



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G E M E N T

**On Behalf of the Republic of Latvia**

**Riga, 18 March 2011**

**Case No. 2010-50-03**

The Constitutional Court of the Republic of Latvia composed of the Chairman of the Court session Gunārs Kūtris, and justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra,

having regard to a constitutional complaint of Mr. Nauris Rakuzovs,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 (3), Article 17 (1) Indent 11, Article 19.<sup>2</sup> and Article 28.<sup>1</sup> of the Constitutional Court Law,

on 1 March 2011 examined the case

**“On Compliance of the First Appendix of 30 May 2006 Cabinet of Ministers Regulations No. 423 “Regulations of Internal Procedure in Imprisonment Establishments” insofar as It Regulates Keeping of Religious Objects with Article 99 of the Satversme of the Republic of Latvia”.**

## The Facts

1. Para 4 of 30 May 2006 Cabinet of Ministers Regulation No. 423 “Regulations of Internal Procedure in Imprisonment Establishments” (hereinafter – the Regulation No. 423) provides that a person sentenced to imprisonment (hereinafter – prisoner) shall have the duty to transfer to responsible persons of the imprisonment establishment his or her identification documents and other documents, precious metals, gemstones and gemstone ware, securities, as well as all belongings that are not mentioned in the list of those articles and food products that a prisoner has the right to keep, or number of which does not exceed the permitted amount. These articles and food products that a prisoner has the right to keep are listed in the appendix of the Regulation no. 423 (hereinafter – the Appendix). Religious objects are not referred to in the Appendix.

2. **The Applicant Mr. Nauris Rakuzovs** (hereinafter – the Applicant) asks the Constitutional Court to assess the Annex insofar as it fails to establish keeping of religious objects (hereinafter – the Contested Norm). It has been indicated in the application that the prohibition to prisoners to keep religious objects, for instance, icons, crosses, rosary, contradicts the freedom of religion guaranteed in Article 99 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The prohibition to keep religious objects prohibits performing religious rituals and restricts the right to religion. Such prohibition is not necessary; therefore it is not proportional. The Applicant holds that prisoners preserve their basic rights when kept in custody, and restrictions established to them cannot exceed the extent required by the kind of punishment or regime of the imprisonment establishment.

The Applicant indicates that restricting of keeping of religious objects cannot be related to safety considerations. It is possible to do harm to another person by means of those objects that are already kept by prisoners. Moreover, in many imprisonment establishments, keeping of religious objects is, in fact, permitted. Consequently, this causes unequal attitude because regimes of different imprisonment establishments differ.

Moreover, the Applicant emphasizes the role of religion in re-socialization of prisoners.

**3. The institution that adopted the contested act, the Cabinet of Ministers** indicate that freedom to religion includes the right to internal faith which is an absolute right, and the right to expressing one's religious beliefs, which is not an absolute right. Expression of religious beliefs can be restricted by law insofar as it is necessary in a democratic society in order to maintain security of the society, ensure public order, as well as health, dignity and rights and freedoms of other persons.

The European Court of Human Rights has recognized that Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) protects only such activities that ensure expression of religious beliefs in a commonly accepted way, like, public worships, rather than protects all activities executed by a person based on his or her religious beliefs. Moreover, when exercising the freedom of religion, a person has to take into account the specific character of a particular situation.

The Cabinet of Ministers indicates the following: based on the aspect of the right of church, using of religious objects is not separated as a particular element or accentuated in any way. Moreover, such objects are not always necessary for expressing one's religious beliefs. Prohibiting prisoners to keep and use rosary does not mean that a person is prohibited to resort to its religion and fulfil certain rituals.

Restriction of the basic rights of a prisoners, namely, prohibiting keeping and using of religious objects in his or her cell, has been established based on a law because the Regulation No. 423 has been adopted in accordance with the stipulated procedure and pursuant to the delegation by the Saeima.

