# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

**JUDGMENT**
**In the name of the Republic of Latvia**
**Riga, 28 June 2019**
**in case No 2018-24-01**

The Constitutional Court in the following composition: the chairperson of the court session Sanita Osipova, judges Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

on the basis of an application of the Supreme Court,

on the basis of Article 85 of the *Satversme* (Constitution) of the Republic of Latvia , and Articles 16(1), 17(1)(9), $19^1$ and $28^1$ of the Law on the Constitutional Court,

in written proceedings on 30 May 2019 reviewed the case

**"On the Compliance of Article 28(2) of the Law on Detention Procedures, in the wording effective until 2 January 2018, with Article 96 of the *Satversme* of the Republic of Latvia"**.

## The Facts

**1.** Article 28(2) of the Law on Detention Procedures in the wording effective until 2 January 2018 provided that remand prison staff shall control the correspondence and phone conversations of detainees (except for the correspondence and phone conversations with the addressees referred to in Article 15(3) of this Law). If the content of correspondence or phone conversation endangers rights of other people, democratic structure of the State, public safety, welfare and morals, establishment of truth in criminal proceedings, and security of prisons, the correspondence shall be intercepted or the phone conversation shall be interrupted, and the reason of such interception of correspondence or interruption of phone conversation shall be explained to the detainee (hereinafter referred to as — the contested provision).

Article 15(3) of this Law (until 22 December 2008 — Art15(2)) in the wording effective until 2 January 2018 stipulated that the correspondence of the detainee with the public and international human rights institutions, the Human Rights and Public Affairs Committee of the Saeima, prosecution office, court, defence counsel, person conducting the proceedings, as well as the communication of detained foreigner with his/her diplomatic or consular representative office which is authorised to represent his/her interests, shall not be subject to control and shall be sent at the expense of remand prison.

By the Law "Amendments to the Law on Detention Procedures" of 7 December 2017 which became effective on 3 January 2018 the contested provision was amended, and now Article 28(2) of the Law on Detention Procedures specifies as follows:

"In order to prevent a threat to the security of prison or to the public safety, as well as the transfer of unauthorized objects or substances to detainees, the remand prison staff shall check the correspondence of the detainee, except for the correspondence with the addressees referred to in Article 15(3) of this Law.

The remand prison officer shall check the letter addressed to the detainee or to be sent to his/her addressee by opening it.

If the remand prison officer has a reasonable suspicion that the contents of the correspondence may endanger security of place of imprisonment or public safety, fair settlement of criminal relations, rights of other people, or facilitate the commission of a criminal offence, the remand prison officer responsible for the security shall inspect the letter addressed to the detainee or to be sent to his/her addressee, also by reading it."

Article 28(3) of the Law on Detention Procedures specifies that the correspondence of the detainee shall be intercepted if:

1) its content endangers the purpose of application of detention, safety of remand prison and the procedures thereof;

2) further transfer of its content may facilitate the commission of any criminal or administrative offence;

3) its content may endanger the rights and interests of other person protected by the law;

4) the purpose of correspondence is the information exchange between prisoners who have jointly committed the criminal offence.

According to paragraph four of this Article, intercepted letters and telegrams shall be registered and stored by a remand prison officer responsible for the security who is assigned to censor the correspondence.

**2. The applicant — the Supreme Court** (hereinafter referred to as — the Applicant) — indicates that under the circumstances of the administrative case No A420286014 which is under its review, on the basis of the contested provision the Jelgava Prison administration, carried out the control of the claimant's letters by opening them, between 30 December 2012 and 30 December 2013. The Applicant considers that the contested provision restricts the claimant's right to the inviolability of private life and correspondence established in Article 96 of the *Satversme* Republic of Latvia (hereinafter referred to as — the *Satversme*).

The applicant indicates that the contested provision provides for an obligation of remand prison officers to control all correspondence of the detainee which is not addressed to public institutions, i.e., private correspondence with other individuals. The contested provision does not specify the type of control, and no restricting conditions are included, i.e., it is not established in which cases the control shall be performed and how long it may last. Within the meaning of this provision, the control may also mean the opening and reading of letters, as it derives from the second sentence of the contested provision that the remand prison officer may know the content of correspondence. The criteria for the application of the contested provision are determined only for the strictest type of restriction of inviolability of correspondence — interception of the letter.

Referring to judgments of the European Court of Human Rights, the Applicant concludes that such a restriction has not been established by a duly enacted law. The contested provision is not formulated clearly enough for a person to understand the content of the rights and obligations arising from it and to anticipate the consequences of its application, and does not ensure sufficient protection against its arbitrary application. The contested provision does not provide the institution with restrictions and conditions regarding the cases in which, for how long, and in what way the control of the correspondence of a detainee shall be performed. Although there is an exception, namely, the correspondence with the addressees referred to in Article 15(3) of the Law on Detention Procedures shall not be subject to control, as well as general guidelines regarding the most restrictive type of control — interception of correspondence — are determined, it is not enough to be able to recognize that the contested provision is sufficiently clear and precise insofar as it regulates the control of private correspondence.

The Applicant indicates: even if it were considered that the restriction of rights is established by law, it would still not comply with the *Satversme*, as the

contested provision does not comply with the principle of proportionality. The legitimate aims of the restriction of fundamental rights created by the contested provision — the protection of the rights of other people and public safety — may also be achieved by other means that are less restrictive of the rights and legal interests of a person. Means less restrictive of a person's rights would be a legal framework that would impose conditions restricting the control of correspondence, more specifically identifying cases where the control should be carried out at all, determining its duration and possibly also different types of control. It would also ensure a more efficient use of the institution's resources, allowing them to be focused on cases where there is indeed an increased threat to public safety or a risk that other people's rights may be violated. In any case, the restriction of the rights of a person which takes the form of automatic and extensive control of correspondence, far outweighs the benefits to society.

Referring to judgments of the European Court of Human Rights, the Applicant expresses the opinion that the restriction of the detainee's freedom of correspondence is not justified even by the risk that this person may influence the investigation.

**3. The institution that has issued the challenged act — the *Saeima* (the Parliament) —** in the written reply agrees with the arguments of the Applicant and also considers that the contested provision allows such control of the detainee's correspondence which in some cases may unreasonably restrict the personal rights specified in *Article* 96 of the *Satversme*.

The aim of the restriction included in the contested provision is substantiated by considerations of order and security which shall be taken into account in prisons; moreover, public safety is also ensured by means of such control. In addition to the restrictions necessary in the framework of criminal proceedings, the need to control the correspondence of detainees is also related to the practical need to prevent prohibited objects and substances, especially drugs, entering into prisons, as well as to ensure that detainees are not harmed. Drug addiction is an essential factor which hinders or even prevents not only the maintenance of order and security in prisons, but also the achievement of the objectives of a custodial sentence if a person were to be convicted and sentenced to such a sentence. The control of correspondence by opening consignments also helps to significantly reduce the number of cases in which detainees become addicted to drugs directly in prison. Detection of prohibited objects and substances in a consignment is not always possible if the consignment is not opened. For

example, letters, postcards or even self-made jewellery impregnated with illicit substances are often sent to prisons. In addition to the prohibited substances and objects, the correspondence of detainees may also contain hidden messages and threats.

