



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

On behalf of the Republic of Latvia

Riga, 24 October 2019

Case No 2018-23-03

The Constitutional Court in the following composition: Chairperson of the Court Session Ineta Ziemele, Justices Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

upon receipt of an application by Ansis Ataols Bērziņš,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Paragraph 3 of Section 16, Paragraph 11 of Section 17(1), Sections 19.² and 28.¹ of the Constitutional Court Law,

on 24 September 2019, in the written procedure, reviewed the case

“On Compliance of Paragraph 40 of the Cabinet Regulation No 423 of 30 May 2006, Internal Rules of Procedure of the Prison, with Article 112 of the Constitution of the Republic of Latvia”.

The Establishing Part

1. On 30 May 2006, the Cabinet of Ministers adopted Regulation No 423, Internal Rules of Procedure of the Prison (hereinafter – Regulation No 423).

Paragraph 40 of Regulation No 423 provides that: convicted persons may use personal radios, televisions and video games to be connected thereto in cells and common areas at the time determined in the daily order with the permission of the administration of the prison. Personal refrigerators and electric water heating appliances may be used to preserve and prepare food products purchased in the shop of the prison.

Regulation No 423 entered into force on 3 June 2006. Paragraph 40 of this regulation has not been amended thereafter and remains in force in its original

form.

2. The Applicant – Ansis Ataols Bērziņš (hereinafter – the Applicant) – holds that Paragraph 40 of Regulation No 423 (hereinafter – the contested provision) does not comply with Article 112 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

While serving his sentence in a prison, the Applicant requested the permission of the head of the prison to receive in a parcel and use a personal portable computer without an internet connection, but with special software allowing conduct experiments with speech recordings, for the purpose of working on his doctoral dissertation. The head of the prison refused to satisfy the request. The Prison Administration indicated in its decision of 4 July 2018 that the laws and regulations do not provide for the right of a convicted person to keep, purchase from the store of the prison, receive in a parcel or consignment a personal computer. The Applicant was offered to use the computer without an internet connection already located in the prison, but it did not meet his needs.

Article 112 of the Constitution applies, *inter alia*, to higher education and higher education programmes of all levels and types. Convicted persons are entitled to all fundamental human rights established in the Constitution, including the right to study in a higher education programme and specialisation of their choice. The contested provision restricts that right. In particular, it specifies certain household appliances that the convicted person may use in cells and common areas. However a personal portable computer, which is necessary for the convicted person to acquire quality education, is not included in the list of items provided in the contested provision. The right to education is among the fundamental rights which, according to Article 116 of the Constitution, may not be restricted by law.

It is also in the interest of society and the State to provide quality education to convicted persons. The State must take measures which ensure that the convicted person is educated. Using a personal portable computer without an internet connection poses no security risks. Moreover, the contested provision precludes an assessment on a case-by-case basis. It is also not clear why the contested provision allows convicted persons to use, for example, video games, which degrades them, but does not allow them to use a personal portable computer, which, on the contrary, contributes to the education of the convict. This is contrary to the aim of the penal enforcement system, which is to achieve the social rehabilitation of the convicted person.

Having examined the materials of the case, the Applicant indicates he does not agree with the Cabinet of Ministers' observations on the absence of alternative means of achieving the legitimate aim of the restriction of the fundamental right. There are very few convicted persons who are studying at university, and there are no calculations to support the assumption that the inspection of personal computers in the possession of convicted persons would indeed require disproportionate resources. Moreover, the fact that personal computers may be used by convicts in open prisons does not mean that the contested provision is compatible with the Constitution.

3. The institution which issued the contested act, – the Cabinet of Ministers – has indicated in its reply that the contested provision complies with Article 112 of the Constitution.

The Applicant needed a high-performance, latest-generation computer with sufficiently new software in order to work on his doctoral dissertation in the prison. However, Regulation No 423, including the contested provision, does not provide for the right of convicted persons to use a personal computer in cells and common areas. According to Section 41(6) of the Sentence Execution Code of Latvia (hereinafter – the Code), personal computer hardware with internet access may be kept only by convicted persons serving their sentences in open prisons, if the permission of the head of the prison has been obtained and if the computer is needed to ensure completion of education or employment of the convicted person. In addition, the hardware in question is subject to inspection. Convicted persons serving their sentences in closed or partially closed prisons or juvenile correctional institutions are prohibited from using such personal computer hardware. In these prisons, convicts have the possibility to, with the permission of the head of the prison, to use the computers of the institution.

The right to higher education arises from the first sentence of Article 112 of the Constitution. The right to study for a doctoral degree does fall within the scope of the first sentence of Article 112 of the Constitution, but it does not entail an obligation of the State to ensure doctoral studies for all persons. The State is obliged to provide only primary education for minors, but it is not obliged to ensure the acquisition of secondary and higher education, nor the technical means necessary for the acquisition of such education for adults in prisons. However, the State also ensures that, as far as possible, convicted persons serving their sentences in prisons have the opportunity to study at a university. According to the

information provided by the Prison Administration, five convicted persons were involved in higher education programmes in 2018.

The fundamental human rights enshrined in the Constitution are applicable to convicted persons only in so far as those fundamental rights are not restricted and are compatible with the purpose of serving the sentence and the regime of imprisonment. Taking into account the requirements of the penal regime and the specifics of the execution of the sentence, the right of a convicted person to study at a university cannot be exercised in the same manner and to the same extent as it can be exercised by a person outside a prison. The Applicant had the opportunity to use the computer of the prison to work on his doctoral dissertation, but he refused to do so. Moreover, there are no circumstances which would testify that the development of the doctoral dissertation was urgent. The Applicant had been studying for a doctoral degree since 2006 and it is not clear why his need for a portable computer arose right at the time of his imprisonment where he spent eight months and seven days. He could have carried out other activities necessary for his doctoral dissertation in the prison. Therefore, the right of the Applicant provided for in Article 112 of the Constitution to study for a doctoral degree has not been infringed.

Regulation No 423 was issued on the basis of Sections 11(5) and 47(1) of the Code. The aforementioned legal provisions authorise the Cabinet of Ministers to develop the internal rules procedure of prisons and to regulate the objects which convicted persons are allowed to keep. Thus the restriction of fundamental rights resulting from the contested provisions is established by law. This is determined to ensure order and security in prisons by prohibiting the use of objects which could be used to commit unlawful acts. Therefore, the legitimate aim of the restriction of fundamental rights is the protection of the public safety.

