



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 18 September 2020

in Case No. 2019-32-01

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Ineta Ziemele, Justices Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs, having regard to Juris Krasovskis' 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 20 August 2020, examined in written procedure the case

“On Compliance of Section 49² (1) of the Sentence Execution Code of Latvia with the Second Sentence of Article 91 and Article 96 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 13 December 2012, the *Saeima* adopted the law “Amendments to the Sentence Execution Code of Latvia”, which entered into force on 11 January 2013. This Law added to the Sentence Execution Code of Latvia (hereafter – the Code) Section 49². Pursuant to the first part of this Section, “[a] convicted person who is serving the sentence at the highest level of the sentence serving regime in a partly-closed prison, an open prison or a juvenile correctional institution may, by lodging a written submission to the head of the deprivation of

liberty institution, request a permission to temporarily leave the deprivation of liberty institution for up to five twenty-four hour periods due to death of a close relative or a serious illness that endangers the life of a sick person”.

2. The applicant – Juris Krasovskis (hereafter – the Applicant) – holds that the first part of Section 49² of the Code (hereafter – the contested norm) is incompatible with the second sentence of Article 91 and Article 96 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

The Applicant is serving a prison sentence at a closed prison at the medium level of sentence serving regime. His mother had died on 8 June 2019 and, in connection with this, on 10 June, he had turned to the head of the institution for deprivation of liberty, submitting an application, requesting the possibility to take the last leave of the deceased relative. On 13 June 2019, the Applicant had received oral reply from the head of the institution for deprivation of liberty that the permission was not granted; moreover, the mother’s funeral already had taken place. The head of the institution for deprivation of liberty had not provided a written reply to the Applicant, even following a repeated request to provide it.

The Applicant points out that the contested norm had denied him – a prisoner who is serving his prison sentence in a closed prison at the medium level of sentence serving regime – the right to request permission to temporarily leave the deprivation of liberty institution due to death of a close relative or a serious illness. The contested norm is said to be the sole provision that regulates such situations and provides that only those sentenced persons who are serving their sentence at the highest level of the sentence serving regime in a partly-closed prison, at an open prison or a juvenile correctional institution may temporarily leave the territory of an institution for deprivation of liberty.

2.1. The Applicant notes that the contested norm, not permitting him to attend the funeral of a close relative, had restricted his right to a family life, which is protected by Article 96 of the *Satversme*. The Applicant’s link to his mother is said to be protected by this norm. The contested norm had prohibited him from attending the funeral of the closest person to him. The Applicant agrees that,

formally, the restriction on fundamental rights, envisaged in the contested norm, had been established by law; however, this norm is said to be incompatible with a superior legal provision – the principle of prohibition of discrimination. Insofar the contested norm prohibits the sentenced persons who are serving their sentences at a closed or partly-closed prison at the lowest level of sentence serving regime from temporarily leaving the territory of the institution for deprivation of liberty, its aim is related to the purpose of sentence execution – protection of public security. The contested norm is said to be suitable for reaching the legitimate aim since it ensures that convicted persons are isolated from society.

However, allegedly, the contested norm is not necessary for reaching the legitimate aim because there are several alternative and less restrictive measures that could be used for reaching the legitimate aim. The Code provides, with respect to those groups of sentenced persons who may temporarily leave the institution for deprivation of liberty, that individual assessment must be carried out in each particular case to determine whether such permission should be given. The same procedure could be applied to all other sentenced persons as well. It also would be admissible if, with respect to those sentenced persons who serve their sentences in closed or partly-closed prisons at the lowest level of sentence serving regime, the legislator would define stricter criteria, retaining, however, the possibility of individual assessment. There are no grounds for considering that all the aforementioned sentenced persons would cause greater threat to public security compared to those sentenced persons who serve their sentences in partly-closed prison at the highest level of sentence serving regime or in an open prison. Permission to temporarily leave the institution for deprivation of liberty, escorted by its employee or a policeman, could be considered as being an alternative measure.

Likewise, the possibility should be considered of consolidating in the normative regulation the existing practice that a convicted person who may not leave the institution for deprivation of liberty is given the opportunity to take the last leave of the relative in the territory of the institution for deprivation of liberty. However, this possibility would not be a suitable alternative to the right to attend

the funeral of a close relative because it would, likewise, restrict the right of convicted persons to attend a funeral. It may happen that the relatives of the deceased cannot take the deceased to the institution for deprivation of liberty; moreover, a funeral is an important ritual and participation in it cannot be substituted by taking leave of the deceased relative at the institution for deprivation of liberty.

The restriction included in the contested norm is said to be inappropriate. By not allowing a convicted person to take leave of a deceased relative at all, the right to a family life is said to be affected in its very core. Absolute prohibition for a convicted person to leave the territory of an institution for deprivation of liberty in connection with the death of a close relative is also said to be contrary to the judicature of the European Court of Human Rights and the European Prison Rules. The Constitutional Court also has previously noted that the obligation to bury a deceased person, first and foremost, lies upon their relatives. The prohibition to see a relative for the last time cannot be justified by an abstract public security interest.

2.2. It is contended that the contested norm envisages differential treatment of convicted persons of different genders. Since women do not serve their sentences in a closed prison, their right to temporarily leave the institution for deprivation of liberty is broader. This is said to be contrary to the principle of prohibition of discrimination, included in the second part of Article 91 of the *Satversme*.

Men and women, who have been sentenced for committing a serious or a particularly serious crime, in the context of the right to the inviolability of the family life, are said to be in comparable circumstances. Men and women who have been sentenced for committing crimes of equal severity, begin serving their sentences at different levels of sentence serving regime and, hence, the contested norm causes differential treatment of these groups. If the Applicant were a woman he would serve his sentence in a partly-closed prison and, thus, could request permission for temporarily leaving the institution for deprivation of liberty.

The differential treatment had been established by law in a formal but not in substantive sense because it is said to be contrary to the judgement by the European Court of Human Rights in the case “Ēcis v. Latvia”. The differential treatment caused by the contested norm, as well as the differential treatment in determining the regime for serving the sentence is said to lack objective and reasonable grounds. If protection of women’s rights were recognised as being such grounds then the respective aim could be reached by the contested norm. In addition to the alternative measures for reaching the legitimate aim, noted above, the Applicant also mentions the right of any sentenced person, irrespective of their gender, to request the possibility to temporarily leave the institution for deprivation of liberty. It is contended that the contested norm does not serve public interests because it restricts the social reintegration into society of convicted men.

2.3. In his additional explanations, provided to the Constitutional Court, the Applicant requests recognising, with respect to him, the contested norm as being void as of the moment when the infringement on his fundamental rights occurred or 8 June 2019, so that the issue of compensation for non-pecuniary damages could be addressed in the procedure defined in the Administrative Procedure Law.

3. The institution, which issued the contested act, i.e., the *Saeima*, holds that legal proceedings in the case should be terminated on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law.

The *Saeima* has noted in its written reply the issue regarding the right of convicted persons, who serve their sentences in a closed prison, to temporarily leave the territory of an institution for deprivation of liberty due to the death of a close relative had been discussed at the sitting of the Defence, Internal Affairs and Corruption Prevention Committee of the 13th convocation of the *Saeima* (hereafter – the Committee) on 14 January 2020. The Committee has decided that the legitimate aims of the restriction on fundamental rights, established by the contested norm, could be reached by measures that are less restrictive upon fundamental rights.