Recognizing the need to review the effectiveness of the contested provision and its compliance with the development of law and practice, including in the field of fundamental rights, on 7 December 2017 the *Saeima* adopted the law "Amendments to the Law on Detention Procedures" and amended the contested provision. Amendments to the contested provision ensure a higher standard of protection of fundamental rights and at the same time preserve effective possibilities to prevent threats to the interests of criminal proceedings or security and order. The amendments to the contested provision also ensure an appropriate balance between the rights of detainees to inviolability of private life and correspondence, on the one hand, and the achievement of the purpose of criminal proceedings, as well as security and order in the remand prison, on the other hand. With these amendments, the contested provision contains clear provisions on the circumstances and conditions under which the state power is entitled to act, restricting the right of a detainee to inviolability of correspondence. With the amendments, the legislator has clearly defined the purposes and reasons for which the correspondence of detainees may be subject to each type of inspection. With these amendments, the legislator has established that the correspondence of a detainee with other persons shall be checked by opening the letter. Letters of detainees can be opened to prevent threats to prison and public safety, as well as the transfer of unauthorized objects and substances. The legislator has clearly indicated that automatic reading of letters is not provided for. The correspondence of detainees may be read only in the cases when the remand prison officer has a reasonable suspicion that the contents of the correspondence may endanger security of the place of imprisonment or public safety, fair settlement of criminal relations, rights of other people, or facilitate the commission of a criminal offence. The ultimate measure — interception of the detainee's correspondence — may be applied only if the achievement of the purpose of application of the detention, safety of the place of imprisonment and procedures thereof are endangered, if the transfer of the content of correspondence might facilitate the commission of any criminal or administrative offence, endanger the legal rights and interests of other persons, or if the purpose of correspondence is the information exchange between prisoners who have jointly committed a criminal offence. It depends on the situation of the detainee and the justification of the action of the responsible official

in applying the new provision whether the type of control in question is the most appropriate for such a person. With the amendments the legislator has also provided that the correspondence of detainees shall be controlled by a specific official, and thus even in cases when the control of correspondence is necessary, the content of the letter may be inspected only by one official. This official is also responsible for the proper registration and storage of the intercepted correspondence.

The contested provision was in force for a long time, and the detainees have not yet applied to court in connection with the infringement of fundamental rights that would have been caused to them by applying this provision. Therefore, its recognition as null and void from some moment in the past could have a negative impact on both the legal system and, due to possible complaints, the functioning of the Prisons Administration. Consequently, the *Saeima* requests not to declare the contested provision invalid from some moment in the past.

In the additional explanation regarding the compliance of the current wording of Article 28(2) of the Law on Detention Procedures with Article 96 of the *Satversme*, the *Saeima* points out that without opening the letters it is not possible to ensure that prohibited objects and substances do not reach the detainees. The Ombudsman has also acknowledged the proportionality of this type of control of correspondence. In addition, the case-law of the European Court of Human Rights confirms that the inspection of prisoners' correspondence by opening letters is a justified interference with a person's privacy. Article 28(2) of the Law on Detention Procedures currently clearly defines the purpose of checking the correspondence of prisoners, as well as provides for certain exceptional cases when the correspondence of detainees may be read. Thus, the law no longer provides for automatic reading of letters. The Ombudsman has also acknowledged that Article 28(2) of the Law on Detention Procedures in the effective wording regarding the opening of letters complies with the *Satversme*.

Careful examination of correspondence and, if necessary, reading it is one of the most important tools for preventing prohibited substances and objects from entering prison. In relation to the Ombudsman's proposal to determine that a relevant decision of the prison chief is necessary before reading each letter, and to provide for the possibility to challenge this decision, the *Saeima* points out: from the Ombudsman's point of view it does not follow that due to the lack of such framework Article 28(2) of the Law on Detention Procedures in the effective wording does not comply with the *Satversme*. The obligation to provide an individual written assessment with regard to each letter — even in cases where the

grounds for suspicion are obvious — and the potential subsequent appeal process could lead to a disproportionate delay in the flow of correspondence of detainees. In addition, a detainee who considers that his or her correspondence has been controlled unlawfully is entitled to challenge this control in accordance with the procedures specified in the Administrative Procedure Law as the actual conduct of a prison official. Thus, the legislator has provided for an effective remedy for the protection of the rights of a person.

**4. Person invited to submit an opinion in the proceedings — the Ministry of Justice** — considers that the contested provision complies with Article 96 of the *Satversme*.

By controlling the correspondence of detainees both in the manner and to the extent permitted by the contested provision and in the manner and to the extent permitted by the current provision, the remand prison administration may respond in a timely manner to prevent pressure on witnesses in criminal proceedings, agreeing the testimonies, circulation of drugs and prohibited objects, as well as the cases where detainees commit suicide, escape from prison or attack prison officials. By controlling the correspondence of detainees, the prison administration can ascertain whether the content of the letter is indeed intended for the addressee indicated on the envelope and not for a third party. Also, the control of correspondence allows to accurately record and count the number of letters received and sent by each detainee and in some cases to obtain information important for criminal proceedings or operational activities.

The contested provision was developed and adopted in compliance with the procedures provided for in regulatory enactments, as well as was promulgated and made publicly available. The contested provision was also formulated sufficiently clearly for the detainees to understand its content and the consequences of its application.

If a person is detained, there is a reasonable suspicion that he/she has participated in the commission of a criminal offence or is charged with the commission of a criminal offence, as well as a risk has been established that the person may interfere with the criminal proceedings, try to avoid criminal proceedings or the execution of the sentence, continue the commission of the criminal offences, or influence other persons involved in the criminal proceedings. These suspicions and risks are not to be understood as general assumptions, but as fact-based conclusions about a person's possible behaviour if security measures were not applied. In view of the above, it can be concluded that detention – the

most severe security measure – is applied to persons who, more than all other suspects, may be prone to attempts to obstruct the course of criminal proceedings.

The purpose of detention is to guarantee the safety of the public and individuals — to prevent the commission of new crimes and the unlawful interference of a person who has committed a criminal offence in the course of criminal proceedings — and thus to ensure an impartial case investigation, making an impartial decision and holding a guilty person to criminal liability (fair settlement of criminal-legal relations). On the other hand, remand prisons are required to provide a legal and safe environment for execution of detention. Thus, the aim of the contested provision is to protect the interests of criminal proceedings, while at the same time ensuring a lawful environment in remand prisons. Namely, the contested provision has a legitimate aim — protection of the rights of others and public safety.

The control of correspondence specified in the contested provision is appropriate for the achievement of the legitimate aims, and with the relevant regulation these aims have been fully achieved. In addition, the contested provision contained a rational and effective legal solution for achieving the legitimate aims.

When assessing the alternative remedy proposed by the Applicant, it is necessary to find out, firstly, whether such a scrupulous approach is possible and necessary at all and, secondly, whether such a detailed approach is opposable to the state's objective ability to ensure its continued effective functioning, considering also the rights and available resources of the remand prison officials. If the legitimate aim can be achieved by means that restrict the rights of a person less but require a disproportionate investment from the state and the society, then the state cannot be considered to be obliged to choose such a means. In addition, the choice of alternative solutions is often recognized as a political choice of the legislator which cannot be assessed by means of constitutional control.