The regulatory framework included in the Regulation No. 423 is aimed at ensuring order in imprisonment institutions. It is necessary to restrict the kinds and amounts of objects kept by prisoners and to permit them to keep the minimum amount of objects necessary for meeting hygiene and certain basic needs. Consequently, all other objects, including religious objects are prohibited. Likewise, the aim to protect the rights and security of other prisoners as well as personnel shall be regarded as grounded.

The Cabinet of Ministers indicates that punishment of deprivation of liberty includes restrictions of the basic rights characteristic to it insofar as it is necessary to reach the aim of the punishment. Criminal punishment as a public compulsory mechanism is implemented not only as denial to exercise certain actions and revocation of rights with the purpose of changing behaviour of a prisoner, but also as a measure of special and general prevention, namely, the purpose of criminal punishment is to prevent a prisoner from committing another criminal offences and to make other members of the society to restrain from criminal offences.

According to the Cabinet of Ministers, the restriction included in the Contested Norm should be assessed in the context of other possibilities to express one's religious beliefs that are ensured to prisoners in imprisonment establishments. Measures of mental care for prisoners are organized in the following forms: public worships, concerts, classes of religious literature analysis, demonstration of films with religious content, as well as individual conversations with a priest. Mental care is also ensured by religious organizations registered pursuant to stipulated procedures.

When assessing norms regulating execution of punishment, it can be concluded that international human rights do not commit the State to guarantee such procedure for exercising one's freedom to religion in an imprisonment establishment that would comply with desires of each prisoner, the procedure including the right to keep religious objects; the international human rights rather obligate the State to implement the essence and the general character of the right to freedom of religion.

Consequently, normative acts ensure the minimum of the freedom of religion, and the restriction shall be regarded as proportional.

**4. The summoned person, the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) holds that the prohibition to keep religious objects in an imprisonment establishment in case if a person wants to due to his or her religious beliefs does restrict the right to freedom of religion guaranteed in the Satversme and other international documents of human rights. However, the right to devote oneself to religion is not absolute. This right can be restricted to a prisoner in case if it is not commensurate with the circumstances of a particular imprisonment establishment.

Ensuring of proper order in an imprisonment institution shall be regarded as the legitimate aim of the particular restriction insofar as the restriction is aimed at securing of protection of rights and security of other prisoners and personnel.

When assessing proportionality of the restriction, it is necessary to take into account the peculiar circumstances of an imprisonment institution. The Ombudsman refers to the decision of 1965 of the European Committee on Human Rights in the case “X v. Austria” regarding non-admissibility of the application. In the above mentioned case, the applicant complained, among the rest, on the fact that he was prohibited to keep rosary when in prison. The European Committee on Human Rights has indicated that such restriction is necessary in a democratic society in order to maintain public order, namely, in order to guarantee security for prisoners and maintain discipline in an imprisonment establishment.

Likewise, the Ombudsman indicates that, when assessing proportionality of the restriction, it is necessary to take into account the possibilities of persons to express their religious beliefs, these possibilities being ensured to prisoners in imprisonment establishments, for instance, meeting a priest, participation in morality training etc.

Consequently, the prohibition to keep religious objects in a cell is necessary for the sake of a democratic society, and it does not infringe the basic rights of prisoners.

**5. The summoned person – the Latvian Prison Administration** indicates that a prisoner kept in an imprisonment establishment can be applied all restrictions established in normative acts in case if the minimum of the rights established in the Satversme and other international documents on human rights is ensured.

The Latvian Prison Administration holds that the list of objects provided in the Annex, namely, objects that prisoners have the right to keep in their cells, is exhaustive and sufficient for prisoners to be able to wholesomely live under circumstances of deprivation of liberty. The list provides the possibility to keep religious books, which ensures such amount of freedom of religion that is requested by international documents on human rights.