On 10 March 2020, the Ministry of Justice submitted to the Committee proposals regarding the necessary amendments to the Code and the Law on the Procedure for Holding under Arrest. It is noted in the additional explanations provided by the *Saeima* that amendments to the Code have entered into effect on 23 June 2020, pursuant to which Section 49⁴ had been added to the Code. This norm envisages the right of any convicted person to take the last leave from a deceased relative on the territory of the institution for deprivation of liberty. Thus, the content of the contested norm has changed substantially and it no longer denies the right to a convicted person who serves the sentence in a closed prison to take the last leave from a deceased relative.

Such amendments to the Code had been proposed, *inter alia*, taking into account the judgement of the European Court of Human Rights in the case “*Ēcis v. Latvia*” and the judgement by the Constitutional Court in case No. 2018-25-01. The regulation that provides for the right to request the possibility to temporarily leave the territory of an institution for deprivation of liberty for a limited circle of convicted persons is said to have a legitimate aim – protection of public security. However, there is a measure for reaching this aim that is less restrictive upon the rights of convicted and arrested persons

In February 2020, 243 convicted persons serving their sentences in partly-closed prison at the highest level of sentence serving regime, in an open prison or a juvenile correctional institution had the right to request the possibility to take the last leave from a deceased relative. The new regulation, in turn, significantly expands the circle of these persons, allowing 2441 convicted persons and 941 arrested persons to request the possibility to take the last leave from a deceased relative. Moreover, this regulation is applicable also to those convicted persons who, in accordance with the contested norm, may request the right to temporarily leave the territory of an institution for deprivation of liberty but whose request had been dismissed.

4. The summoned person – the Ministry of Justice – holds that legal proceedings in the case should be terminated on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law.

The Ministry notes that adult men who have been sentenced to deprivation of liberty for committing a serious or a particularly serious crime acquire the right to temporarily leave the institution for deprivation of liberty in order to attend the funeral of a close relative when they, progressing within the system of progressive sentence execution, have arrived at the highest level of sentence serving regime in a partly-closed prison. This may happen only after at least half of the delivered sentence has been served. Women who have been sentenced for committing the same criminal offences may reach this level of sentence serving already after one-fourth of the sentence has been served. However, it should be taken into account that the part of sentence that has been served is not the only criterion that is taken into consideration when deciding on the issue of the convicted person's progression within the system of progressive sentence execution. Thus, after the part of sentence, defined in the Code, has been served, the further sentence serving regime depends upon the convicted person himself.

Likewise, the fact that a convicted person is at the respective level of sentence serving regime does not mean that, in all respective cases, he will be given permission to temporarily leave the institution for deprivation of liberty. Such a request is reviewed in accordance with certain criteria, to protect public security.

The need for the contested norm had followed from the case law because, previously, the Code had provided for the right of convicted persons to temporarily leave an institution for deprivation of liberty but had not specified the criteria for adopting such a decision.

The Ministry upholds the *Saeima's* argument that legal proceedings in the case should be terminated because the Ministry has submitted to the Committee a proposal to add a norm to the Code that would envisage the right of convicted persons to take the last leave of a deceased relative on the territory of an institution for deprivation of liberty.

5. The summoned person – the Prison Administration – holds that legal proceedings in the present case should be terminated on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law.

At its sitting on 14 January 2020, the Committee has decided that amendments to the Code should be drafted, envisaging the possibility to reach the legitimate aim of the restriction on fundamental rights of persons, who serve their sentences in a closed prison, by less restrictive means. Section 49⁴ of the Code, which provides that the convicted person may, by submitting a written application to the head of the institution for deprivation of liberty, request permission to take the last leave from a deceased relative on the territory of the institution for deprivation of liberty in the presence of this institution's representative. Thus, all prison inmates, irrespective of the regime for serving the sentence, would be given the possibility to take the last leave from a deceased relative on the territory of the prison. Thus, with the coming into force of this provision, the content of the contested norm would have changed substantially even before the Constitutional Court's judgement is delivered and it would no longer deny a convicted person, who is serving his sentence in a closed prison, the right to take the last leave from a deceased relative.

6. The summoned person – the Ombudsman – holds that the contested norm is incompatible with the second sentence of Article 91 and Article 96 of the *Satversme*.

The constitutionality of the contested norm should be reviewed by assessing its compatibility with the second sentence of Article 91 of the *Satversme* in conjunction with Article 96 of the *Satversme*.

It is contended that there are legal grounds for the fact that being in place for deprivation of liberty *per se* restricts a person's possibilities to enjoy without interference their right to inviolability of private and family life. However, restrictions that have been established with respect to convicted persons should be commensurate and should not be stricter than is absolutely necessary for the aim

for which they have been established. However, in the context of the right to family life, the prison administration should support the inmate's communication with the family. Pursuant to the judicature of the European Court of Human Rights, in all cases where it is possible, a prison inmate should be allowed to leave the prison facility, either under escort or independently, to visit a sick relative or to attend a funeral, or due other humane considerations. Moreover, maintenance of family ties is a significant measure for supporting the social reintegration and rehabilitation of all prison inmates, irrespective of their gender. A temporary leave from the prison facility should be considered as one of the measures for promoting social reintegration of all prison inmates.

Gender should be considered as one of the prohibited grounds for discrimination, set out in Article 91 of the *Satversme*. Prohibition of discrimination is said to be applicable also to sentence execution.

If additional circumstances have not been established, for example, pregnancy, then persons who have committed criminal offences of equal severity or type are said to be in comparable circumstances, irrespective of gender. Pursuant to the Code, men who have been convicted for serious and particularly serious crimes, compared to women who have been convicted for committing equally serious crimes, within the framework of progressive execution of sentence, must serve a much larger part of the sentence delivered before having the possibility to apply for the highest level of sentence serving regime at a partly-closed prison. Prison inmates acquire the right to request permission for leaving temporality the prison facility only at this level. Thus, allegedly, it follows from the contested norm that differential treatment of convicted persons belonging to the female and male gender who are in similar and comparable circumstances is allowed. This differential treatment is based on the gender criterion.

Although various international documents set requirements that must be met in executing a sentence of deprivation of liberty for women, the possibility to receive permission to temporarily leave a prison facility due to the loss of a close relative cannot be linked to the special protection of women and providing for their specific needs. The European Court of Human Rights in its judgement in the

case “Ēcis v. Latvia” also has noted that general prohibition for men to leave the prison to attend the funeral of a relative does not take into account the special needs of female prison inmates.

It is contended that the right to private life does not guarantee to a prison inmate unconditional right to temporarily leave the prison facility to participate in the funeral of a relative. However, each request like this should be examined on its merits. If normative acts do not provide for the possibility to examine, in each particular case, a prison inmate’s request to allow him to attend the funeral of a relative then the interests of society and those of the particular individual are not balanced.

Hence, automatic prohibition to persons who are in a closed or a partly-closed prison at the lowest level of sentence serving regime to attend funerals of relatives should be deemed to be disproportionate. The threat to public security could be prevented by less restrictive measures, i.e., by conducting individual assessment of each situation and each convicted person but not denying a certain group of convicted persons access to the respective right.