The restriction included in the contested provision is to be assessed in connection with other communication opportunities that were and still are provided to the detainees in the remand prisons. Correspondence is not the only way for detainees to communicate with the outside world. Pursuant to Article 13(1)(6) and Article $13^1$(1) of the Law on Detention Procedures, in the wording in force until 2 January 2018, detainees were granted the right to meet with relatives or other persons for at least one hour at least once a month. Such meetings took place without the presence of the remand prison administration. Only in exceptional cases the chief of the remand prison, after assessing each case individually and justifying his/her decision, could decide to organise a meeting in

the presence of a representative of the remand prison administration if this was necessary for security reasons or in the interests of criminal proceedings or it was requested by the visitor. Such a meeting procedure has provided detainees and visitors with the opportunity to maintain and strengthen their relationship in the most normal conditions possible.

During the operation of the contested provision, there were no more lenient measures by which the fundamental rights of the detainees would be restricted less, but the legitimate aims could be achieved in an equivalent quality, without imposing a disproportionate and even unbearable burden on the state. On the other hand, the adverse consequences for the detainees due to the restriction of their fundamental rights did not outweigh the benefits obtained from this restriction for the public and the state as a whole and provided by the fair settlement of criminal-legal interests. Consequently, the contested provision complies with the principle of proportionality.

Grammatically interpreting the contested provision, it *prima facie* appears that it automatically restricted the detainees' rights of inviolability of correspondence specified in Article 96 of the *Satversme*. However, the law also provides for exceptions, namely, the addressees the correspondence with whom was not controlled. Thus, the contested provision did not provide for automatic control of the correspondence of the detainee, as it was not applied to all the correspondence of the person.

When interpreting the contested provision in conjunction with other legal norms and guided by the will of the author of the normative act and the purpose of the normative act, there is no reason to consider that the legislator by adopting the contested provision would have unequivocally tilted in favour of only the interests of the state and the public and unreasonably restricted the right of the detainees to inviolability of correspondence. In the opinion of the Ministry of Justice, the historical, systemic and teleological methods allow to interpret the contested provision in accordance with Article 96 of the *Satversme*.

The contested provision was in force for a long time, and until now detainees have not applied to the court in connection with the interference with fundamental rights that would have been caused to them by applying the contested provision, therefore the recognition of the contested provision as null and void from some moment in the past may have an adverse effect on the legal system and the operation of the Prisons Administration.

The Ministry of Justice also provided information that since the adoption of the Law on Detention Procedures, amendments to Article 28(2) of this Law have

been made twice. For the first time, editorial clarifications have been introduced, while the law of 7 December 2017 Amendments to the Law on Detention Procedures which entered into force on 3 January 2018 has improved the procedures for controlling the correspondence of detainees. In 2015, the Ombudsman raised the issue of compliance of the control of the correspondence of prisoners specified in normative acts with the human rights requirements. Therefore, the Ministry developed proposals for amendments to the contested provision and submitted them to the Saeima in relation to the draft law "Amendments to the Law on Detention Procedures". The proposals were supported at second reading.

Following the amendments of 7 December 2017, the Law on Detention Procedures no longer provides for automatic reading of detainees' letters. The effective wording of the relevant provision makes it clear that such correspondence of detainees may be read only in the cases when the remand prison officer has reasonable suspicion that the contents of the correspondence may endanger the security of place of imprisonment or public safety, fair settlement of criminal law relations, rights of other people, or facilitate the commission of a criminal offence. It depends on the situation of a specific detainee and the justification of the action of the responsible official in applying Article 28 of the Law on Detention Procedures whether the type of control in question is the most appropriate for such a person.

**5. Person invited to submit an opinion in the proceedings — the Ombudsman** — points out that since 2015 he has drawn the attention of the state to the fact that the contested provision does not comply with Article 96 of the *Satversme*. The Ombudsman agrees with the Applicant that the contested provision is not to be considered as prescribed by a duly adopted law, as it is not sufficiently precise and has not provided adequate protection against the arbitrariness of the institution.

The contested provision allowed to control the correspondence of the detainee, but did not determine the methods of exercising control, did not provide for different control depending on the addressee of the correspondence, did not specify the extent to which correspondence is controlled and the cases in which a letter may be read or intercepted. The contested provision also did not envisage an opportunity for the detainee to contest the control of correspondence, did not determine the duration of the restriction of the rights of the detainee and did not impose an obligation on the correspondence controllers to assess the necessity of

control. Although it is possible to contest the control of correspondence as an actual conduct of the prison in accordance with the procedures specified in the Administrative Procedure Law, this legal remedy was not effective because the conduct was in accordance with the law. Nor was there any provision for ensuring that the criminal investigation was not jeopardized, but at the same time allowing the detainee to enjoy, as far as possible, the right to inviolability of private life and correspondence.

The restriction of fundamental rights included in the contested provision cannot be considered justifiable and proportionate, because in addition to the general control of the correspondence of the detainee, there were other, alternative, means that could serve the legitimate aim, but would have restricted the fundamental rights of the individual to a lesser extent. One of the alternative ways to solve this issue is to control the correspondence of a detainee on an individual and time-limited basis. It could be envisaged that enhanced control of correspondence is allowed for a certain period after the person's detention, as during this period of detention there is a higher risk that the detainee may correspond with persons who are in some way related to the criminal offence or that the correspondence may be related to the desire to evade their criminal procedural obligations. However, over time the need for the detainee to maintain contact with family and relatives increases and in many cases the possibility of interfering with the process has decreased, as new evidence, testimonies, etc. has been obtained in the past, etc. The longer a person is in detention, the more carefully the need for automatic control should be assessed. The legislator should envisage a certain circle of persons who may inspect the letters of the detainees, as well as the cases in which the inspection of letters by opening or reading them is permitted, and in which the letter may be confiscated or intercepted. The procedural mechanism for contesting the control of correspondence should also be ensured.

When drafting the current wording of *Article* 28(2) of the Law on Detention Procedures, the control of correspondence was improved, but not all the recommendations of the Ombudsman were taken into account. The current wording of the relevant provision defines the types of control of correspondence, so that it is clear to any person that letters are checked by opening them, as well as it is specified in which cases the reading of a letter or the interception of correspondence is permissible. The control of correspondence by opening consignments in order to visually verify that they do not contain prohibited objects and substances is to be considered a proportionate restriction of the detainee's

fundamental rights. However, the current wording stipulates that in certain cases the correspondence of a detainee may also be read. A remand prison officer has such a right if he/she has a reasonable suspicion that the contents of the correspondence may endanger security of the place of imprisonment or public safety, fair settlement of criminal-legal relations, rights of other people, or facilitate the commission of a criminal offence. The possibility to read the correspondence only on the basis of suspicion is still preserved, as well as the mechanism of legal protection is not clearly defined (possibility to challenge or appeal the restriction). In addition, persons have the right to know that their letters are being read and to receive a justification for doing so. In the Ombudsman's view, the most appropriate solution would be to obtain the permission of the chief of prison before reading the letter. This would also ensure control over the justification provided. At present, a person may challenge the control of his/her correspondence as an unlawful actual conduct, but only after the actual conduct has already taken place. Thus, a person does not have the opportunity to challenge the circumstances or suspicion on the basis of which the decision to read the letter was made before the relevant restriction of rights has been applied to him/her.