The prohibition on the receipt and possession of a personal computer by convicted persons prevents the possibility of using the computer to carry out activities which may endanger public security, and therefore the restriction is appropriate to achieve the legitimate aim. If convicted persons in closed or semi-closed prisons were allowed to receive and keep a personal computer, the prison administration would need to carry out regularly inspections of each computer in the possession of convicted persons. Such inspections would also require a very large commitment of human and technical resources. This means that there are no other, alternative means of achieving the legitimate aim of the restriction of the fundamental right. It does not follow from Article 112 of the Constitution that the

State is obliged to provide convicted persons in prisons with access to a computer that meets the individual needs and wishes of each convicted person in the process of education. The contested provision does not preclude convicted persons from obtaining all levels of education in prisons, insofar as the procedure for obtaining education does not conflict with the purpose and regime of serving the sentence.

4. The invited person – the Ministry of Justice – agrees with the written reply of the Cabinet of Ministers that the contested provision complies with Article 112 of the Constitution, since it does not prevent convicted persons from obtaining higher education, insofar as the procedure for obtaining education does not conflict with the purpose and regime of serving the sentence.

Convicted persons, except for those in open prisons, are prohibited to receive and keep a personal computer, but they have the possibility to use the computers which are already located in prisons to exercise the right to education enshrined in Article 112 of the Constitution, and some convicted persons already use these computers to acquire higher education. It does not follow from Article 112 of the Constitution that the State is obliged to provide convicted persons acquiring education in prisons with a computer that meets the individual wishes and needs of each convicted person.

Other countries have different practices in regulating the use of computers and the internet in prisons. In Germany, for example, every prison has a computer room, but unsupervised use of the internet is forbidden. In Hungary, convicted persons are not allowed to keep or use devices that can be used to access social networks. In Scotland, possession of devices which can be used to access social networks constitutes a breach of the rules of procedure of prisons. However, when comparing the practices of different countries, it is necessary to take into account the prison regimes, security measures and infrastructure of the prisons of the country concerned.

5. The invited person – the Ministry of Justice – holds that the contested provision complies with Section 112 of the Constitution.

The first sentence of Article 112 of the Constitution is applicable to a convicted person serving a sentence in a prison only in so far as the exercise of that right is compatible with the regime and purpose of serving the sentence. In particular, the convicted person has the right to freely choose a university or a study programme. However, the right to study in a doctoral programme, which includes

the elaboration of a doctoral thesis, cannot be exercised by a convicted person, given the regime of serving his or her sentence, in the same manner and to the same extent as by a person who is not deprived of liberty.

Since the Applicant has served his sentence in a closed and semi-closed prison, he was rightly denied the possibility to receive in a parcel a computer corresponding to his individual preferences. There is a risk that the computer could be used as a means of communication when planning or committing new crimes. The computer also allows various data to be stored in a hidden way. A computer is inherently multifunctional, and its functional purpose can be easily changed with different software. The prohibition to use personal computers in semi-closed and closed prisons restricts a person's ability to receive and pass on information to others, and to carry out uncontrolled processing and storage of information.

However, the Ministry of Education and Science agrees with the written reply of the Cabinet that the restriction of the fundamental right is established by law, has a legitimate aim and is proportionate to the legitimate aim. The State is obliged to impose restrictions on convicted persons in semi-closed and closed prisons in the interests of public safety. There are no other means which would be equally effective and the choice of which would be less restrictive of the fundamental rights of individuals. In addition, convicted persons serving their sentences in closed and semi-closed prisons are allowed to use computers without internet access already located in the prison. The Applicant could also have used such a computer for those parts of his doctoral dissertation which do not require a computer with special software. The benefit to society from the restriction contained in the contested provision outweighs the harm done to the individual.

6. The invited person – the Prosecutor General's Office – holds that the contested provision complies with Section 112 of the Constitution.

The availability of any object to convicted persons in prisons depends primarily on the requirements of public safety, the purpose of serving the sentence and the regime of imprisonment. The necessity of an object for the purposes of education is secondary. Moreover, it must be borne in mind that, in the context of technological progress, computers can be used not only as computing devices in the strict sense of the term, but also as means of communication and may be used contrary to the public interest.

The contested provision determines only the household appliances that a convicted person may use in cells and common areas. However, it is not the case

that the contested provision would absolutely prohibit a convicted person from using a personal computer for study purposes in a prison, and therefore it is compatible with Article 112 of the Constitution. Thus, if it is ensured that the use of a personal computer does not violate the requirements of the prison regime or endanger public safety, Regulation No 423 may be supplemented by a regulation allowing the convicted person to use a computer for educational purposes.

7. The invited person – the Prison Administration – agrees with the written reply of the Cabinet that the contested provision complies with Article 112 of the Constitution.

The legislator has not established an absolute prohibition for convicted persons to use a personal computer for educational purposes. However, the right to use a personal computer is limited to convicted persons serving their sentences in open prisons. Thus, only if the convicted person has proved by his behaviour that he or she respects the procedure laid down in the legislation regulating the execution of criminal sentences and has reached an appropriate level of social rehabilitation, he or she is authorised to use a computer, including one with internet access, upon obtaining the relevant permission. Being in a prison in itself imposes restrictions on a person which may make it impossible to carry out experiments and learn practical skills within the framework of the chosen study programme.

The Applicant has been provided, at his request, with the possibility to use a computer located in the prison. The fact that the computer offered did not meet the expectations of the Applicant does not mean that the contested provision is incompatible with Article 112 of the Constitution. Moreover, the Applicant spent a relatively short period of time in the prison and was able to carry out other activities necessary for the completion of his doctoral dissertation.

8. The invited person – the Ombudsman – considers that the contested provision does not comply with Article 112 of the Constitution, insofar as it does not provide for the possibility to assess each case individually in order to decide on granting permitting a convicted person to use different devices for the educational purposes.

The right to education included in the first sentence of Article 112 of the Constitution covers all levels of education, all types and forms of education, as well as all educational activities and all types of studies, including doctoral studies. Moreover, this right can be aimed not only at furthering academic knowledge, but

also at learning a profession. The right to education also includes the right to use the teaching aids, tools and resources that are available and necessary for acquiring the relevant education.

The State is not obliged to guarantee everyone the right to higher education. However, the State has a duty not to interfere, as far as possible, with everyone's right to pursue education and to engage in educational activities in accordance with their abilities, including doctoral studies. The State should pursue a policy that facilitates the exercise of these rights to the greatest extent possible, in accordance with the capacities of each individual. It should be noted that Latvia has one of the lowest doctoral graduation rates in Europe. This points to the need to promote access to higher education, including doctoral studies, and thus contribute to the development of the higher education system.