Regulation that would allow all prison inmates the request the possibility to take the final leave from a deceased relative on the territory of the institution for deprivation of liberty should be considered positively. However, application of this regulation in practice causes concern. If other relatives have to bring the deceased person to the territory of the institution for deprivation of liberty this might not happen due to financial or other reasons. Nobody is obliged to take or to permit taking to a prison the mortal remains of their relative so that another relative could take the last leave of the deceased. Thus, the aforementioned regulation will not resolve the situation where a separate group of convicted persons does not have the possibility to request permission to leave the territory of an institution for deprivation of liberty to attend the funeral of a relative. Hence, such regulation could be supported only insofar it is envisaged as an additional possibility when, following the death of an inmates’ relative, in the general procedure, taking into account the individual assessment, circumstances are

established that do not permit the possibility that the prison inmate could attend the funeral of a relative.

7. The summoned person – the Latvian Centre for Human Rights – notes that the contested norm is incompatible with the second sentence of Article 91 and Article 96 of the *Satversme*.

The contested norm does not provide for persons who are serving their sentence of deprivation of liberty in a closed or a partly-closed prison at the lowest level of the sentence serving regime the right to request permission to temporarily leave the territory of the institution for deprivation of liberty due to the death or serious illness of a close relative. Thus, it can be concluded that these persons do not have this right. There are no grounds for adding to the sentence of deprivation of liberty elements that are not linked to the aims for which a criminal sentence is executed. Likewise, it is not correct to create an impression to convicted persons that the State is not treating them respectfully.

The right to take the last leave from a relative in the case of their death or severe illness is said to be an aspect of the right to private life. This right is gender-neutral because a relative's death affects men and women equally. Also, the State should not be entitled to assess a person's genuine link to the particular relative.

Although the contested norm is aimed at protecting public security, more proportionate measures for reaching this legitimate aim are said to be accessible, for example, escorting the prison inmate to the place for taking the final leave. Definitely, the proportionality between a person's right to private life and public security should be examined rather than applying general prohibition to leave the prison facility to certain groups of prison inmates. Likewise, taking the last leave from the deceased person at the prison facility could be considered as being a more proportionate measure than the provisions included in the contested norm if privacy needs would be met in the leave-taking.

The contested norm places men who serve their sentence in a closed prison in a less favourable situation compared to women who have committed the same criminal offences. Therefore, the Constitutional Court's findings, included in its

judgement in case No. 2018-25-01, should be applied also in context of the contested norm.

8. The summoned person – *asoc. prof. Dr. iur. Solvita Olsena from the Faculty of Medicine, the University of Latvia*, – notes that the contested norm is incompatible with the second sentence of Article 91 and Article 96 of the *Satversme*.

The prevailing principle in the treatment of prison inmates should be such that facilitates their contacts with the world outside prison. Pursuant to the Prison Rules of the Committee of Ministers of the Council of Europe, prison inmates should be allowed to attend funerals of their relatives, if that is possible without considerable security risks and the necessary resources for it are available. Since, in the Applicant's case, the issue whether any considerations existed that would justify the prohibition to participate in his mother's funeral was not examined, this prohibition violated the Applicant's right to private life.

Allegedly, the contested norm is incompatible also with the principle of gender equality. The conclusions made by the European Court of Human Rights in the case "Ēcis v. Latvia" regarding the need to ensure equality between men and women in those case where a prison inmate has to attend the funeral of a relative should have been applied in the Applicant's situation. However, these conclusions had been disregarded.

The *Saeima* has pointed out that prison inmates have the possibility to request permission to take the final leave from a deceased relative on the territory of the institution for deprivation of liberty; however, such mechanism is incompatible with the judicature of the European Court of Human Rights. Pursuant to this Court's judicature, in the case of a funeral of an inmate's close relative, it should always be assessed whether the particular prison inmate can be allowed to temporarily leave the prison facility. The regulation pointed out by the *Saeima* does not envisage assessment of legitimate interests and prevents from adopting a decision appropriate for the particular situation; moreover, it does not respect the importance of funeral as an important cultural and religious rite in

Latvia. Furthermore, it is not clear whether other relatives of the deceased would agree to cover the costs related to transporting the mortal remains to the prison facility, nor whether the prison facility would be able to guarantee sufficient privacy for the inmate when taking the final leave from the deceased relative.

In deciding on termination of legal proceedings in the case, the Constitutional Court should take into account the legal remedies available to the Applicant.

The Findings

9. The institution, which issued the contested act, – the *Saeima* – requests terminating legal proceedings in the case on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law because, on 23 June 2020, amendments to the Code have entered into force, adding Section 49⁴ to the Code. Pursuant to these amendments, the content of the contested norm has changed. The Ministry of Justice and the Prison Administration also note that legal proceedings in the case should be terminated for exactly the same reason. Whereas the Applicant, the Ombudsman, the Latvian Centre for Human Rights and summoned person Solvita Olsena are of the opinion that the said amendments do not substantially change the contested norm and, therefore, legal proceedings in the case should be continued.

If arguments that could be the grounds for terminating legal proceedings have been expressed in the case the Constitutional Court must examine these first and foremost (*see, for example, Judgement by the Constitutional Court of 27 June 2016 in Case No. 2015-22-01, Para 12*).

On 23 June 2020, amendments to the Code entered into force and a new provision was added to the Code – Section 49⁴. Pursuant to this norm, any convicted person may submit a written application to the head of an institution for deprivation of liberty, requesting permission to take the final leave from a deceased relative on the territory of the institution for deprivation of liberty in the presence of the institution's representative. Thus, this norms envisages the

possibility for all convicted persons – both such who serves his sentence in a partly-closed prison at the highest level of the sentence serving regime, in an open prison or a juvenile correctional institution and such who serves his sentence in a partly-closed prison on the lowest level of sentence serving regime or in a closed prison, to request permission to take the final leave from a deceased relative on the territory of an institution for deprivation of liberty. Section 49⁴ of the Code does not envisage that, in the case of a death of a close relative, a convicted person could leave the territory of an institution for deprivation of liberty.

By Section 49⁴ of the Code, the legislator has provided the possibility for convicted persons to take the last leave from a deceased person on the territory of the institution for deprivation of liberty; however, even after this norm has entered into force, the possibility to temporarily leave the territory of an institution for deprivation of liberty due to the death of a close relative will not be envisaged for the convicted persons who serve their sentence in a closed or partly-closed prison at the lowest level of sentence serving regime. Thus, to establish whether legal proceedings in the case should be terminated, the Constitutional Court must examine whether leaving the territory of an institution for deprivation of liberty due to the funeral of a close territory falls within the scope of fundamental rights, defined in Article 96 of the *Satversme* (*compare, see, for example, Judgement by the Constitutional Court of 12 March 2020 in Case No. 2019-11-01, Para 9*).

Moreover, if the case has been initiated on the basis of a constitutional complaint, the fact that the submitter of the constitutional complaint has requested recognising the contested norm as being void as of certain past date may point to the need for continuing legal proceedings in it (*compare, see Judgement by the Constitutional Court of 5 November 2008 in Case No. 2008-06-01, Para 5*). The Constitutional Court notes that the present case has been initiated on the basis of a constitutional complaint. Application of the contested norm has caused direct adverse consequences for the Applicant – prohibition to attend his mother's funeral, and he has requested recognising this norm as being void from the moment of its application.

Hence, there are circumstances requiring continuation of legal proceedings.