The legislator amended the contested provision, and the current wording of Article 28(2) of the Law on Detention Procedures no longer allows an almost absolute discretion of an official with regard to the control of the correspondence of detainees. Consequently, the restrictions on the fundamental rights of a person included in the current wording of the said provision are established by a law developed and adopted in accordance with the appropriate procedures. However, this wording should also be improved by stipulating that reading letters should be allowed only on the basis of a decision of the chief of prison, and the right to challenge this decision should be included in the law.

Although the current wording of Article 28(2) of the Law on Detention Procedures complies with Article 96 of the *Satversme*, the Ombudsman nevertheless carefully follows the application of this provision in practice.

**6.** The Prisons Administration has provided information that the correspondence of detainees is controlled on a continuous basis throughout their detention and in respect of all detainees. The detainees have the opportunity to get acquainted with the effective external normative acts in prison. During the time of validity of the contested provision, the control of the correspondence of the detainees was performed and is still performed in accordance with the Law on Detention Procedures and the Internal Regulation No 1/10.-n.-12 of the Prisons

Administration of 16 October 2012 “Procedures for the Control of the Correspondence of Detainees and the Verification of the Correspondence of Convicted Persons in Prisons” (hereinafter referred to as — the Internal Regulation of the Prisons Administration) *(see the Internal Regulation of the Prisons Administration, case materials, volume 1, pp. 39-40).*

**7.** The administrative courts provided information that the contested provision was applied in administrative cases No A420242118 and No A420214417. In these cases the proceedings have been suspended until the entry into force of the judgment of the Constitutional Court.

## The Motives

**8.** The Applicant has applied to the Constitutional Court, requesting to declare the contested provision unconstitutional, insofar as the contested provision provided that the remand prison staff controls the private correspondence of detainees. Namely, the Applicant challenges the control of the correspondence of detainees insofar as it does not apply to the correspondence with the addressees referred to in Article 15(3) (until 22 December 2008 — Article 15(2)) of the Law on Detention Procedures.

The Applicant has substantiated that the contested provision has been applied in the administrative case in which it has applied to the Constitutional Court, and has indicated arguments that this provision, insofar as it relates to the control of the private correspondence of detainees, does not comply with Article 96 of the *Satversme*.

Taking this account, the Constitutional Court in this case will assess the compliance of the contested provision with Article 96 of the *Satversme*, insofar as it provides that the remand prison staff controls the private correspondence of detainees.

**9.** Article 96 of the *Satversme* provides for that everyone has the right to inviolability of his or her private life, home and correspondence.

Although the right to inviolability of correspondence is already reflected in the text of Article 96 of the *Satversme*, the Constitutional Court has previously emphasized that the right to inviolability of correspondence falls within the scope of protection of private life (*see judgment of the Constitution Court of 18 December 2009 in case No 2009-10-01, paragraph 9.1*). The main purpose of

the right to privacy is to allow a person to develop his or her personality, suffering as little as possible from the intervention of the state or other persons (*see judgment of the Constitution Court of 23 April 2009 in Case No 2008-42-01, paragraph 9*).

The right to inviolability of correspondence also extends to the right to communicate freely with other persons, while preserving the personal character of the content of the communications between them and the confidentiality of those communications in different situations. Any person, including a detainee, can be a subject of this fundamental right.

The European Court of Human Rights has also recognized that the right to inviolability of private life and correspondence includes the protection of the confidentiality of the detainee's correspondence (*see judgment of the European Court of Human Rights of 15 June 2006 in case Kornakovs v. Latvia, application No 61005/00, paragraph 158, and judgment of 24 February 2005 in case Jankauskas v. Lithuania, application No 59304/00, paragraph 20*).

The inviolability of the correspondence of persons in detention shall, in principle, apply to their written communications and shall prevent any interference, including censorship or any other form of interference of communications, unless such interference is justified (*cf. see Rainey B., Wicks E., Ovey C. Jacobs, White and Ovey, The European Convention on Human Rights. Oxford: Oxford University, 2017, p. 451*).

The Constitutional Court points out that written communication of detainees with other persons is especially important because the freedom of these persons is restricted. In addition, isolation from society can increase the risk of abuse of power in prisons. That is why the right of detainees to communicate with persons outside the prison is so important, and it is essential that the detainee should be able to send and receive letters and other postal items in private.

**Article 96 of the *Satversme* also protects the inviolability of the correspondence of detainees.**

**10.** Detention is the deprivation of the liberty of a person that may be applied to a suspect or an accused person in accordance with a decision of an investigating judge, or a court judgment before the entering into effect of a final judgment in particular criminal proceedings, if the specific information acquired in the criminal proceedings regarding facts causes justified suspicions that a person has committed a criminal offence regarding which the law provides for a punishment of deprivation of liberty, and the application of another security measure may not ensure that the person will not commit a new criminal offence,

will not hinder or will not avoid the pre-trial criminal proceedings, the trial or the execution of a judgment *(see* Article *271(1) and* Article *272(1) of the Criminal Procedure Law*).

The Criminal Procedure Law provides for additional cases in which detention may be imposed on a person suspected or accused of committing a particularly serious crime, and provides that detention may be applied to a person suspected or accused of an intentional crime committed during a probation period; it also provides that the basis for detention may be a court judgment concerning the commission of a serious or particularly serious crime for which a punishment of deprivation of liberty has been imposed (*see* Article *272(2), (3) and (4) of the Criminal Procedure Law*). That law also lays down special conditions for the application of detention with respect to minors, pregnant women and women in the post-natal period (*see* Article *273 of the Criminal Procedure Law*).

The application of detention allows a person to be detained in a remand prison or in specially equipped police premises (*see* Article *271(2) of the Criminal Procedure Law*). A person may be detained only for as long as is necessary to ensure the normal course of criminal proceedings, but not longer than is permitted by the Criminal Procedure Law (*see* Article*s 277-279 of the Criminal Procedure Law*) for a criminal offence referred to in the decision on recognizing this person as a suspect or holding them criminally liable, and no longer than the maximum period of deprivation of liberty which the court may impose for the criminal offence with which the person is charged, or the period of deprivation of liberty imposed by the court in a conviction (*see* Article *277(10) of the Criminal Procedure Law*).

Article 13(1)(5) of the Law on Detention Procedures allows a detainee to communicate with persons outside the remand prison by correspondence, while Article 13(1)11 allows them to receive consignments and deliveries.

According to the contested provision, the remand prison staff controls the private correspondence of the detainee and, if necessary, intercept it, explaining to the detainee the reason for the interception.

The contested provision uses the term “correspondence”, which means all types of correspondence (letter correspondence, postal parcels, etc.) sent by the detainee or addressed to the detainee. Moreover, the contested provision uses the term “control”, which means all types of control of correspondence, including interception, opening, reviewing, reading or censoring correspondence.