The right to higher education may be exercised only in accordance with the purpose and regime of the sentence. There is no general restriction on prisoners' access to higher education in prisons, and it is encouraged as far as possible. The Applicant was not in open prison and, in accordance with the contested provision, he was not entitled to receive in a parcel the computer hardware necessary for developing his doctoral dissertation. Thus, the contested provision restricts the right of the Applicant enshrined in Article 112 of the Constitution. In particular, the person was denied the possibility to receive and use learning aids, thus limiting his possibilities to acquire the chosen educational programme in the desired manner and to the desired extent.

The restriction of fundamental rights contained in the contested provision has a legitimate aim – protection of public security, but this restriction is not proportionate. A general prohibition to receive and use personal computers in closed, semi-closed prisons and juvenile correctional institutions means that convicted persons serving sentences in these prisons may not use their personal computers for any activity, whether lawful or unlawful. The contested provision currently also prohibits the receipt and use of devices such as electronic dictionaries, electronic book readers, audiobooks and their readers, scientific and graphing calculators. There is a possibility that devices such as computers could be used to communicate with other persons. However, it is not clear how the use of these other devices could enable such unlawful communication.

According to the provisions of the Code, security and constant supervision of convicted persons is provided in partially closed prisons, while in closed prisons, security and maximum surveillance are provided. In addition, the

household appliances in use by convicted persons are already inspected on a regular basis. The legitimate aim of the restriction of fundamental rights may be achieved, for example, by limiting the time and place of use of devices such as computers or by introducing a rule that the device may be used in the computer room of the prison, under the supervision of a member of staff of the prison. A person's request to be allowed to use other objects not mentioned in the contested provision should be assessed on a case-by-case basis. However, the contested provision does not provide for such an individual assessment, and therefore the restriction contained therein is not proportionate.

9. The invited person – *Dr. iur. Ilona Kronberga* – holds that the contested provision complies with Section 112 of the Constitution.

The purpose of a criminal sentence is to protect public safety, restore justice, punish the guilty person for the criminal offence committed, ensure the social rehabilitation of the punished person, and ensure that the convicted person and other persons obey the law and refrain from committing criminal offences. Chapter Seven of the Code determines the regime at prisons. The regime is a procedure for the execution of a prison, i.e. it implies mandatory isolation and supervision of convicted persons so that they would not have an opportunity to commit new criminal offences. Convicted persons are also required to fulfil precisely the obligations laid down by law and they are subject to various conditions of the regime depending on the nature of the criminal offence committed by the convicted person, his or her personality and behaviour. Section 47.¹ of the Code allows convicted persons in prisons to use personal televisions and radios without voice recording capabilities, as well as other personal home appliances, and authorises the Cabinet of Ministers to regulate the scope, time and procedure for the use of such home appliances. However, Regulation No 423 does not provide that a convicted person may use a personal computer in a prison. An exception is provided for in Section 41(6) of the Code for persons serving a custodial sentence in an open prison.

It follows from the Code and the Cabinet Regulation No 191 of 9 April 2013, Procedure for the Implementation of Re-socialisation of a Convicted Person, that educational measures are organised for convicted persons in prisons within the framework of a re-socialisation plan. Their aim is to facilitate the integration of the convicted person into the labour market after the completion of his or her sentence, to give the convicted person the opportunity to earn his or her subsistence means

legally, as well as to reduce the risk of committing new criminal offences. It should be noted that the legal provisions do not impose a general prohibition on the use of personal computers by convicted persons. However, the use of a personal computer is limited by the conditions of the regime in order to ensure the protection of the rights of others and public safety. In addition, even in closed and semi-closed prisons, convicted persons may use the computers in the prison without access to the internet.

10. The invited person – attorney-at-law *Dr. iur. Inga Švarca* – holds that the restriction of the fundamental right enshrined in Article 112 of the Constitution contained in the contested provision is not proportionate. The legislation should provide for the right of the administration of a prison to decide whether or not a convicted person serving a sentence in a closed or semi-closed prison should be allowed to use a personal computer for educational purposes.

Apart from the right to liberty, convicted persons enjoy all other fundamental human rights, including the right to education included in the first sentence of Article 112 of the Constitution. The development of a doctoral thesis also falls within the scope of the right to education. However, this right is not absolute and may be subject to limitations. The restriction of fundamental rights contained in the contested provision is established by law and has a legitimate aim, i.e. protection of public security. The measure chosen by the Cabinet of Ministers is appropriate for achieving the legitimate aim, since even without internet access, a computer can pose a risk to security and order in a prison. The contested provision restricts the possibilities of the convicted person to receive and transfer information to other persons, as well as to carry out uncontrolled processing and storage of information. It should be borne in mind that a computer can store various data and software in a hidden form and can be used to carry out various activities.

When assessing whether the legitimate aim of the restriction of fundamental rights cannot be achieved by means less restrictive of the individual's rights, it should be taken into account that convicted persons serving their sentences in open prisons are already allowed to keep personal computer hardware, even with internet access, with the permission of the head of the prison if the convicted person needs it for educational purposes. Pursuant to Section 41(6) of the Code, personal computer hardware in the possession of convicted persons is subject to inspection. It is not clear whether the necessary resources are available to inspect computers with Internet access in open prisons and how exactly inspecting

computers in semi-closed and closed prisons would differ from inspecting computers in open prisons. Moreover, Recommendation Rec(2006)2 of 11 January 2006 of the Committee of Ministers of the Council of Europe on the European Prison Rules (hereinafter – the European Prison Rules) states that prison conditions that infringe prisoners' human rights are not justified by lack of resources.

As in open prisons, the use of personal computers in semi-closed and closed prisons should be allowed in certain cases, subject to a prior individual assessment, i.e. an assessment of both the crime committed by the convicted person and the level of danger thereof, and, wherever possible, an inspection of the computer and respecting the principle of proportionality in this regard. The legislator could also specify criteria which, when fulfilled, would result in a prohibition on the use of personal computers in semi-closed and closed prisons. It should be borne in mind that the education of convicted persons is one of the means of social rehabilitation. The benefit to society from the fact that a person uses his or her time spent in captivity for self-education far outweighs the prohibition on the use of personal computers in semi-closed and closed prisons to prevent potential threats to public safety.