Therefore, legal proceedings in the present case shall be continued.

10. The Applicant has requested recognising that the contested norm is incompatible with the *Satversme* because it prohibits convicted persons who serve their prison sentence in a closed or a partly-closed prison at the lowest level of sentence serving regime from requesting permission to temporarily leave the territory of an institution for deprivation of liberty due to the death of a close relative.

The contested norm provides that a convicted person who serves his sentence in a partly-closed prison at the highest level of the sentence serving regime, in an open prison or a juvenile correctional institution may request permission to temporarily leave the territory of the institution for deprivation of liberty on two occasions – due to the death of a close relative or a relative's severe, life-threatening disease.

It follows from the application that the Applicant objects not to the entire contested norm but only to the fact that the possibility to leave the territory of an institution for deprivation of liberty due to the death of a close relative is not applied to those convicted persons who serve their sentence in a closed prison or in a partly-closed prison at the lowest level of sentence serving regime. Moreover, the Applicant has expressed arguments exactly regarding the possibility to leave the institution for deprivation of liberty due to the death of a close relative.

If the norm that is contested in the application pertains to a broad set of different situations it might be necessary for the Constitutional Court to specify the extent to which it will review this norm (*compare, see Judgement by the Constitutional Court of 28 March 2013 in Case No. 2012-15-01, Para 9, and Judgement of 7 July 2014 in Case No. 2013-17-01, Para 19*). Taking into consideration the arguments stated in the application and other materials in the case, it can be concluded that the basic matter in the case is whether the contested norm, pursuant to which only such a convicted person who serves his sentence in a partly-closed prison at the highest level of sentence serving regime, in an open prison or a juvenile correctional institution may leave the territory of an institution for deprivation of liberty due to the death of a close relative is compatible with the

right to inviolability of private life and the principle of prohibition of discrimination.

Hence, in the present case, the Constitutional Court must review the contested norm, insofar it provides that only such a convicted person who serves his sentence in a partly-closed prison at the highest level of sentence serving regime, in an open prison or a juvenile correctional institution, may temporarily leave the territory of an institution for deprivation of liberty due to death of a close relative.

11. If the compliance of the contested norm with several provisions of the *Satversme* is challenged then the Constitutional Court, in view of the merits of the case, must define the most effective approach to reviewing this compliance (*see Judgement by the Constitutional Court of 26 April 2018 in Case No. 2017-18-01, Para 23*).

The Applicant has noted that the contested norm had prohibited him from attending his mother's funeral and, thus, restricted his right to private and family life. It is contended that the absolute prohibition, included in the contested norm, is not proportionate. Moreover, the Applicant argues that the contested norm provides for women who have been convicted for committing an equally serious criminal offence and who serve their sentence in another sentence serving regime the right to temporarily leave the prison facility. Allegedly, this situation caused by the fact that the Code provides for different sentence execution regimes for men and women who have been convicted for committing criminal offences of equal severity.

It follows from the arguments presented by the Applicant, the *Saeima* and the summoned persons that the basic matter in the case is related to the right to inviolability of private life, included in Article 96 of the *Satversme*. Hence, the Constitutional Court will, first and foremost, review the compatibility of the contested norm with Article 96 of the *Satversme*. Whether the compatibility of the contested norm with the second sentence of Article 91 of the *Satversme*, which

includes the principle of prohibition of discrimination, needs to be reviewed depends on the solution to the basic matter in the case.

12. The Applicant notes that the contested norm is incompatible with Article 96 of the *Satversme*.

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

The concept of “private life” is broad and comprises, *inter alia*, family life, as well as inviolability of home and correspondence. The right to inviolability of private life includes also the right to establish and develop relationships with other persons (*see Judgement by the Constitutional Court of 23 April 2009 in Case No. 2008-42-01, Para 8 and Para 10*). A person’s private life is that sphere of human existence where an individual as a reasonable being and the supreme value of democratic state governed by the rule of law exercises their freedom. This exercise of freedom is manifestation of a person’s autonomy and self-determination, which constitutes the private life of the said person (*see Judgement by the Constitutional Court of 5 December 2019 in Case No. 2019-01-01, Para 16*).

The rights specified in Article 96 of the *Satversme* is indissolubly connected to the constitutional axiom, included in the Introduction to the *Satversme* (*see Judgement by the Constitutional Court of 5 December 2019 in Case No. 2019-01-01, Para 16.1.*). The fifth paragraph in the Introduction to the *Satversme*, in turn, provides, that the identity of Latvia in the European cultural space has been shaped by [...] universal values. Each individual takes care of oneself, one’s relatives. These universal values, *inter alia*, human dignity, provide that a person, after their death, must be buried, and this obligation, first and foremost, lies upon the relatives of the deceased persons. In Latvia, traditionally, people are buried in cemeteries. Likewise, it must be noted that the constitutional value – human dignity – means that also after a person’s death their body must be treated with dignity, *inter alia*, taking into account, to the extent possible, the last

will of the deceased person (*compare, see Judgement by the Constitutional Court of 5 March 2019 in Case No. 2018-08-03, Para 11*).

Attending the funeral of a close relative not only allows taking the last leave of them but also showing respect during the funeral, reinforcing and developing one's religious and philosophic views and finding consolation after the death of a relative together with other relatives (*see: Gross R. The Psychology of Grief. London: Routledge, 2018, pp. 56–57*). In the case of a religious funeral, the funeral ceremony may comprise also religious rites, for example, the Office of the Dead, included in the Latvian cultural canon (*see: Boiki M. Mirušo ofīcijs Latgalē un Augšzemē. Available: <https://kulturaskanons.lv/>*). The funeral rite is to be considered as being of special importance for society, it should be regarded as a cultural event of supreme importance (*see: Uzule L., Zelče V. Latviešu kapusvētki: identitātes rituāls. Rīga: Mansards, 2014, 25.–26. lpp.*). Social rites have symbolic and emotional significance, and they allow relatives to share the experience and understanding of the most important life-events. Funeral is one among such rites. It is a complex psychological, social and spiritual event.

Moreover, the Constitutional Court has concluded that a sentence of deprivation of liberty is executed with the aim to applying effectively, within the term set in the court's judgement, all elements of punishment, thus, ensuring his resocialisation and law-abiding conduct after he is released from serving the sentence of deprivation of liberty (*see Judgement by the Constitutional Court of 9 June 2011 in Case No. 2010-67-01, Para 11.1.*). Likewise, the sentence serving regime, which is applied to the convicted person, should be aimed at creating a positive understanding of values in the convicted person. Therefore a person who is serving their sentence at a prison facility retains their fundamental rights, *inter alia*, the right to inviolability of private life (*compare, see, Judgement by the Constitutional Court of 21 October 2008 in Case No. 2008-02-01, Para 9.1.*).

Due to imprisonment, a person's possibilities to maintain contacts and relationships with other persons decrease (*see Judgement by the Constitutional Court of 23 April 2009 in Case No. 2008-42-01, Para 10, and Judgement of 7 November 2019 in Case No. 2018-25-01, Para 26*). However, as noted above,

attending the funeral of a close relative is linked to a person's private life because it affects the person's internal world and, at the same time, facilitates maintaining relationships between the family members. Thus, the inviolability of private life is applicable also to imprisoned persons and it includes, *inter alia*, the possibility to attend the funeral of a close relative.