The Prisons Administration has provided the Constitutional Court with information that the control of correspondence takes place on a permanent basis,

throughout the period of detention and in relation to all detainees. The control is carried out in accordance with the Law on Detention Procedures and the Internal Regulation of the Prisons Administration. Pursuant to para. 7 of this Regulation, the prison official or employee responsible for the circulation of documents shall hand over to the censor the correspondence addressed to the imprisoned person not later than on the day following the day of receipt of the correspondence. In turn, para. 11 of the Regulation stipulates that in the course of the inspection of correspondence the censor shall inspect the envelope and its contents. Para. 17 of the Regulation, in turn, stipulates that intercepted correspondence shall be stored by the censor for one year. Upon expiry of that period, the intercepted correspondence shall be destroyed. Pursuant to para. 18 of the Regulation, correspondence containing operationally important information shall be handed over to the unit of the prison responsible for security.

Both the Constitutional Court and the European Court of Human Rights have already previously concluded that the control of correspondence, its opening and examination of its content restricts a person's right to inviolability of correspondence (*see judgment of the Constitutional Court of 18 December 2009 in case No 2009-10-01, paragraphs 10 and 11, and judgment of the European Court of Human Rights of 15 June 2006 in case Kornakovs v. Latvia, application No 61005/00, paragraph 158*).

Thus, the obligation specified in the contested provision to open and inspect the private correspondence of the detainee, as well as the right to intercept the private correspondence of the detainee in certain cases creates a restriction of the fundamental rights of this person specified in Article 96 of the *Satversme*.

**The contested provision restricts the fundamental rights of detainees specified in Article 96 of the *Satversme*, namely, the right to inviolability of correspondence.**

**11.** The right to inviolability of correspondence may be restricted if such a restriction is provided for by a duly adopted law, has a legitimate aim and is proportionate.

Thus, in order to assess the compliance of the contested provision with Article 96 of the *Satversme*, first of all it is necessary to establish whether the restriction of fundamental rights is established by a law adopted in accordance with the appropriate procedures, namely:

1) whether the law is adopted in compliance with the procedures provided for in normative acts;

2) whether the law is promulgated and is publicly available in accordance with the requirements of normative acts;

3) whether the law is worded clearly enough so that the person can understand the content of the rights and obligations arising therefrom and anticipate the consequences of its application.

The control of the correspondence of detainees was already provided for in the Cabinet of Ministers Regulation No 288 of 11 April 2006 "Law on the Detention Procedures" which was adopted in accordance with the former Article 81 of the *Satversme*. It appears from the information available in the *Saeima's* legislative database that the Cabinet submitted the Regulation to the *Saeima* for consideration on 18 April 2006. The Regulation of the Cabinet was considered in the *Saeima* in three readings and adopted in the third reading on 22 June 2006, in accordance with the Rules of Procedure of the *Saeima*. The Law on Detention Procedures, in its original wording, was promulgated in the official publication *Latvijas Vēstnesis* on 4 July 2006. This law, including the contested provision, entered into force on 18 July 2006.

The parties to the case and persons invited to submit opinions in the proceedings have not expressed any objections to the procedure of adoption and promulgation of the contested provision, and the Constitutional Court has no doubts that the contested provision has been adopted and promulgated in accordance with the *Satversme* and the *Saeima* Rules of Procedure, as well accessible according to the requirements of normative acts.

However, there is no consensus between the participants in the case and persons invited to submit opinions in the proceedings as to whether the contested provision is sufficiently clearly formulated. The Applicant and the person invited to submit an opinion in the proceedings — the Ombudsman — consider that the contested provision is not established by a duly adopted law, as it is not sufficiently precise and does not provide for sufficient protection against the arbitrariness of the institution.

The Applicant points out that the contested provision is clear and precise from the point of view that it clearly follows from this provision and, consequently, any detainee can understand that all his/her private correspondence may be subject to control and the institution is entitled to use all possible means of control, including that officials of the institution are entitled to read all private letters, but the provision does not clearly set out the criteria for its application.

However, the Ministry of Justice points out that the law also provided for exceptions, namely, the addressees with regard to whom the correspondence sent

and received was not controlled. Thus, the contested provision did not provide for automatic control of the correspondence of detainees and it was not applied to the entire correspondence of the detainee.

Thereby the Constitutional Court ought to establish whether the contested provision is sufficiently clear, so that the person can understand the content of the rights and obligations arising therefrom and anticipate the consequences of its application.

**12.** In examining whether a restriction of fundamental rights is imposed by law, the European Court of Human Rights has recognized: instructions which are not in themselves legally binding may be taken into account in assessing whether the foreseeability criterion of a restriction of fundamental rights is followed; the law furthermore must be accessible and worded in such a way that (as far as it is reasonable in the circumstances) could foresee the consequences of the action in question *(see judgment of the European Court of Human Rights of 25 March 1983 in case Silver and Others v. the United Kingdom, applications No 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75, paragraphs 85-90, and judgment of 18 January 2007 in case Estrikhs v. Latvia, application No 73819/01, paragraph 167).*

Taking into account the above, the Constitutional Court will assess whether the detainees could reasonably foresee how in accordance with the contested provision the remand prison staff control the correspondence, including the contents thereof, of detainees.

**12.1** The contested provision envisages the obligation of remand prison staff to control the correspondence of detainees (except for the correspondence with the addressees referred to in Article 15(3) of the Law on Detention Procedures).

The Prisons Administration has indicated that in accordance with the contested provision all correspondence of a detainee is subject to control during the entire period of their detention (*see the case materials, volume 1, p. 38).* The *Saeima* has also indicated that the legal basis for the control of correspondence is the application of the status of a detainee by a court decision and it serves to prevent the commission of new criminal offences and to promote an efficient course of criminal proceedings. In turn, remand prisons, when executing the detention, should ensure a legal and safe environment, preventing violations as far as possible (*see p. 2 of the Saeima reply, the case materials, volume 1, p. 57).*

The Constitutional Court points out that the contested provision, when

providing for ,the obligation to control the correspondence of a detainee, the only legal basis of which is the application of the status of a detainee pursuant to a court decision, and clearly defining exceptional cases when control is not performed, provides for an obligation to control all private correspondence of detainees.

The Constitutional Court concludes that the contested provision in conjunction with the practice of its application envisages with sufficient clarity that the remand prison staff controls all private correspondence of detained persons during the entire period of detention.

**12.2** The reason for the control of the correspondence of the detainee is the necessity to prevent prohibited objects and substances from entering prisons, to achieve the purposes of detention *(see p. 3 of the Saeima reply, the case materials, volume 1, p. 58)* and to disclose possible hidden information of operational significance *(see para. 11 of the Internal Regulation of the Prison Administration, the case materials, volume 1, p. 40).* Therefore, in accordance with the contested provision, the remand prison staff intercepts correspondence if its content endangers rights of other people, the democratic structure of the state, public safety, welfare and morals, establishment of truth in criminal proceedings, as well as the security of prisons.

The Constitutional Court points out that the obligation to intercept correspondence specified in the contested provision if its content endangers rights of other people or public safety clearly indicates that the remand prison staff, when controlling the correspondence of a detainee, also checks its contents.

The Constitutional Court concludes: the contested provision sufficiently clearly establishes that the remand prison staff also controls the contents of the private correspondence of detainees and in certain cases intercepts the correspondence.

