonable conclusion about whether the meeting in question can jeopardise public safety. Moreover, it cannot be confirmed from the draft materials of the contested norm that the legislature has considered the question of whether indeed every convicted person serving a sentence in a prison should be completely deprived of the right to privacy in this aspect.

The Constitutional Court points out that such a prohibition, which does not provide for an individual assessment, could be acceptable only if it was absolutely clear that whenever two persons—a convicted person serving a sentence in one prison and a convicted person serving a sentence in another prison—meet, certain actions that would jeopardise public safety would certainly be taken. Only in that case would an individual assessment not be regarded as an alternative means of achieving the legitimate aim of the same quality.

The Constitutional Court does not find corroboration for the fact that every convict who has committed a criminal offence of any seriousness, such as a

criminal offence through negligence, would automatically be considered such a significant threat to public security that the prohibition on meeting with a family member serving a sentence in another prison would also be justified without any individual assessment. In addition, the assessment of personal risks and other circumstances within the framework of the resocialisation process in accordance with paragraphs 8 and 9 of the Regulation of the Cabinet of Ministers No. 191 “Procedures for the implementation of the resocialisation of convicted persons” is already being carried out.

The need for an individual assessment in assessing the convicted person’s right to meet with family members has also been emphasised by the ECtHR. In a case which, as in the present case, considered a restriction which excluded any assessment, the ECtHR stated that inflexible regulation of such matters was not allowed and that states parties were expected to develop a proportionality assessment methodology that would allow institutions to balance individual and public interests and to take into account the idiosyncrasies of each case (*see ECtHR Judgment of 23 February 2012 in the case “Trosin v. Ukraine”, Application No. 39758/05, para. 42*).

It should be emphasised that, in the case of an individual assessment, each head of a prison would assess the risk to public security that such a meeting of convicted persons may pose. Namely, in the first place, it would be checked whether, in accordance with the objective of protecting public safety, the convicted person could be allowed to meet with a family member serving a sentence in another prison. Such an assessment, similarly to what is provided for in the second sentence of Section 45, paragraph 5 of the Code, would be made by the head of the prison when deciding whether to allow the convicted person to meet with the family member in question. Secondly, it would be checked whether a family member serving a sentence in another prison could leave the territory of that prison. This assessment would be made by the head of the second prison, in deciding whether to allow temporary leave from the territory of the prison.

15.2. Isolating a person from the outside world may limit that person’s chances of later integration into society. On the other hand, stable family

relationships and a positive attitude towards society as a whole can not only promote resocialisation but also prevent recidivism (*see Van Zyl Smit D., Snacken S. Principles of European Prison Law and Policy: Penology and Human Rights. Oxford: Oxford University, 2011, pp. 212–213*). The Constitutional Court pays special attention to the aspect of resocialisation of a convicted person. The *Saeima* and the invited person the Ministry of Justice point out that the prohibition contained in the contested norm is important for the successful resocialisation of the convicted person, as it promotes the sustainability of the results already achieved in the resocialisation process. The prohibition contained in the contested norm promotes only socially positive contact with family members but does not allow the convicted person to have contact with such family members that could affect him negatively.

However, it should be noted that in assessing the prohibition of mutual correspondence of convicted persons, the Constitutional Court has already indicated that it cannot be considered as an element of resocialisation (*see Judgment of 18 December 2009 by the Constitutional Court in the Case No. 2009-10-01, para. 15.1*).

In assessing the resocialisation process and its goal, it is necessary to emphasise that in certain situations, as indicated by the *Saeima*, such a meeting could indeed delay the resocialisation process. This could happen when a person re-enters an environment that may have led him to criminal activity in the past. Thus, the specific prohibition could in certain situations serve to support resocialisation. However, it cannot be stated that such a prohibition would always achieve the desired result. There is no reason to believe that a meeting with a family member serving a sentence in another prison could not have also a positive effect on the convicted person. This could happen, for example, in a situation where one convicted person has already made significant progress in the resocialisation process, changed his or her attitude towards the crime, and taken steps towards a law-abiding life. In such a situation, the other convicted person could also be positively affected. That is why in accordance with its objectives resocialisation should include an individual assessment of the cases in question,

as only after such an assessment could it be concluded that the prohibition on meeting of family members serving sentences in different prisons will serve the purpose of resocialisation.