However, the right to inviolability of private life, *inter alia*, attending the funeral of a close relative, is not absolute and may be restricted. Moreover, prison inmates are persons who are specially subordinated to the institution for deprivation of liberty. The institution of persons specially subordinated to an institution is characterised by the finding that some groups of persons, also prison inmates, become specially subordinated to state institutions. To ensure operation of an institution, various restrictions on their rights may be established for the subordinated person (*see Judgement by the Constitutional Court of 10 June 2014 in Case No. 2013-18-01, Para 11.1.*). Therefore it is acceptable that restrictions on the rights of imprisoned persons are stricter compared to those for persons who are in liberty (*compare, see, Judgement by the Constitutional Court of 21 October 2008 in Case No. 2008-02-01, Para 10*). Hence, the right to inviolability of private life of persons in prison facilities is not the same as of persons who are in liberty, and the right of this person to communicate with the family members and other persons is restricted in compliance with the meaning of imprisonment (*see Judgement by the Constitutional Court of 2 December 2009 in Case No. 2009-07-0103, Para 12*).

In clarifying the content of fundamental rights, established in the *Satversme*, Latvia's international commitments in the area of human rights also must 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 upon Latvia. It follows from this Article that the legislator's aim is to achieve balance between the human rights provisions, included in the *Satversme*, and the provisions of international law. International human rights provisions, binding upon Latvia, and the practice of application thereof on the level of constitutional law serve also as a means for

specifying the content and scope of the principles of a democratic state governed by the rule of law, insofar they do not cause decreasing the protection for fundamental rights, included in the *Satversme* (compare, see *Judgement by the Constitutional Court of 12 May 2016 in Case No. 2015-14-0103, Para 15.1.*).

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention) defines the right to inviolability of private and family life. The European Court of Human Rights has explained that the right to inviolability of private life comprises also the right to establish and develop relationships with other persons (see *Judgement by the European Court of Human Rights of 16 December 1992 in Case “Niemiets v. Germany”, Application No. 13710/88, Para 29, and Judgement of 25 November 2008 in Case “Biriuk v. Lithuania”, Application No. 23373/03, Para 34*). Whereas the right to family life means the right to maintain relationships with family members (see, for example, *Judgement by the European Court of Human Rights of 17 July 2008 in Case “X v. Croatia”, Application No. 11223/04, Para 36*). Likewise, this Court has repeatedly underscored: the right to inviolability of family life includes also the right of detained and arrested persons to temporarily leave the place for deprivation of liberty to attend funerals of relatives because this right, *inter alia*, helps to reinforce the family ties (see *Judgement by the European Court of Human Rights of 12 November 2002 in Case “Ploski v. Poland”, Application No. 26761/95, Para 32, and Judgement of 12 January 2019 in Case “Ēcis v. Latvia”, Application No. 12879/09, Para 71 and Para 92*).

Thus, attending the funeral of a close relative as an essential manifestation of personal autonomy and self-determination. Funeral, *inter alia*, is collective leave-taking by the family members from the deceased and allows not only to show the last respect to the deceased but also to reinforce the relationships between the family members. Hence, attending the funeral of a close relative falls within the scope of the right to inviolability of private life.

Hence, attending the funeral of a close relative falls within the scope of the right to inviolability of private life, included in Article 96 of the *Satversme*,

which is applicable also to persons who have been sentenced to deprivation of liberty.

13. The contested norm provides that only such convicted person who is serving his sentence in a partly-closed prison at the highest level of sentence serving regime, in an open prison or a juvenile correctional institution may request permission to temporarily leave the territory of the institution for deprivation of liberty due to the death of a close relative. Whereas the contested norm prohibits a convicted person who is serving his sentence in a closed prison or partly-closed prison at the lowest level of sentence serving regime from leaving the territory of an institution for deprivation of liberty in the same circumstances.

Thus, the contested norm restricts the fundamental right, included in Article 96 of the *Satversme*, of a convicted person who is serving his sentence of deprivation of liberty in a closed prison or a partly-closed prison at the lowest level of sentence serving regime.

14. The right to inviolability of private life may be restricted if such restriction has been established by a law, adopted in due procedure, it has a legitimate aim and is proportionate.

Hence, to examine the compliance of the contested norm with article 96 of the *Satversme*, it must be verified, first and foremost, whether the restriction on fundamental rights has been established by a law adopted in due procedure, i.e.:

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 publicly accessible in compliance with the requirements set out in regulatory enactments;

3) whether the law has been worded with sufficient clarity to allow a person to understand the content of the rights and obligations following from it and foresee the consequences of its application (*see Judgement by the Constitutional Court of 28 June 2019 in Case No. 2018-24-01, Para 11*).

The contested norm was included in the Code by the law “Amendments to the Sentence Execution Code of Latvia”, which entered into force on 11 January 2013. The Applicant agrees and neither does the Constitutional Court doubt that the restriction has been established by a law, adopted in due procedure, which is sufficiently clear and accessible.

However, the Applicant notes that the contested norm cannot be regarded as a law in “substantive sense” because the European Court of Human Rights already in its judgement of 10 January 2019 in the case “Ēcis v. Latvia” has recognised that this norm is incompatible with Article 14 of the Convention.

The Constitutional Court agrees that the legislator has the obligation to consider regularly whether the particular legal regulation continues to be effective, suitable and necessary and whether any improvements to it are not required (*see Judgement by the Constitutional Court of 8 December 2015 in Case No. 2015-07-03, Para 19*). Due to development of the legal system and relationships between members of society, legal regulation, which once was compatible with legal norms of higher legal force, may become outdated and, finally, even violate a person’s fundamental rights (*compare, see Judgement by the Constitutional Court of 11 October 2018 in Case No. 2017-30-01, Para 19*). Latvia is State Party to the Convention, thus, judgements by the European Court of Human Rights in cases against Latvia are binding upon it and it must respect the findings on interpretation of the Convention, expressed in these judgements (*see Judgement by the Constitutional Court of 27 November 2003 in Case No. 2003-13-0106, Para 1 of the Findings*).

It must be taken into account that the European Court of Human Rights delivered its judgement in the case “Ēcis v. Latvia” in 2019 or six years after the contested norm entered into force. Thus, the legislator, in adopting the contested norm, could not examine the compliance of the draft law, which included this norm, with the aforementioned judgement.

Moreover, it should be taken into account that, although the European Court of Human Rights and the Constitutional Court are both mechanisms for the protection of human and fundamental rights, they have different jurisdictions.

Pursuant to Article 85 of the *Satversme*, the Constitutional Court reviews cases regarding the compliance of laws with the *Satversme*, as well as other cases that the legislator has placed in its jurisdiction. Whereas the task of the European Court of Human Rights, as it has noted also in its judgement in the case “*Ēcis v. Latvia*”, is not to perform abstract review of legal provisions but to assesses the way, in which they had been applied to a particular applicant. Hence, in the aforementioned case, the European Court of Human Rights did not examine the compliance of the whole Latvian regime of prison facilities with the Convention but whether, by prohibition to attend the father’s funeral, the rights of the particular applicant, which have been defined in Article 14 of the Convention and must be examined in conjunction with Article 8 of the Convention, had been violated (*see Judgement by the European Court of Human Rights of 12 January 2019 in Case “Ēcis v. Latvia”, Application No. 12879/09, Para 43*). In the examined case, the European Court of Human Rights concluded that the prohibition to the applicant to attend his father’s funeral had been contrary to the principle of prohibition of discrimination (*see Judgement by the European Court of Human Rights of 12 January 2019 in Case “Ēcis v. Latvia”, Application No. 12879/09, Para 94*). The Constitutional Court will review the constitutionality of the contested norm by taking into account, *inter alia*, the findings expressed by the European Court of Human Rights in its judgement in the case “*Ēcis v. Latvia*”.