**12.3** A legal provision cannot be understood outside the practice of its application and the legal system in which it functions *(see, for example, judgment of the Constitution Court of 28 June 2013 in case No 2012-26-03, paragraph 12.1, and judgment of 15 March 2018 in case No 2017-16-01, paragraph 16.2).*

As already concluded, in accordance with para. 7 of the Internal Regulation of the Prisons Administration the official or employee of the prison responsible for the circulation of documents shall hand over the correspondence addressed to the prisoner to the censor no later than the day following the day of receipt of the correspondence. Para. 11 of this Regulation stipulates that in the course of inspection of correspondence, the censor shall inspect the envelope and its contents. In its turn, para. 12 of this Regulation provides for that the censor shall

hand over the inspected correspondence to an official or employee of the prison responsible for issuing the correspondence to the imprisoned person. The inspected correspondence shall be issued to the prisoner not later than within three days from the day when the correspondence was received in prison.

The Constitutional Court points out that the three days allotted for the inspection of correspondence is such a term that a person may reasonably foresee, taking into account the requirement established by law that the remand prison staff shall inspect the detainee's correspondence, including its content. Moreover, the Internal Regulation of the Prisons Administration also provides for special circumstances related to private life under which correspondence is issued to detainees before the expiry of the three-day period.

The Prisons Administration has provided the Constitutional Court with information that detainees in prisons have the opportunity to consult the effective normative acts. In addition, in accordance with Article 12 of the Law on Detention Procedures, the administration shall immediately inform the detainee of his rights and obligations in a language he/she understands after being placed in the remand prison, as well as inform of the officials to whom the detainee may turn with complaints and requests.

The Constitutional Court concludes that the detainees are informed that after their placement in the remand prison in accordance with the contested provision their private correspondence is controlled within a reasonable time, including checking its content and, if necessary, intercepting the correspondence, as well as informing the detainees about their possibilities to defend their rights.

Taking into account the aforesaid, the Constitutional Court acknowledges that the contested provision does not grant the remand prison staff discretion regarding the opening of correspondence and the inspection of its content. The contested provision also envisages cases when correspondence may be intercepted, and the obligation to immediately explain to the detainee the reason for the interception of correspondence in case of its interception. Consequently, the contested provision is sufficiently clearly formulated for the detainee to understand the content of the restriction of rights arising from this provision and to reasonably foresee the consequences of its application.

**Thus, the restriction of the right to inviolability of correspondence is established by law.**

**13.** Any restriction of fundamental rights shall be based on circumstances and arguments why it is necessary, namely, the restriction shall be determined for

the sake of important interests – a legitimate aim (*see, for example, judgment of the Constitutional Court of 22 December 2005 in case No 2005-19-01, paragraph 9).*

Article 116 of the *Satversme* stipulates that the rights of a person, which are included *inter alia* in Article 96 of the *Satversme*, may be restricted in the cases provided by law in order to protect rights of other people, democratic structure of the state, public safety, welfare and morals.

If restrictions on rights are established, then the obligation to present and substantiate the legitimate aim of such restrictions in the Constitutional Court proceedings is first of all for the institution that has adopted the contested provision, in this particular case — the *Saeima* (*see, for example, judgment of the Constitutional Court of 11 December 2014 in case No 2014-05-01, paragraph 18).*

In the written reply, the *Saeima* points out that the legitimate aims of the restriction of fundamental rights established by the contested provision are to protect such constitutional valuesas the rights of other people and public safety. The Applicant also considers that such a restriction of fundamental rights has legitimate aims — protection of the rights of other people and public safety.

The Ministry of Justice considers that the aim of the restriction of fundamental rights established by the contested provision is to protect the interests of criminal proceedings, at the same time ensuring a lawful environment in remand prisons. Consequently, the Ministry of Justice also agrees that this restriction of fundamental rights has a legitimate aim — to protect the rights of other people and public safety.

The Ombudsman points out that the legitimate aim of this restriction of fundamental rights is to protect public safety. Namely, control is performed in order to prevent the planning of other criminal offences and not to hinder the investigation of a criminal case.

The Constitutional Court has acknowledged that the legitimate aim of a restriction of fundamental rights — protection of the rights of other people — is present when the legal framework protects other persons from individual infringements of their rights *(see judgment of the Constitutional Court of 14 December 2018 in case No 2018-09-0103, paragraph 3).*

On the other hand, the protection of public safety as a legitimate aim of restriction of fundamental rights is related to the protection of the democratic structure of the state and is recognized as permissible mainly in cases when issues concerning threats to the state or public safety are touched upon. In such a case, an objectively existing or potentially possible link shall be established between the

adoption of a specific legal framework and the strengthening of public safety, prevention or reduction of safety threats (*see judgment of the Constitutional Court of 7 October 2010 in case No 2010-01-01, paragraph 12.2*).

The Constitutional Court has already acknowledged that the control of correspondence of persons placed in prison is justified on grounds of order and safety, moreover, the public safety is also ensured with the help of such control (*see judgment of the Constitutional Court of 18 December 2009 in case No 2009-10- 01, paragraph 15.2*).

The Constitutional Court agrees that the restriction of the inviolability of the correspondence of detainees has been established to serve public interests in order to prevent threats to order and safety, as well as to ensure a smooth course of criminal proceedings. A smooth course of criminal proceedings protects, *inter alia*, the right of victims to a fair trial, as well as the rights of witnesses and the obligation to give true testimony. These protected rights and interests are interrelated and partially overlapping, therefore they cannot be considered in isolation. Thus, the restriction of fundamental rights included in the contested provision protects both public safety and the rights of other people.

**Consequently, the restriction of the right to inviolability of correspondence included in the contested provision has legitimate aims — protection of the rights of other people and public safety.**

**14.** When assessing the proportionality of the restriction of fundamental rights, the Constitutional Court shall verify:

1) whether the selected means are suitable for the achievement of the legitimate aim, namely, whether the selected means can achieve the legitimate aim;

2) whether such action is necessary, namely, whether the legitimate aim cannot be achieved by means which are less restrictive of the rights of the individual;

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

If it is recognized 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, for example, judgment of the Constitutional Court of 16 May 2007 in case No 2006-42-01, paragraph 11, and judgment of 14 December 2018 in case No 2018-09-0103, paragraph 18*).

**15.** The means selected by the legislator are appropriate for achieving a legitimate aim if the aim is achieved by the specific provisions (*see, for example, judgment of the Constitutional Court of 7 October 2010 in case No 2010-01-01, paragraph 13*).

The Applicant indicates that the means selected by the legislator are appropriate for the achievement of the legitimate aims, as the control of correspondence is an effective way to ensure the achievement of the legitimate aims.

Other persons invited to submit an opinion in the proceedings — the Ministry of Justice and the Ombudsman — also agree that the restriction of fundamental rights specified in the contested provision achieves its legitimate aims. The Ombudsman points out that the restriction serves to prevent attempts to obstruct the course of criminal proceedings or to plan other criminal offences.

By controlling the correspondence of detainees, the remand prison administration may examine the contents of the correspondence and find out about the detainee's intentions and actions, which may be contrary to the remand prison procedures or the purposes of the applied security measure — detention.