15.3. Consequently, the Constitutional Court concludes that the legitimate aim of the restriction of fundamental rights contained in the contested norm can be achieved in an equivalent quality by alternative means. Namely, an alternative measure that would be less restrictive of the fundamental rights of a convicted person who wishes to meet with a family member serving a sentence in another prison that are enshrined in Article 96 of the *Satversme* would be an individual assessment of each respective request of the convicted person. When considering a request to allow a particular meeting, a decision would be made on its admissibility. If it were concluded that the meeting would not jeopardise public safety, a decision could be taken to allow the meeting. In contrast, if it were concluded that the meeting was likely to jeopardise public security, a decision would be taken to prohibit the meeting, similarly as provided for in the second sentence of Section 45, paragraph 5 of the Code. Such a framework would allow for an individual assessment of the risks that each prisoner may pose to public security. Thus, such a measure is considered to be a more lenient means by which the legitimate aim of the restriction of fundamental rights contained in the contested norm can be achieved in the same quality.

Thus, the contested norm does not comply with Article 96 of the *Satversme*.

16. In accordance with Section 32, paragraph 3 of the Constitutional Court Law, a legal norm which the Constitutional Court has declared as non-compliant with a norm of a higher legal force shall be regarded as invalid from the day of the promulgation of the Constitutional Court judgment, unless the Constitutional Court has determined otherwise.

The Applicant requests to declare the contested norm invalid from the moment of violation of his fundamental rights. The moment of occurrence of the violation can be considered 10 July 2019, when the head of the prison rejected the

Applicant's request for a long-term meeting with his mother. The Constitutional Court has already acknowledged that its task is to prevent the violation of the fundamental rights of the applicant as far as possible (*see Judgment of 16 December 2005 by the Constitutional Court in the Case No. 2005-12-0103, para. 25*). In order to prevent as far as possible the unfavourable consequences for the Applicant caused by the application of the contested norm, the contested norm shall be declared invalid from the moment of the violation of fundamental rights.

With regard to other persons, the contested norm becomes invalid from the day of the promulgation of this Judgment. The Constitutional Court points out that when considering requests submitted by convicted persons to meet with family members serving a sentence in another prison, in cases where one of the convicted persons has obtained permission from the head of the prison to temporarily leave the territory of the prison, Article 96 of the *Satversme* is directly applicable, as are the findings contained in this Judgment. In addition, the Constitutional Court draws attention to the fact that within the framework of resocialisation in prisons, an individual assessment of the convicted persons' risks and needs on the basis of the Code and the Regulation of the Cabinet of Ministers No. 191 "Procedures for the implementation of resocialisation of convicts" of 9 April 2013, the aim of which is to determine individual and appropriate resocialisation measures applicable to each convicted person to reduce anti-social behaviour and the risks of recidivism, is already being carried out. Paragraph 13 of these Regulations provides that the results of the assessment shall be recorded in a questionnaire, which shall include, inter alia, information on the motives and circumstances of the offence, the convicted person's behaviour in prison, education, work experience, marital status, social relations, and place of residence. Thus, the needs and risks of each convicted person are identified and assessed in preparing the resocialisation plan (*see Judgment of 7 November 2019 by the Constitutional Court in the Case No. 2018-25-01, para 29.2*). It can thus be concluded that this questionnaire could be used, inter alia, for the head of a prison to decide whether a convicted person should be allowed to meet with a family member who is

serving a sentence in another prison and who has been granted permission to temporarily leave the territory of the prison.

Substantive Part

On the basis of Article 29, paragraph 1, clause 6 and Articles 30–32 of the Constitutional Court Law, the Constitutional Court

held:

- 1) To declare the first sentence of Section 45, paragraph 5 of the Sentence Execution Code of Latvia, insofar as it prohibits without an individual assessment a convicted person from meeting with a family member who is serving a sentence in another prison and has received permission to temporarily leave the territory of the prison, to be incompatible with Article 96 of the *Satversme* of the Republic of Latvia.**
- 2) With regard to the submitter of the constitutional complaint Artjoms Zablockis, to recognise the first sentence of Section 45, paragraph 5 of the Sentence Execution Code of Latvia, insofar as it prohibits without an individual assessment a convicted person from meeting with a family member who is serving a sentence in another prison and has received permission to temporarily leave the territory of the prison, to be incompatible with Article 96 of the *Satversme* of the Republic of Latvia and invalid from the moment of occurrence of the violation of his fundamental rights.**

The judgment is final and not subject to appeal.

The judgment enters into force on the day it is promulgated.

Chairperson of the Court hearing
Osipova

Sanita