The restriction on the right to inviolability of private life, included in the contested norm, has been established by law.

15. Any restriction on fundamental rights should be based upon conditions and arguments justifying its need, i.e., the restriction should be established in view of important interests – for a legitimate aim (*see, for example, Judgement by the Constitutional Court of 22 December 2005 in Case No. 2005-19-01, Para 9*).

Article 116 of the *Satversme* provides that a person’s rights, included, *inter alia*, in Article 96 of the *Satversme*, may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic

structure of the State, and public safety, welfare and morals. If restrictions upon rights have been established then, in the proceedings before the Constitutional Court, the institution, which has issued the contested act, first and foremost, has the obligation to present and substantiate the legitimate aim of such restrictions, in this particular case – it is the *Saeima* (see, for example, *Judgement by the Constitutional Court of 11 December 2014 in Case No. 2014-05-01, Para 18*).

The *Saeima* has noted in its written reply: the restriction on fundamental rights, which does not envisage that a convicted person, belonging to a certain group of convicted persons, could temporarily leave the territory of the institution for deprivation of liberty to attend the funeral of a close relative, has a legitimate aim – protection of public security. All summoned persons also agree that the contested norm is directed at the protection of public security.

The Applicant has argued that the preparatory documents for the draft law, which included the contested norm, do not provide clarity regarding the legislator's aim. However, the Applicant recognises that the prohibition to leave the territory of the institution of deprivation of liberty is linked to the purpose of executing a criminal sentence – ensuring isolation and surveillance of a convicted persons, and this purpose complies with the interests of public security.

The Constitutional Court has recognised that the protection of public security as the legitimate aim of a restriction on fundamental rights should be linked to the protection of the order of a democratic state governed by the rule of law and is recognised as being admissible mainly in those cases where issues of threat to the state or public security are involved. In such a case, an objectively existing or potentially possible link between the adoption of the particular legal regulation and reinforcement of public security, prevention or diminishing of a 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 Constitutional Court agrees that the prohibition to a person, sentenced to deprivation of liberty, to temporarily leave the territory of an institution for deprivation of liberty has been established in the interests of society in general to prevent threats to order and security. The European Court of Human Rights also

has noted that the right to temporarily leave the place for deprivation of liberty may be restricted in the interests of public security, as well as to prevent committing of crimes (*see Judgement of the European Court of Human Rights of 12 November 2002 in Case “Ploski v. Poland”, Application No. 26761/95, Para 34*). The contested norm allows the head of an institution for deprivation of liberty, on the basis of criteria, included in this norm, to make considerations related to public safety and other considerations, in examining requests for permission to temporarily leave the place for deprivation of liberty, which have been submitted by convicted persons who are serving their sentences in an open prison or a partly-closed prison at the highest level of sentence serving regime. With respect to other convicted persons who serve their sentences in a closed prison or a partly-closed prison at the lowest level of sentence serving regime, the legislator itself has made these considerations (*see the minutes and the audio recording of the sitting of Saeima Defence, Internal Affairs and Corruption Prevention Committee of 6 March 2012 in Case Materials, pp. 53-56 and p. 133*).

Hence, the prohibition to all convicted persons, who are serving their sentences in a closed prison or a partly-closed prison at the lowest level of the sentence serving regime, to attend the funeral of a close relative is aimed at protecting public security.

Thus, the restriction on the right to inviolability of private life, included in the contested norm, has a legitimate aim – protection of public security.

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

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

2) whether such actions are 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 then 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*).

17. 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 contested norm ensures that a convicted person who serves his sentence in a closed prison or in a partly-closed prison at the lowest level of sentence serving regime, does not leave the institution for deprivation of liberty and is isolated from society. Hence, the contested norm, by restricting the possibilities of a convicted person to temporarily leave the place for deprivation of liberty, decreases the possibility of threat to society. The Applicant, the *Saeima* and the summoned persons also subscribe to it.

Thus, the Constitutional Court concludes that the prohibition to temporarily leave the territory of the institution for deprivation of liberty, is suitable for reaching the legitimate aim of the restriction on fundamental rights – protection of public security.

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

18. The Applicant, the *Saeima* and several summoned persons – the Ombudsman, Solvita Olsena and the Latvian Centre for Human Rights – hold that there are also more lenient measures that would allow reaching the legitimate aim of the restriction on fundamental rights.

The Constitutional Court has noted that a restriction on fundamental rights is necessary if there are no other measures that would be as effective and, by

choosing of which, persons' fundamental rights would be restricted 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 such that allows reaching the legitimate aim in at least the same quality (*see, for example, Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 14*). Verification whether there are alternative measures that would be less restrictive upon persons' fundamental rights, defined in the *Satversme*, falls within 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*).

18.1. The *Saeima*, the Ministry of Justice and the Prison Administration have noted that the regulation, which is currently included in Section 49⁴ of the Code, provides the possibility to a convicted person to take the last leave from a deceased relative in a way that would not cause threats to public security. Thus, it should be recognised as a measure that is less restrictive upon the fundamental rights of a convicted person and, at the same time, does not subject public security to threats.

The Applicant has noted that in cases where the institution of deprivation of liberty has valid grounds for not granting permission to the convicted person to leave the prison facility the possibility to take the last leave from the deceased relative at the prison facility could be ensured to the convicted person. However, the applicant holds, that this possibility *per se* does not prevent infringement on the convicted person's fundamental rights, which follows from the prohibition to attend the funeral of a close relative. This, allegedly, depends on the wishes and possibilities of other persons and, likewise, the ritual meaning of funeral is not taken into account. Moreover, the permission to all convicted persons to take the last leave from a deceased relative at the prison facility *per se* does not change the situation where a convicted person who belongs to a particular group of convicted persons cannot receive permission to attend the funeral of a close relative.

The Ombudsman holds that taking the last leave from a deceased relative on the territory of the prison facility should be supported to the extent it were

envisaged as an additional possibility when, after the death of a close relative of a convicted person, in the general procedure, taking into account individual assessment, such circumstances are established due to which the particular convicted person may not be allowed to visit a relative's funeral. The fact that the convicted person's possibility to take the last leave from the deceased would depend upon the actions of other persons is said to cause concern. Moreover, this regulation would not resolve the situation where a convicted person belonging to a particular group of convicted persons may not request permission to leave the territory of the institution for deprivation of liberty to attend the funeral of a relative.

Summoned person Solvita Olsena has pointed out that taking the last leave from a deceased relative at the prison facility cannot be deemed to be an alternative to leaving temporarily the place for deprivation of liberty to attend the funeral of a close relative. The solution presented by the *Saeima* fails to respect the importance of funeral as an important cultural and religious rite in Latvia. In applying the contested norm, assessment would be required as to whether it is possible to ensure at the place for deprivation of liberty such circumstances that would respect the dignity of the deceased, their family and of the convicted person.