The Concluding Part

11. The present case was initiated on the basis of a constitutional complaint. It follows from the case materials that the Applicant was serving a sentence of deprivation of liberty in a place of imprisonment from 23 March to 30 November 2018. Before serving his sentence, the Applicant had started his doctoral studies and therefore requested the administration of the prison to allow him to receive in a parcel a personal portable computer, which he needed to work on his doctoral dissertation. The administration of the prison denied his request (*see Volume 1 of the case-file, p. 1*). The applicant requests the Constitutional Court to examine the compliance of the contested provision with Article 112 of the Constitution, as he considers that it disproportionately restricted his right to continue his studies in order to obtain higher education.

Thus, in order to assess the constitutionality of the contested provision, the Constitutional Court must first establish whether the right to continue studies in order to obtain higher education falls within the scope of Article 112 of the Constitution.

11.1. Article 112 of the Constitution determines the following: “Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory.”

State-funded primary and secondary education, as provided for in the second sentence of Article 112 of the Constitution, is a fundamental means of ensuring the right to education. It is considered to be a minimum right which the State has undertaken to guarantee and the reduction of which is therefore not permissible (*cf. Judgment of the Constitutional Court of 23 April 2019 in Case No 2018-12-01, paragraph 20*). Moreover, in order to promote the sustainable development of a knowledge-based society, in accordance with the first sentence of Article 112 of the Constitution, the State may also establish other, higher levels of education.

Paragraph 2 of Section 1 of the Education Law determines that higher education is the level of education at which, after acquisition of secondary education, the personal development rooted in science or art, or both in science and art takes place in the selected academic or professional, or academic and professional field of studies, preparation for scientific and professional activity. It follows from the Law on Higher Education Institutions that after completing secondary education, a person has the possibility to complete higher education by studying in a bachelor's programme. A person who has acquired a bachelor's degree may continue studies for the acquisition of a master's degree, and after acquiring a master's degree – in a doctoral study programme for the acquisition of a doctoral degree (*see Section 46(3) and Section 57(3) and (4) of the Law on Higher Education Institutions*).

The legislator has thus established a system which creates opportunities for a person to pursue higher education, including the possibility of studying for a doctoral degree.

11.2. In clarifying the content of the human rights norms enshrined in the Constitution, Latvia's international obligations in the field of human rights must be respected. Article 112 of the Constitution must be specified and applied in conjunction with Article 2 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), the first sentence of which provides: ‘No person shall be denied the right to education’ (*see, e.g., Judgment of the Constitutional Court of 23 April 2019 in Case No 2018-12-01, paragraph 20*). Thus, with regard to the content of Article 112 of the Constitution, the Constitutional Court takes into account the

case-law of the European Court of Human Rights on the application of Article 2 of Protocol No 1 to the Convention.

The European Court of Human Rights has held that Article 2 of Protocol No 1 to the Convention applies generally to primary and secondary education, whereas higher education is essential for the acquisition and development of knowledge and is of significant cultural and scientific value both for the individual and for society, and has therefore held that Article 2 of Protocol No 1 to the Convention also applies to any higher education institution established by the State (*see Judgment of the European Court of Human Rights of 10 November 2005 in the case Leyla Şahin v. Turkey, application No 44774/98, paragraphs 134-142*).

According to the International Standard Classification of Education (ISCED-2011), a doctoral programme is a higher-level programme and aims to develop advanced research qualification (*see: International Standard Classification of Education*). The classification of the Latvian education system is determined by Cabinet Regulation No 322 of 13 June 2017, Regulations on the Classification of Latvian Education. According to these regulations, Latvia's education classification structure consists of an eight-level system covering all types of education and all levels of education, including doctoral studies.

Doctoral programmes at universities aim to train the new generation of academics. According to Section 3(2) and Section 59(2) of the Law on Higher Education Institutions, a doctoral degree and a doctoral diploma is awarded after the acquisition of the academic doctoral study programme, and after acquisition of the vocational doctoral study programme in arts – a vocational Ph. D. in Arts diploma. Acquisition of scientific qualifications in higher education institutions is carried out in accordance with the Law on Scientific Activity. In particular, according to Section 10(1) of the Law, a scientific qualification is certified by a doctoral degree. A person acquires the status of a scientist when a decision on the conferral of an academic degree or the equalisation of a qualification acquired in foreign states enters into effect in relation to such person (*see Section 10(2) of the Law on Scientific Activity*).

The Constitutional Court notes that doctoral studies are generally aimed at preparing a person for scientific activity. It also includes conducting research during the studies. The right to scientific, artistic and other creative freedom is protected by Article 113 of the Constitution. However, it should be borne in mind that doctoral studies, while based on research, are also a process of acquiring knowledge and skills. These studies are described as the bridge between education

and research (*see: Latvian doctoral studies and promotion system, 21 November 2016, p. 5*). A person obtains the status of an academic after the acquisition of a doctoral degree. A doctoral study programme is a higher-level education programme designed to enable doctoral candidates to acquire and develop specific knowledge and skills.

Thus, studies in doctoral programmes also fall within the scope of the first sentence of Article 112 of the Constitution.

11.3. The Constitutional Court has already held that all fundamental human rights enshrined in the Constitution are applicable to convicted persons insofar as they are not restricted and are compatible with the purpose of serving the sentence and the regime of imprisonment (*see Judgment of the Constitutional Court of 21 October 2008 in Case No 2008-02-01, paragraph 10*). Consequently, the rights established in Article 112 of the Constitution are also available to the convicted person.

In the area of fundamental rights, the State has several distinct duties: to respect, protect and ensure the rights of the individual. In order for the State to act in accordance with human rights, it must implement a number of measures – both passive, for example, non-interference in the rights of a person, and active, for example, ensuring the satisfaction of individual needs of a person (*see, for example, Judgment of the Constitutional Court of 3 April 2008 in Case No 2007-23-01, paragraph 7, and Judgment of 21 December 2009 in Case No 2009-43-01, paragraph 24*).

The European Court of Human Rights has held that Article 2 of Protocol No 1 to the Convention does not impose a duty on the State to set up particular educational establishments, but has stated that the State must ensure that the existing educational facilities are available to all persons, including a convicted person (*see Judgment of the European Court of Human Rights of 27 May 2014 in Velyo Velev v. Bulgaria, application No 16032/07, paragraphs 31 and 34*). Access to audio-visual teaching materials and computers, as well as access to the internet, is the means by which the right to education is effectively exercised (*see Judgment of the European Court of Human Rights of 18 June 2019 in Joined Cases Mehmet Resit Arslan and Orhan Bingöl v. Turkey, Application Nos 47121/06, 13988/07 and 34750/07, paragraph 53*).