Thus, the Constitutional Court concludes that the control of correspondence is an appropriate means to achieve the legitimate aims of the restriction of fundamental rights — protection of the rights of other people and public safety.

**Therefore, the selected measure is suitable for achieving the legitimate aims.**

**16.** Restriction of fundamental rights is necessary if there are no other measures that would be equally effective and by selecting which the fundamental rights of people would be restricted less (*see, for example, judgment of the Constitutional Court of 26 April 2018 in case No 2017-18-01, paragraph 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 at least in the same quality (*see, for example, judgment of the Constitution Court of 7 October 2010 in case No 2010-01-01, paragraph 14*). The Constitutional Court is competent to examine whether there are no alternative measures that would violate the fundamental rights of persons established in the Constitutional less (*see, for example, judgment of the Constitutional Court of 24 November 2017 in case No 2017-07-01, paragraph 19*).

The Applicant considers that the legitimate aims can be achieved by less restrictive measures. A less restrictive measure would be a legal framework that would impose conditions restricting the control of correspondence, by more

specifically identifying cases where the control should be carried out at all, by determining its duration and possibly also by providing for different types of control appropriate to different situations. In the Applicant's opinion, this would also ensure a more efficient use of the institution's resources, allowing them to be focused on cases where there is indeed an increased risk that public safety may be endangered or the rights of other people may be violated.

The *Saeima* explains in the reply that there is no dispute regarding the merits of the case. The *Saeima* does not contest the conclusion of the Applicant that the contested provision permits the control of the detainee's correspondence, which in some cases may unreasonably restrict the rights of a person specified in Article 96 of the *Satversme*.

The Ministry of Justice points out that the meeting procedure provided for in the Law on Detention Procedures has provided detainees and their visitors with an opportunity to maintain and strengthen their mutual relations in the most normal conditions possible. During the operation of the contested provision, there were no more lenient measures by which the fundamental rights of the detainees would be restricted less but the legitimate aim could be achieved in an equivalent quality, without imposing a disproportionate or even unbearable burden on the state.

However, the Ombudsman points out that detention does not in itself justify a general control of the detainee's correspondence in remand prison and that an individual assessment of the extent of the control of each individual detainee's correspondence would be necessary. One of the alternative ways to solve this issue which is recommended by the Ombudsman is to control the correspondence of a detainee on an individual and time-limited basis. In particular, the responsible officials should assess individually whether the letter in question needs to be inspected by visually examining or by reading it. The period during which the inspection shall be carried out and also the length of time for which the letter may be intercepted should be specified. It could also be envisaged that enhanced control of correspondence is allowed for a certain period after a person's detention, as it is precisely during the initial stages of detention that there is a higher risk that a detainee may engage in correspondence with persons who are in some way related to the criminal offence or that the correspondence may be related to the desire to evade their criminal procedural obligations.

The contested provision is included in the chapter and section of the law that regulates the security measures to be taken in remand prisons to ensure the regime. The Constitutional Court points out that the rights of detainees to the inviolability of correspondence may be subject to such restrictions as are required

by:

1) the purpose of the detention;

2) procedures and safety of the remand prison.

Pursuant to Article 241(2) of the Criminal Procedure Law, a security measure shall be applied as a procedural coercive measure to a suspect or an accused person if there are grounds to believe that the relevant person will continue criminal activities, hinder pre-trial criminal proceedings or court or avoid such proceedings or trial.

In accordance with Article 244(1) and (2) of this Law, a person directing the proceedings shall choose such a procedural coercive measure that infringes upon the fundamental rights of a person to the least possible extent, and is proportionate. In selecting a security measure, a person directing the proceedings shall take into account the nature and harmfulness of the criminal offence, the character of the suspect or accused, his or her family situation, health and other conditions.

The security measure — detention — is a coercive procedural measure and is considered to be a security measure that is the most severe and restrictive with regard to rights.

As concluded above, detention is mainly applied in cases where the factual information obtained in the course of criminal proceedings give rise to a reasonable suspicion that the person has committed a criminal offence punishable by deprivation of liberty and the application of another security measure cannot ensure that the person will not commit a new offence, will not hinder or avoid pre-trial criminal proceedings, trial or execution of a judgment.

The Constitutional Court concludes that the purpose of detention is to guarantee the safety of the public and individuals — to prevent the commission of a new crime and the unlawful interference of a person who has committed a criminal offence in the course of criminal proceedings — and thus to ensure an impartial case investigation, the adoption of an impartial decision and charging a guilty person with criminal liability. In turn, remand prisons when executing the detention should ensure a lawful and safe prison environment, preventing violations and other disorders. Thus, the application of detention to a person is inextricably linked to various restrictions of personal rights, including restrictions of private life which are inherent in the nature of detention and are an integral part of it.

Paragraph 24.1 of Recommendation Rec(2006)2 of the Committee of Ministers the Council of Europe of 11 January 2006 on European Prison Rules

also stipulates that prisoners shall be allowed to communicate as often as possible — by letter, telephone or other forms of communication — with their families, other persons and representatives of outside organisations, and to receive visits from these persons. Paragraph 24.2 of these Rules sets out the possible limits to the fulfilment of such a national obligation, stipulating that communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security in prison, prevention of criminal offences and protection of victims of crime. In addition, it should be noted that restrictions should be such that contact is kept to a minimum.

The Constitutional Court points out that the control of the communication of a detainee cannot go beyond the necessity to ensure the order and safety of the remand prison, as well as beyond the purpose of detention which arises from the basis of the respective detention. Thus, the control of correspondence may only be carried out for the purpose of ensuring the course of detention according to the established rules, including the prevention of prohibited substances and objects getting at the disposal of the detainee, and ensuring the achievement of purposes of detention, including prevention of escape and the loss of evidence, pressure on witnesses. The control of correspondence is a tool to prevent such risks.

The European Court of Human Rights has already recognized that restrictions on privacy such as the control of correspondence should not be automatic. Systematic and unjustified control of correspondence is contrary to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*see judgment of the European Court of Human Rights of 24 February 2005 in case Jankauskas v. Lithuania, application No 59304/00, paragraph 22, and judgment of 22 May 2008 in case Petrov v. Bulgaria, application No 15197/02, paragraph 44)*. In addition, the European Court of Human Rights has stated that in cases where the freedom of correspondence of persons in detention is restricted, it is essential to state the reasons for the interference so that the person and/or his/her advisers can verify that the law has been correctly applied and that the decisions taken with respect to particular persons are not unreasonable or arbitrary (*see judgment of the European Court of Human Rights of 7 January 2010 in case Onoufriou v. Cyprus, application No 24407/04, paragraph 113*).

The Constitutional Court points out that the legitimate aims of the restriction of fundamental rights included in the contested provision — protection of the rights of other people and public safety — can be achieved by control of

correspondence, according to which the responsible official assesses individual circumstances and inspects the correspondence of a detainee by opening it, reading it or intercepting it if it is necessary to prevent the risk that the rights of other people may be infringed or public safety may be endangered. The intensity and type of inspection may depend on various circumstances, including the length of detention and the detainee's behaviour in prison. Thus, the correspondence of a detainee may be inspected, including opening, reading or intercepting, provided that the responsible official has grounds for such an inspection and the specific type of control has been chosen in order to eliminate one of the above risks.