The Constitutional Court notes that taking the last leave from a deceased relative at the territory of the institution for deprivation of liberty cannot be considered as being an alternative measure to attending the funeral of a close relative, included in the right to inviolability of private life. As indicated above in this judgement, funerals and funeral rites have a special significance in the life of each individual and society in general. Taking leave of the deceased on the territory of the place for deprivation of liberty cannot replace it.

Hence, taking the last leave from a deceased relative on the territory of the place for deprivation of liberty cannot be considered as being an alternative to attending the funeral of a close relative.

18.2. The Applicant has pointed out that the fourth, the sixth and the eleventh part of Section 49² of the Code define several criteria that the head of the institution for deprivation of liberty has to take into account when performing

individual assessment of each request of permission to temporarily leave the territory of the institution for deprivation of liberty and that the legislator could apply these criteria also to those convicted persons who are serving their sentences in a closed prison or a partly-closed prison at the lowest regime of sentence serving regime. Conducting of individual assessment, perhaps, introducing additional criteria with respect, in particular, to the aforementioned groups of convicted persons, could be regarded as a measure less restrictive on the rights of these persons than the regulation that has been included in the contested norm. Likewise, it could be provided that these convicted persons, when leaving temporarily the place for deprivation of liberty, should be constantly escorted by a police officer or an employee of the institution for deprivation of liberty.

Also the *Saeima* has noted in its written reply that the understanding of the content of the convicted persons' right to private life has changed and this has been established at the Committee's sitting on 14 January 2020. Thus, a decision must be made how to reach the aim of the contested norm by less restrictive measures.

Similar arguments have been expressed by several summoned persons. The Ombudsman has noted that the threat to public security could be prevented by less restrictive measures. Namely, each situation and in each particular convicted person should be assessed individually rather than defining a group of such convicted persons who are never allowed to temporarily leave the place for deprivation of liberty. The Latvian Centre for Human Rights has underscored that in each case the proportionality between a person's right to private life and public security should be reviewed rather than applying general prohibition to certain groups of convicted persons to temporarily leave the territory of a place for deprivation of liberty.

The contested norm envisages reaching the legitimate aim of the restriction included in it by allowing leaving temporarily the territory of an institution for deprivation of liberty due to the death of a close relative a convicted person who belongs to particular groups of convicted persons, i.e., convicted persons who serve their sentence in a partly-closed prison at the highest level of sentence

serving regime, at an open prison or a juvenile correctional institution. However, even if the convicted person belongs to any of the aforementioned groups of convicted persons and may request permission to temporarily leave the territory of an institution for deprivation of liberty, such possibility is not guaranteed to him in all cases. Pursuant to Section 49² of the Code, in each case, the head of the institution for deprivation of liberty decides on granting such permission. The Ministry of Justice also has noted that, pursuant to the procedure set out in the Code, a convicted person's request to permit him to temporarily leave the territory of the institution for deprivation of liberty is carefully assessed in compliance with certain criteria to prevent possible threat to public security. Thus, the legislator has provided that, in view of public security, permission to temporarily leave the territory of an institution for deprivation of liberty should be granted by assessing whether the particular convicted person would not cause threat to public security. However, the legislator has not envisaged such assessment with respect to those convicted persons who serve their sentence in a closed prison or a partly-closed prison at the lowest level of sentence serving regime. The contested norm does not envisage for a person who is serving his sentence in a closed prison or a partly-closed prison at the lowest level of sentence serving regime the possibility to exercise the right to inviolability of private life, by attending the funeral of a close relative. Hence, it can be concluded that such person has been substantially denied the right to inviolability of private light in this part of its scope.

Pursuant to Section 50⁴(1) of the Code, convicted men who have been sentenced to deprivation of liberty for committing a serious or a particularly serious crime, as well as convicted persons who have been transferred from a partly-closed prison for gross or systemic violations of the regime serve their sentences in a closed prison. Whereas Section 50⁵ (1) of the Code defines those groups of convicted persons who serve their sentences in a partly-closed prison. Women who have committed intentional crimes, men who have committed less serious crimes and others belong to these groups.

The Special Part of Criminal Law indicates serious and particularly serious crimes targeting very different interests and rights, e.g., a person's life, health,

fundamental rights and fundamental freedoms, liberty, morals and sexual inviolability. Likewise, some of the crimes against family and minors, indicated in Chapter XVII of the Criminal Law are serious or particularly serious. There are also such serious and particularly serious crimes that are directed against natural environment, property, general security and public order, road safety, system of governance and jurisdiction. Some criminal offences in economy, civil service and military service also have been defined in the Criminal Law as serious or particularly serious. Serious and particularly serious crimes are also such offences that are directed against humanity, peace, war crimes, genocide, as well as crimes against the State (*see Judgement by the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Para 19.2.1.*).

The contested norm denies everyone who has been sentenced for committing a serious or particularly serious crime, as well as a convicted person who is serving the prison sentence at a partly-closed prison at the lowest level of sentence serving regime the right to attend the funeral of a close relative. In other words, the legislator has adhered to the presumption that all persons who serve their sentences in a closed prison or a partly-closed prison at the lowest level of sentence serving regime would threaten public security to similar extent if they were granted permission to temporarily leave the territory of the institution for deprivation of liberty to attend the funeral of a close relative.

The Constitutional Court notes that also a convicted person who has committed a serious or a particularly serious crime and, therefore, is serving the sentence in a closed prison, as well as a convicted person who is serving the sentence in a partly-closed prison at the lowest level of sentence serving regime, just like all other convicted persons have the right to inviolability of private life. As noted above, attending the funeral of a close relative, included in Article 96 of the *Satversme*, is applicable also to convicted persons who serve a sentence of deprivation of liberty. For such a person, specially subordinated to the institution, to be able to attend the funeral of a close relative, they must request permission to temporarily leave the territory of the institution for deprivation of liberty. It should

be assessed in each particular case whether the convicted person's participation in the funeral of close relative is commensurate with the interests of public security.

Establishment of prohibition similar to the prohibition included in the contested norm may be justifiable if it is well-founded. In particular, substantiation is necessary if the legislator has decided to deny a certain group of convicted persons, which is classified in accordance with a trait defined by the legislator – serving the sentence in a closed prison or in a partly-closed prison at the lowest level of sentence serving regime, the possibility to attend the funeral of a close relative at all (*compare, see, Judgement by the Constitutional Court of 24 November 2017 in case No. 2017-07-01, Para 19.2.1.*). However, preparatory materials of the contested norm do not provide confirmation that the legislator had assessed whether every convicted person, to which the trait, defined by the legislator, applies, is such who should be fully deprived of the right to inviolability of private life in this regard. Namely, whether, indeed, every convicted person who has committed any of the abovementioned various criminal offences, provided for in the Criminal Law, and is serving the sentence in a closed prison or in a partly-closed prison at the lowest level of sentence serving regime, should be considered as being so substantial threat to public security that it would substantiate the prohibition for him to temporarily leave the territory of the institution for deprivation of liberty to attend the funeral of a close relative.

A convicted person's right to inviolability of private life and, hence, the possibility to exercise this right by attending the funeral of a close relative, are not absolute. Whether the request by a convicted person of permission to temporarily leave the territory of the institution for deprivation of liberty to attend the funeral of a close relative must be satisfied, should be assessed, by taking into account all particular circumstances in the case. In assessing, whether the prison inmate should be granted permission to temporarily leave the territory of the institution for deprivation of liberty, the type and severity of the criminal offence committed by him may be taken into account. However, this may not be the sole criterion to be taken into consideration when making individual assessment of the request.