The Constitutional Court concludes that neither Article 112 nor other norms of the Constitution imply a mandatory obligation of the State to ensure the right of every person to study in a doctoral study programme. However, if a country has

set up a doctoral programme and a person has been admitted to that programme after meeting certain requirements, that person has the right to continue his or her studies to acquire a higher education qualification. This also applies to a convicted person.

Consequently, if the State has established a doctoral study programme and a person has been admitted to that programme after fulfilling certain requirements, his or her right to continue studies arises from the first sentence of Article 112 of the Constitution, insofar as it is compatible with the purpose of serving the sentence and the regime of imprisonment.

12. The Applicant has indicated that the contested provision has restricted his right to continue his studies in order to obtain higher level education, as enshrined in Article 112 of the Constitution. Namely, the contested provision lists specific objects which a convicted person is entitled to use in cells and common areas. However, it does not provide for the possibility to receive in a parcel and use a personal laptop, which he needed to work on his doctoral dissertation. The Ombudsman, the Ministry of Education and Science and I. Švarca also hold that the contested provision has restricted the right of the Applicant provided for in the first sentence of Article 112 of the Constitution, as it has prevented him from using personal computer hardware, which was necessary for him to elaborate his doctoral dissertation, thus preventing him from continuing his studies to acquire higher level education.

In its written reply, the Cabinet of Ministers points out that the legal provisions do not establish a general prohibition for a convicted person to receive a personal computer with internet access in a parcel for the purposes of education. In particular, with the permission of the head of the prison, a convicted person serving a sentence in an open prison may use a personal computer for educational purposes. The use of personal computers is not allowed only for convicted persons serving a prison sentence in a closed or semi-closed prison. However, in these prisons, convicted persons are able to use the computers already located in the premises. The Applicant was also offered such an opportunity, however, he refused it because the computer was not suitable for his needs. Thus, the contested provision did not restrict his rights established in Article 112 of the Constitution.

Consequently, the Constitutional Court must establish whether the contested provision contains a restriction of the right established in the first sentence of Article 112 of the Constitution.

12.1. The contested provision determines the personal household appliances which a convicted person may use in the cells and common premises at the time determined in the daily order, upon obtaining a permit from the administration of the prison. These are personal radios, televisions and video games to be connected thereto. This provision also allows the convicted person to use personal refrigerators and electric water heating appliances to preserve and prepare food products purchased in the shop of the prison.

Pursuant to Section 41(6) of the Code, with the permission of the head of the prison, convicted persons serving their sentence in open prisons are also allowed to keep personal computer hardware with Internet access, if it is needed to ensure completion of education or employment of the convicted person. However, neither the contested provision, nor other provisions of Regulation No 423, nor the Code provide that convicted persons serving their sentences in closed or partially closed prisons may, with the permission of the administration of the prison, use personal computer hardware to acquire education. The Cabinet of Ministers also indicates in its written reply that the norms of Regulation No 423, including the contested provision, do not provide that convicted persons serving sentences in these prisons may use personal computer hardware (*see Volume 1 of the case file, p. 59*).

It follows from the case materials that from 23 March to 30 November 2018 the Applicant was serving a sentence in Riga Central Prison. He started serving his prison sentence in a closed prison, but was later transferred to a semi-closed prison. While serving his sentence in the prison, the Applicant repeatedly requested the permission of the head of the prison to receive in a parcel and use a personal portable computer without internet access, but with special software, which would allow him to conduct experiments with speech recordings in order to continue the development of his doctoral dissertation. However, all his requests were rejected, as the legal provisions determining the items which prisoners are entitled to acquire, possess, use and receive in parcels or consignments do not provide for convicted persons serving sentences in a closed or partially closed prison have the right to possess, purchase, receive as a gift or in a parcel a personal computer (*see Volume 1 of the case file, p. 6–8 and 63*).

12.2. According to Section 63 of the Law on Higher Education Institutions, the doctoral degree conferral council of higher education institutions shall award the doctoral degree after the acquisition of an accredited academic doctoral study programme and the defence of the doctoral thesis. A doctoral thesis may also be a

dissertation (*see paragraph 3.1 of the Cabinet Regulation No 1001 of 27 December 2005, Procedures and Criteria for the Award of a Doctoral Degree*).

The applicant served his sentence in a closed and semi-closed prison; therefore the administration of the prison had no right to allow him to receive in a parcel and to use a computer with special software for the elaboration of his doctoral thesis. Although the Applicant was offered the possibility to use the computers already located in the prison, they were not suitable for conducting experiments, as they were not equipped with special software. By adopting the contested provision, the Cabinet of Ministers has determined the personal household appliances that a convicted person is entitled to use. These items do not include personal computer hardware, which is why the prison administration is not entitled to authorise its use in closed and semi-closed prisons.

According to Section 6 of the Law on Higher Education Institutions, the freedom of studies, research work and artistic creation is ensured in higher education institutions. Freedom of studies is expressed, inter alia, as the right of students to be engaged in scientific research and artistic creation, and freedom of research work as the rights to choose the topic and direction of scientific activity (*see also Section 8(1) of the Law on Scientific Activity*). Thus, a person pursuing a higher education programme has the right to choose the methods of research work, including the aids. The exact aids which a person needs are determined by the nature of the research work. If a person requires special computer hardware for research work, then the prohibition to use such an aid constitutes as a restriction of the fundamental right established in Article 112 of the Constitution.

Consequently, during the period when the Applicant was serving his sentence in a closed and semi-closed prison, the contested provision, in so far as it does not provide for the right of the administration of the prison to decide on the right to grant permission to the convicted person to use aids in order to continue his studies to acquire higher level education, restricted his right enshrined in the first sentence of Article 112 of the Constitution.

13. Article 116 of the Constitution provides that the rights of persons set out in Articles ninety-six, ninety-seven, ninety-eight, one hundred, one hundred and two, one hundred and three, one hundred and six, and one hundred and eight of the Constitution 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.

Article 116 of the Constitution does not mention the right to education; however, this does not mean that this fundamental right is absolute and cannot be subject to restrictions. In addition, restrictions may be stricter for convicted persons than for persons not deprived of liberty. The assumption that the fundamental rights determined in Article 112 of the Constitution cannot be restricted at all would contradict both the fundamental rights of other persons guaranteed in other Articles of the Constitution and the obligation of the State to protect the fundamental rights of the individual enshrined in Article 89 of the Constitution.