In turn, according to the Administrative Procedure Law a person could appeal against the actual conduct — control of correspondence — and accordingly the court could verify whether in the specific case, taking into account the individual circumstances, there was a need to control the detainee's correspondence to prevent the infringement of rights of other people or threat to public safety. In such a case, the court *inter alia* would have to assess whether the control was carried out to the extent necessary to eliminate any of the above risks.

The Constitutional Court sees no basis for the statement of the Ministry of Justice that such a procedure would be excessively burdensome for the state.

Consequently, the Constitutional Court concludes that there exists a more lenient measure of achieving the legitimate aims of the restriction of fundamental rights specified in the contested provision — control of correspondence in case if after the individual assessment of circumstances there is a justified need to perform such control and to perform it to the extent necessary to prevent the threat to the rights of other people or public safety. Such a measure is to be regarded as a more lenient measure which permits achieving the legitimate aim with the same quality.

Upon the assessment of the circumstances of the particular cases pending before the administrative court, the administrative court will examine whether such circumstances existed in the case of the actual conduct complained of in these cases and whether the institution has chosen the most proportionate method of controlling the correspondence.

**Consequently, the contested provision, insofar as it provides for the control of correspondence during the entire period of detention without an individual assessment of circumstances and the establishment of an existence of a threat to the rights of other people or public safety, does not comply with Article 96 of the *Satversme*.**

**17.** In accordance with Article 32(3) of the Constitutional Court Law, a legal provision which the Constitutional Court has declared inconsistent with a legal provision of higher legal force shall be deemed invalid from the day of the publication of the Constitutional Court judgment, unless otherwise determined by the Constitutional Court. Pursuant to Article 31(11) of the Constitutional Court Law, when the Constitutional Court declares a legal provision to be inconsistent with a legal provision of higher legal force, it shall determine the moment when the respective provision becomes invalid.

The contested provision was in force until 2 January 2018.

The Applicant has indicated that on the basis of the contested provision the control of the correspondence of the claimant was started, therefore the verification of its compliance is necessary for the examination of the specific administrative case and assessment of the lawfulness of the action of the institution. The Applicant requests the Constitutional Court to declare the contested provision invalid in respect of the claimant in the administrative case from the moment when the control of his correspondence was initiated on the basis of this provision.

The *Saeima*, in its turn, requests the Constitutional Court not to grant retroactive force to the resolutive part of the judgment. The contested provision was in force for a long time, and the detainees have not to date applied to court in connection with the infringement of fundamental rights that would have been caused to them by applying the contested provision. Therefore, in the opinion of the *Saeima*, the recognition of the contested provision as null and void from some moment in the past could have a negative impact on the legal system and, due to the possible complaints, the functioning of the Prisons Administration.

The Constitutional Court has acknowledged that when deciding on the moment when the contested provision becomes invalid, it shall be taken into account that its task is to prevent the infringement of fundamental rights as much as possible (*see judgment of the Constitutional Court of 16 December 2005 in case No 2005-12-0103, paragraph 25*). Moreover, when determining a specific moment when a contested provision becomes invalid, the Constitutional Court also assesses whether there are any considerations according to which the contested provision should be declared invalid from some moment in the past with respect to other persons, apart from the one with respect to the protection of whose fundamental rights the application has been submitted to the Constitutional Court (*see judgment of the Constitutional Court of 21 December 2009 in case No 200943-01, paragraph 34*).

The Administrative District Court has informed the Constitutional Court that the contested provision has also been applied in administrative cases No A420242118 and No A420214417 and in these cases the proceedings have been suspended until the entry into force of the Constitutional Court judgment. Thus, it is possible that other persons have also initiated the protection of their rights in connection with the control of correspondence during their detention, and the contested provision could be applied in the cases of those persons as well.

The Constitutional Court observes that in case of a violation of the fundamental rights of a person caused as a result of application of the contested provision the recognition of the contested provision as invalid from the moment of the occurrence of the infringement of fundamental rights in relation to persons who have initiated protection of their rights is the only possibility to protect the fundamental rights of these persons.

Therefore, the contested provision, insofar as it provides for the control of correspondence without an individual assessment of circumstances and determination of the existence of a threat to rights of other people or public security, in relation to persons who have applied to a higher institution or administrative court before the pronouncement of the judgment, but with respect to whom the administrative procedure has not been completed, shall be recognized invalid from the moment the infringement of the fundamental rights of these persons occurs. The moment when the control of correspondence was started on the basis of the contested provision shall be considered as the moment of occurrence of the infringement.

**18.** In addition, the Constitutional Court points out that it does not assess the compliance of the current wording of Article 28(2) of the Law on Detention Procedures with the *Satversme*; however, during the preparation of the case it was established that the arguments of the *Saeima* and persons invited to submit an opinion in the proceedings — the Ministry of Justice and the Ombudsman — regarding the content of this provision differ from its application practice.

The *Saeima* has indicated that Article 28(2) of the Law on Detention Procedures in its current wording clearly defines the purpose of checking the correspondence of persons in prisons, as well as provides for certain exceptional cases when the correspondence of detainees may be read. It may be read only in the cases when the remand prison officer has a reasonable suspicion that the contents of the correspondence may endanger security of place of imprisonment or public safety, fair settlement of criminal relations, rights of other people, or

facilitate the commission of a criminal offence. Consequently, the law no longer provides for automatic reading of letters. The persons invited to submit an opinion in the proceedings — the Ministry of Justice and the Ombudsman — also agree with this.

In turn, the information was received from the Prisons Administration on the application of current wording of Article 28(2) of the Law on Detention Procedures. The Prisons Administration notes that the control of correspondence is also performed now in accordance with the Internal Regulation of the Prisons Administration. Pursuant to para. 7 of the Regulation, the prison official or employee responsible for the circulation of documents shall hand over to the censor the correspondence addressed to the imprisoned person not later than on the day following the day of receipt of the correspondence, and according to para. 11 of this Regulation the censor shall inspect the envelope and its contents during the inspection of correspondence.

According to Article 72(3) of the State Administration Structure Law, an internal normative act shall comply with external normative acts. In view of the above, the Constitutional Court draws attention to the fact that the legislator has amended the contested provision and expressed it in the new, currently effective wording, but from the information provided by the Prisons Administration it can be concluded that it still controls the correspondence of detainees in accordance with previously established procedures.

## The Resolutive Part

On the basis of Articles 30-32 of the Constitutional Court Law, the Constitution Court

**decided:**

**to declare Article 28(2) of the Law on Detention Procedures, in the wording in force until 2 January 2018, insofar as it provides for the control of the correspondence of detainees throughout the period of detention without an individual assessment of the circumstances and an established threat to the rights of other people or public safety, to be inconsistent with Article 96 of the *Satversme* of the Republic of Latvia and in relation to persons to whom this provision has been applied and who have commenced protection of their rights within the framework of administrative procedure, but in respect of**

**whom administrative procedure has not yet been completed, to be invalid from the moment of occurrence of the infringement of fundamental rights of these persons.**

The judgment is final and not subject to appeal.

The judgments shall enter into force as of the date of its publication.

Chairperson of the Court session S. Osipova