The Constitutional Court also notes that, pursuant to Section 8 of the Code, the purpose of sentence execution is to ensure resocialisation of the persons and their law-abiding conduct after execution of the sentence. To make resocialisation possible, relationships of sentenced persons with their families should be improved, facilitating return to the family (*see, for example, the Cabinet's Order of 24 September 015 No. 581 "On the Plan for Implementing the Guidelines on Resocialisation of Prison Inmates for 2015–2020"*). Stable relationship with the family and positive attitude towards society in general may not only facilitate resocialisation but also prevent reoffending (*see: Van Zyl Smit D., Snacken S. Principles of European Prison Law and Policy: Penology and Human Rights. Oxford: Oxford University, 2011, p. 213*). Permission to temporarily leave the territory of the place for deprivation of liberty is one of the ways, in which the development of such relationship can be fostered (*see: Meijer S. Rehabilitation as a Positive Obligation. European Journal of Crime, Criminal Law and Criminal Justice, 2017, Vol. 25, p. 152, 154*).

The European Court of Human Rights also has noted that the right to inviolability of private and family life does not guarantee unconditional right of a person in detention to visit relatives (*see Judgement by the European Court of Human Rights of 13 January 2000 in Case "Georgiou v. Greece", Application No. 45138/98*). However, the State may deny a person the right to attend the funeral of close relatives, e.g., parents, only in the presence of convincing reasons and if it is impossible to find an alternative solution (*compare, see Judgement by the European Court of Human Rights of 12 January 2012 in Case "Feldman v. Ukraine (no. 2)", Application No. 42921/09, Para 34 and 35*). Individual assessment of the situation must be conducted even in those cases where the convicted person has committed serious crimes (*see Judgement by the European Court of Human Rights of 6 December 2016 in Case "Kanalas c. Roumanie", Application No. 20323/14, Para 61*).

Rule 70 of the Standard Minimum Rules for the Treatment of Prisoners, approved by the UN General Assembly's Resolution of 17 December 2915, provides: whenever circumstances allow, the prisoner should be authorised to go,

either under escort or alone, to attend the funeral of a near relative (*see Rule 70 of the United Nations Standard Minimum Rules for the Treatment of Prisoners*).

Likewise, it has been noted in several documents of the Council of Europe that prison inmates should be granted the right to temporarily leave the place for deprivation of liberty, *inter alia*, to attend funerals of relatives. Pursuant to Sub-para 24.7 of the Recommendation Rec(2206)2 of the Committee of Ministers of the Council of Europe “The European Prison Rules”, whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone to visit a sick relative or to attend a funeral of a relative. It is noted in Recommendation No. R(82) 16 of the Committee of Ministers of the Council of Europe on Prison Leave that such right makes prisons more humane and improve the conditions of detention. The right to leave the prison facility to attend the funeral of a relative should be granted also to prisoners who are serving their sentences in closed prisons, unless it is established, assessing individually such circumstances as the severity and type of the criminal offence committed, the period of detention already completed, the behaviour of the prisoner, potential threat to public security and others, that the particular person poses danger to society.

Thus, the Constitutional Court concludes that the aim of the restriction on fundamental rights, included in the contested norm, could be reached in equal quality by alternative measures. Namely, there is an alternative measure, which is less restrictive upon a prisoner’s right to inviolability of private life, i.e., individual assessment of every prison inmate’s request to be permitted to temporarily leave the territory of the place for deprivation of liberty, in view of the findings expressed above and the criteria, included in Section 49² of the Code. Such regulation would permit individual assessment of the risk, which might be posed by each prison inmate to the interests of public security. Thus, both public security and a prison inmate’s right to inviolability of private life would be protected at the same time. Hence, this measure is to be considered as being a more lenient measure, allowing to reach the legitimate aim in the same quality.

Therefore, the contested norm is incompatible with Article 96 of the *Satversme*.

19. Upon establishing incompatibility of the contested norm with even one Article of the *Satversme*, it must be recognised as being unlawful and void. Since the contested norm has been recognised as being incompatible with Article 96 of the *Satversme* it is no longer necessary to review the compatibility of this norm with Article 91 of the *Satversme* (*compare, see Judgement by the Constitutional Court of 21 February 2018 in Case No. 2017-11-03, Para 15*).

The Constitutional Court draws the legislator's attention to the fact that the contested norm provides for different rights and, hence, creates different restriction on the right to inviolability of private life for convicted persons who are serving their sentences in different sentence serving regimes. In its judgement in case No. 2018-25-01, the Constitutional Court found that the scope of rights and restrictions for convicted men and women at each level of sentence serving regime differed and decided that legal regulation, which, only on the basis of the gender criterion and without taking into account the individual needs and risks of each convicted persons, envisaged stricter sentence serving regime, as well as different rights and restrictions (in particular, restrictions on the right to inviolability of private life) following from it, for convicted men, did not ensure respect for the rights of convicted men (*see Judgement by the Constitutional Court of 7 November 2019 in Case No. 2018-25-01, Para 29.2.*).

20. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a superior legal norm, must be considered as being void from the date when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise.

The Applicant requests recognising the contested norm as being void as of the moment when the infringement occurred. The Constitutional Court has already recognised that, in deciding on the moment as of which the contested norm (act)

becomes void, its task is to eliminate, to the extent possible, the infringement on the applicants' fundamental rights (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 25*).

To eliminate, insofar possible, the adverse consequences caused to the Applicant by the application of the contested norm, with respect to him, it should be recognised as being void from the moment when the infringement upon fundamental rights occurred. With respect to other persons, the contested norm becomes void from the date when this judgment is published. The Constitutional Court notes that, in reviewing requests, submitted by convicted persons who serve their sentences in a closed prison or a partly-closed prison at the lowest regime of sentence serving regime, for permission to temporarily leave the territory of an institution for deprivation of liberty due to the death of a close relative, Article 96 of the *Satversme*, as well as findings included in this judgement are directly applicable. Until new normative regulation enters into force, the same procedure, in which requests that are received from convicted persons who serve their sentence in a partly-closed prison at the highest level of sentence serving regime, in an open prison or juvenile correctional institution, may be applied to such requests.

Substantive Part

On the basis of Para 6 of Section 29 (1), as well as Section 30–32 of the Constitutional Court Law, the Constitutional Court

Held :

1. To recognise Section 49² (1) of the Sentence Execution Code of Latvia, insofar it does not envisage to a convicted person, who is serving the sentence in a closed prison or in a partly-closed prison at the lowest regime of sentence serving regime, the possibility to temporarily leave the territory of the institution for deprivation of liberty due to the death of a close relative, as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia.

2. With respect to the submitter of the constitutional complaint Juris Krasovskis, to recognise Section 49² (1) of the Sentence Execution Code of Latvia, insofar it does not envisage to a convicted person, who is serving the sentence in a closed prison or in a partly-closed prison at the lowest regime of sentence serving regime, the possibility to temporarily leave the territory of the institution for deprivation of liberty due to the death of a close relative, as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia as of the moment when the infringement on his fundamental rights occurred.

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

Ineta Ziemele