So the right to education can be restricted, but an examination must be made of whether the restriction is justified, i.e. whether: (1) it is established by law; (2) it has a legitimate aim; (3) it is proportionate.

14. The Constitutional Court must first of all assess whether the restriction of the fundamental right is established by law.

The Constitutional Court has concluded that the word ‘law’ cannot be interpreted grammatically, and it includes not only laws adopted by the Parliament in their formal sense, but also other external laws and regulations, provided that they:

1) are issued on the basis of the law and in accordance with the procedure provided for in laws and regulations;

2) have been proclaimed and are publicly available in accordance with the requirements of laws and regulations;

3) are formulated sufficiently clearly to allow a person to understand the content of the rights and obligations arising therefrom and to predict the consequences of the application thereof, as well as ensure protection against the arbitrary application thereof (*see Judgment of the Constitutional Court of 18 December 2018 in Case No 2016-04-03, paragraph 20*).

Compliance with the procedure of adoption of a legal provision is a precondition for the validity of the legal provision (*see Judgment of the Constitutional Court of 21 November 2005 in Case No 2005-03-0306, paragraph 10.4, and Judgment of 21 December 2015 in Case No 2015-03-01, paragraph 23*). The legislator has provided in Section 41(6) of the Code that with the permission of the head of the prison, convicted persons serving their sentence in open prisons are also allowed to keep personal computer hardware with Internet access, if it is needed to ensure completion of education or employment of the

convicted person. In turn, in Section 47(1) of the Code, the legislator has authorised the Cabinet of Ministers to determine the list of objects that a convicted person is allowed to receive by way of consignments and parcels. The contested provision has been adopted with reference to this provision of the Code. The Constitutional Court has already recognised that the provisions of the Code authorise the Cabinet of Ministers to elaborate the rules of internal order of prisons and to regulate which objects a convicted person is allowed to keep (*see Judgment of the Constitutional Court of 18 March 2011 in Case No 2010-50-03, paragraph 10*).

Although, by pointing out that the contested provision is incompatible with Article 64 of the Constitution, the Applicant expresses the opinion that the Cabinet of Ministers is not authorised to issue Regulation No 423, however, he has not indicated and the Constitutional Court has not established such aspects of adoption and publication or comprehensibility of the contested provision that would allow doubting that the restriction of fundamental rights contained in this norm is established by law.

Therefore, the restriction of fundamental rights contained in the contested provision is established by law.

15. Any restriction of fundamental rights must be based on circumstances and arguments on why it is necessary, namely, the restriction must be imposed 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*).

Where a restriction of rights is established, in the Constitutional Court procedure the obligation to present and substantiate the legitimate aim of such restriction lies, first and foremost, with the institution which issued the contested provision, which in the given case is the Cabinet of Ministers (*see, for example, Judgment of the Constitutional Court of 1 November 2012 in Case No 2012-06-01, paragraph 12, and Judgment of the Constitutional Court of 11 December 2014 in Case No 2014-05-01, paragraph 18*).

The Cabinet of Ministers has pointed out that the restriction preventing convicted persons serving their sentences in closed or semi-closed prisons from receiving by way of a parcel and using personal computer hardware is imposed in order to ensure order and security in prisons. If the convicted person is a defendant in another criminal proceeding while serving a custodial sentence, he or she may

use the computer to carry out activities that could jeopardise the achievement of the objectives of the criminal proceedings. A convicted person can also use a personal computer to obtain prohibited information. Thus, the legitimate aim of the contested provision is the protection of public safety.

The invited persons, Ministry of Education and Science, I. Švarca, the Ombudsman and the Prosecutor General, point out that nowadays a computer allows to store various data, software in a concealed manner and to use it for carrying out activities which may endanger security and order in the prison (*see Volume 3 of the case file, p. 6, 14, 21–22 and 36*).

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 system and is recognised as admissible mainly in cases where issues concerning threats to national or public safety are touched upon. In such a case, an objectively existing or potentially possible link must be established between the adoption of a specific legal framework and the strengthening of public safety, prevention or reduction of safety threats (*see Judgement of the Constitutional Court of 7 October 2010 in Case No 2010-01-01, paragraph 12.2*).

The European Court of Human Rights has held that restrictions on the use of various items, including computers, by a convicted person are aimed at ensuring order in the prison and preventing the commission of new offences (*see Judgement of the European Court of Human Rights of 18 June 2019 in Joined Cases Mehmet Resit Arslan and Orhan Bingöl v. Turkey, Application Nos 47121/06, 13988/07 and No 34750/07, paragraph 60*). The Constitutional Court finds that the restriction on the use of personal computer hardware by a convicted person in a closed or semi-closed prison is established in the public interest in order to prevent threats to order and security.

Consequently, the restriction of fundamental rights contained in the contested provision has a legitimate aim – protection of public safety.

16. In establishing the legitimate aim of a restriction of a fundamental right, it is necessary to assess the compatibility of that restriction with the principle of proportionality and thus to ascertain:

1) whether the means used by the legislator are suitable for the achievement of the legitimate aim, namely, whether the contested provision 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 person;

3) whether the action of the legislator is appropriate, i.e. whether the benefit to society outweighs the damage caused to the rights of the person.

If it is established that the restriction imposed by a legal provision does not meet any one of these criteria, the restriction is automatically found to be incompatible with the principle of proportionality and therefore unlawful.

17. When assessing whether the selected means are suitable for the achievement of the legitimate aim, the Constitutional Court must examine whether the legitimate aim can be achieved by the selected means.

A general prohibition on the use of personal computer hardware by convicted prisoners serving their sentences in closed or semi-closed prisons prevents any risk that it might be used to carry out activities that are likely to be directed against the order and security of the prison. Consequently, the restriction of fundamental rights provided for in the contested provision is an appropriate means of achieving the legitimate aim – protection of public security.

Therefore, the selected measure is suitable for achieving the legitimate aim.

18. When assessing whether the chosen means are necessary to achieve the legitimate aim, the Constitutional Court must examine whether the legitimate aim cannot be achieved by other means which would be less restrictive of the individual's rights which would be equally effective.

However, The Constitutional Court has already held that a more lenient measure is not just any other measure, but only such a measure by which the legitimate aim can be achieved at least in the same quality (*see, for example, Judgment of the Constitutional Court of 7 October 2010 in Case No 2010-01-01, paragraph 14*). It is the competence of the Court to examine whether there are any alternative measures which would be less restrictive of the fundamental rights of persons enshrined in the Constitutional (*see, for example, Judgement of the Constitutional Court of 24 November 2017 in Case No 2017-07-01, paragraph 19*).

18.1. It follows from the application that, according to the Applicant, the legitimate aim of the restriction of fundamental rights contained in the contested provision may be achieved by less restrictive means, for example, by establishing

such a legal regulation which would allow the administration of the prison to assess each case individually.

The Ombudsman also holds that a more lenient measure would be a regulation which would allow the administration of the prison, taking into account the regime and purpose of the sentence, to decide on a case-by-case basis whether to allow the convicted person to use a personal computer. The convicted person already is allowed to use the objects provided for in the contested provision only after obtaining a permit from the administration of the prison. The Cabinet of Ministers is also entitled to restrict the time and place of use of devices such as computers, or to provide that a convicted person may use a computer only under the supervision of a staff member of the prison (*see Volume 3 of the case-file, p. 14*). I. Švarca stresses that use of personal computer hardware is already allowed in open prisons, and it is subject to regular inspections. There are no obstacles for the Cabinet of Ministers to extend a similar procedure to closed and semi-closed prisons. It is also possible to define in statutory provisions the criteria according to which a prohibition for the convicted person to use a personal computer would be determined (*see Volume 3 of the case-file, p. 22–26*).

However, the Cabinet of Ministers considers that there are no other means which would restrict the rights of sentenced persons to a lesser extent and would achieve the legitimate aim to the same quality. If convicted persons serving their sentences in closed or semi-closed prisons were allowed to use personal computer hardware for educational purposes, the administration of the prison would have to ensure that each computer in the possession of the convicted person was inspected regularly. This would require a disproportionate commitment of staff and technical resources.

18.2. According to Section 35(2) of the Criminal Law, the purpose of punishment determined therein, including a sentence of deprivation of liberty, is to protect public safety, to restore justice, to punish the offender for the committed criminal offence, to achieve that the convicted person and other persons comply with the law and refrain from committing criminal offences. The prisons executing the criminal sentences must ensure that these objectives are met, in addition to ensuring a lawful and secure prison environment and preventing offences and other kinds of disorder.

Pursuant to Section 13(1) of the Code, a custodial sentence shall be executed in a closed prison, a partly-closed prison or an open prison, or in a juvenile correctional institution. The basic principle of custodial sentences is that convicted

prisoners are kept in mandatory isolation and so that they would not have and opportunity to commit new criminal offences. Convicted persons are also required to comply precisely with the obligations provided for them. In addition, depending on the conditions of the regime, the nature of the criminal offence committed by the convicted person, his or her personality and behaviour, certain restrictions may also be imposed (*see Section 41(1) of the Code*). Confinement in a prison is therefore inextricably linked to various restrictions of a person's rights, which arise from the nature of the custodial sentence and its purposes, and are an inherent feature of that punishment.

European Prison Rules require that all persons deprived of their liberty are treated with respect for their human rights. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed (*see paragraphs 1 and 3 of the European Prison Rules*).

As previously mentioned, only a convicted person serving a sentence in an open prison may keep personal computer hardware, including with Internet access, with the permission of the head of the prison, if it is needed to ensure completion of education. However, convicted persons serving their sentences in closed or semi-closed prisons do not have this option. In particular, it follows from the contested provision that the administration of such prisons is entitled to decide on allowing convicted persons to use only the household appliances referred to in this provision. Since the contested provision does not list personal computer hardware among the items, the administration of a closed and partially closed prison is not entitled to decide on the use thereof. The Prison Administration has indicated to the Applicant in the decision of 4 July 2018 that it is not entitled to allow him to use a personal portable computer for the development of his doctoral dissertation, since the legal provisions, including the contested provision, do not provide for the use of such an object (*see Volume 1 of the case-file, p. 6-7*).

In its assessment of a restriction that prevented prisoners from using a computer with internet access necessary for acquisition of higher education, the European Court of Human Rights stated that any restriction of the fundamental rights of prisoners, including the right to education, must be justified, even if it is justified on the grounds of security, including the need to prevent the commission of new criminal offences or to maintain order in the prison. The State must ensure a balance between a person's right to education and the capacity of the State to ensure this right. By denying the person the use of a computer with internet access,

the national courts had not analysed in detail the security risks posed by the use thereof in prison, as a result of which the European Court of Human Rights established a violation of Article 2 of Protocol No 1 to the Convention (*see Judgment of the European Court of Human Rights of 18 June 2019 in Joined Cases Mehmet Resit Arslan and Orhan Bingöl v. Turkey, Application Nos 47121/06, 13988/07 and No 34750/07, paragraphs 55, 57 and 69*).

The Constitutional Court points out that in order to ensure a balance between the right of a person who, after fulfilling certain requirements, has been admitted to a doctoral study programme to continue his or her studies in order to acquire higher level education and the necessity to ensure order and security in the prison, the regulatory framework must provide the administration of the prison with the right to decide on the authorisation or prohibition to use the aids necessary to continue studies also for those convicted persons who are serving their sentence in semi-closed or closed prisons. Such a procedure would be possible if the contested provision provided that, after an individual assessment of the circumstances, the administration of the prison was entitled to permit the convicted person to use the aids necessary for him or her to continue studies. Whether and exactly what kind of aids, including personal computer hardware, a sentenced person may be allowed to use would depend on the individual circumstances of each case.

The right of the administration of a prison to assess on a case-by-case basis whether a convicted person may be allowed to use an aids to continue his or her studies does not necessarily guarantee that the use of a particular aid, such as a computer, will be allowed. If, after an individual assessment of the circumstances, risks to security or order are identified, the administration of the detention institution may refuse the person the use of a particular aid, such as a computer. Pursuant to Section 47.¹(2) of the Code, a complaint may be submitted to the head of the Latvian Prison Administration regarding the decision of the head of a prison to prohibit the convicted person from using personal household appliances.

A framework that would allow a case-by-case assessment of whether a convicted person can be permitted to use aids for the continuation of studies would be less restrictive of the fundamental rights of convicted persons, since in individual cases where no security risks are identified, the convicted person would be allowed to use such aids. The Constitutional Court has already held that the right to education enables an individual to develop as a free personality and to integrate into civil society (*see Judgment of the Constitutional Court of 23 April 2019 in Case No 2018-12-01, paragraph 20*). While serving a custodial

sentence, the convicted person is isolated from society. This isolation affects his or her physical and emotional health, which is why it is important to ensure that he or she has access to education. Moreover, education in prison is important to promote the development of positive social values and contribute to the full integration of the convicted person into society after serving his or her sentence. Education is one of the main techniques of social rehabilitation (*see Cabinet Order No 580 of 24 September 2015, On the Guidelines for the Re-socialisation of Prisoners 2015–2020*).

The Constitutional Court notes that Recommendation No R (89)12 of the Committee of Ministers of the Council of Europe of 13 October 1989, On Education in Prison, emphasises the importance of education in the development of the personality of the convicted person and in improving the conditions in the prison. The European Prison Rules also state that the administration of every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible, and which meet their individual needs while taking into account their aspiration (*see paragraph 28.1 of the European Prison Rules*). Although the European Prison Rules are not legally binding, the Constitutional Court recognises that they contain guidelines which characterise the treatment of convicted persons in the European cultural area.

The Constitutional Court sees no basis for the statement of the Cabinet of Ministers that such a procedure would be excessively burdensome for the State. The personal computer hardware of convicted persons serving their sentences in open prisons is already subject to regular inspections (*see Section 41(6) of the Code*). Moreover, the number of prisoners who study in higher education programmes while in prison is relatively small. According to the information provided by the Prison Administration, in 2018, a total of 1,574 convicted persons received education in various programmes, of which five – in higher education programmes (*see Volume 1 of the case-file, p. 70*). It should also be taken into account that in some cases the convicted person will not need aids, such as special computer hardware, and will be able to continue his or her higher education studies using only the computers already located in the prison. Whether the use of an aid, such as computer hardware, is objectively necessary must be decided on a case-by-case basis.

The Constitutional Court concludes that there exists a more lenient measure which would restrict the fundamental rights of a person enshrined in the first sentence of Article 112 of the Constitution to a lesser extent, but allow the

legitimate aim of the restriction of fundamental rights, i.e. protection of public safety, to be achieved to the same quality.

Thus, the restriction does not comply with the principle of proportionality and, consequently, the contested provision, insofar as it does not provide for the right of the administration of a prison to decide on granting permission for a convicted person to use aids to continue his or her studies in order to acquire higher level education, does not comply with Article 112 of the Constitution.

19. In accordance with Section 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 publication of the Constitutional Court judgement, unless otherwise determined by the Constitutional Court. Pursuant to Paragraph 11 of Section 31 of the Constitutional Court Law, the Constitutional Court may indicate in its judgement the moment from which the contested legal provision declared as not conforming to the provision of higher legal force ceases to have effect.

19.1. The Constitutional Court has previously held that when deciding on the moment when the contested provision (act) becomes void, it should be borne in mind that its task is to prevent, as far as possible, the infringement of the fundamental rights of the Applicant (*see Judgement of the Constitutional Court of 16 December 2005 in Case No 2005-12-0103, paragraph 25*).

It follows from the case-file that in the given case, the contested provision was applied to the Applicant on 26 June 2018, when the head of the prison denied him to receive and use personal computer hardware (*see Volume 1 of the case-file, p. 8*). That date shall be deemed to be the moment when the infringement of the fundamental rights of the Applicant occurred.

The administrative procedure in the institution was concluded by the decision of the Head of the Prison Administration of 4 July 2018 by which the complaint of the Applicant regarding the decision of the head of the prison was rejected (*see Volume 1 of the case-file, p. 6-7*). According to Section 47.¹(2) of the Code, this decision is not subject to appeal.

On 30 November 2018, the Applicant was released from imprisonment. However, the contested provision, in order to eliminate, as far as possible, the adverse consequences caused to him by the application thereof, must be declared

void in respect of the Applicant from the moment of the infringement of his fundamental rights.

19.2. The Constitutional Court, exercising the power conferred upon it by Section 32(3) of the Constitutional Court Law, must also ensure, within the limits of its possibilities, that the situation which may arise from the moment when the contested provision is declared not in effect until the moment when the legislator adopts a new legal regulation in its place does not lead to an infringement of the fundamental rights guaranteed to persons by the Constitution (*see Judgment of the Constitutional Court of 16 December 2005 in Case No 2005-12-0103, paragraph 25, and Judgment of 31 January 2013 in Case No 2012-09-01, paragraph 16.1*).

The Constitutional Court points out that until the adoption of a new legal regulation, the rights of convicted persons are to be protected by direct application of Article 112 of the Constitution and the findings included in this Judgment.

20. Moreover, the Constitutional Court draws the attention of the Cabinet of Ministers to the fact that the contested provision, as well as other provisions of Regulation No 423 relating to the use of objects in a prison, are formulated in such a way as to determine the objects which a convicted person is allowed to keep. This means that the administration of a prison does not have the right to allow a convicted person to use other objects not mentioned in these legal provisions, even if their use would not endanger the order and safety of the prison. Such a regulation may result in disproportionate infringements of a person's fundamental rights enshrined in the Constitution. The Cabinet of Ministers is therefore obliged to consider how the legal framework could be improved. The Constitutional Court has already drawn attention to the fact that it is possible to choose another way of regulating the issue of objects to be kept in prisons. For example, it is possible to draw up a list of items which a convicted person is prohibited from keeping. Similarly, criteria could be defined for deciding the keeping of which objects is prohibited, or to list those objects the keeping of which is permitted; while providing the prison administration with the right to decide on permission to keep other items if the convicted person so requests (*see Judgment of the Constitutional Court of 18 March 2011 in Case No 2010-50-03, paragraph 14.2*).

The Substantive Part

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

decided:

1. To declare Paragraph 40 of Cabinet Regulation No 423 of 30 May 2006, Internal Rules of Procedure of the Prison, insofar as it does not provide for the right of the administration of a prison to decide on granting permission for a convicted person to use aids to continue his or her studies in order to acquire higher level education, as incompatible with Article 112 of the Constitution of the Republic of Latvia.

2. In respect of the Applicant Ansis Ataols Bērziņš, to declare Paragraph 40 of Cabinet Regulation No 423 of 30 May 2006, Internal Rules of Procedure of the Prison, insofar as it does not provide for the right of the administration of a prison to decide on granting permission for a convicted person to use aids to continue his studies in order to acquire higher level education, to be incompatible with Article 112 of the Constitution of the Republic of Latvia and void from the moment of the infringement of his fundamental rights.

The Judgment is final and not subject to appeal.

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

Chairperson of the Court session

I. Ziemele