Non-inclusion of religious objects into the above mentioned list is based on consideration of safety. For instance, sometimes it is not possible to distinguish whether a chain and a crucifix is made of precious metal or not; however, it is not allowed to prisoners to keep the latter. Consequently, this would enable that such chains could be used for inter-cell communication or committing other criminal offences.

The Latvian Prison Administration indicates that in certain cases administration of an imprisonment establishment allows keeping of religious objects, like, calendars with sacred images, framed icons and the Bible.

**6. Latvian imprisonment institutions** have furnished information to the Constitutional Court regarding the fact whether they generally allow keeping of religious objects.

The Prison of Valmiera indicates that in cases of exception the administration allows keeping of religious objects. The respective decision is adopted by the chairperson of the prison. The opinion of a chaplain that of a senior inspector of the Social Rehabilitation Department and a chairperson of the Surveillance Department is taken into account, as well as value, size and other parameters of a particular religious object are considered.

The Prison of Šķīrotava permits wearing crucifixes that are suspended on a string. It prohibits keeping of such objects that could be used for possible escape or assault.

The Prison of Liepāja requires consent by the administration for keeping of religious objects. The administration permits keeping all those religious objects that could not be used for assault or escape, like, rosary, icons, crucifixes.

The Prison of Jelgava permits keeping of small crucifixes, rosary, icons, as well as publications of sacred content. However, such religious objects cannot be made of precious metals or gems. These are officials of the Security Department and the Surveillance Department that assesses the possibility to keep other kinds of religious objects. Usually, the officials permit keeping of religious objects in case if it does not threaten surveillance and security of an imprisonment establishment. For instance, prisoners who are old-believers are allowed to keep a small rug for paying.

The Prison of Jēkabpils indicates that in certain cases it allows keeping of religious objects and usage thereof in the chapel of the prison. The permission is issued in case if it is supported by the chaplain.

Based on an application of a prisoner, the Prison of Iļģuciems allows keeping of religious objects that are not made of precious metal. Likewise, it permits keeping of icons and the Bible or other books of religious nature in case if they are contributed to the prison or if they are issued by the chaplain.

The Riga Central Prison indicates that all prisoners are allowed to keep religious objects of a certain nature. For instance, small crucifixes, David's Star, Sickle Moon and other small pendants of religious character, as well as small icons are allowed. The prison administration allows keeping of religious objects of other character after having assessed each case separately by involving the chaplain of the prison. The fact whether a particular religious object is planned to be used in accordance with its essence, as well as security, possible harmful consequences of the use thereof, specific character of their keeping and other aspects are taken into account. Likewise, the fact whether residential premises of prisoners are or are not shared is also considered. As to Rosary, prisoners usually use them to show their attitude towards others by visually popularizing counteraction to prison administration rather than for religious purposes. However, rags for praying are usually used to cover the surveillance hole of the camera or one's bed. The amount of religious objects that a prisoner has the right to keep and use in premises of the prison chapel is not restricted by the prison administration.

The Prison of Vecumnieki, the Prison of Daugavgrīva, the Prison of Brasa and the Prison of Olaine indicate that they have never received any application from prisoners requesting permission to keep any religious objects.

## **The Findings**

7. Article 99 of the Satversme provides: "Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State."

**7.1.** The freedom of thought, conscience and religion is one of the most important values of a democratic society. This freedom comprises different religious, non-religious and atheistic beliefs, as well as the right to accept or refuse religion. In the light of the particular article of the Satversme, religious beliefs can be interpreted in a broad manner. Moreover, not only presence of religious beliefs but also expression of religious beliefs is protected.

When establishing the content of Article 99 of the Satversme, the Constitutional Court has to take into account international documents on human rights as well as the practice of application thereof. A norm that is similar to that of Article 99 of the Satversme is included in Article 9 of the convention and Article 18 of the United Nations Organization (hereinafter – the UN) International Covenant on Civil and Political Rights (hereinafter – the Covenant).

The European Court of Human Rights (hereinafter – the ECHR) has recognized that freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned (*see, e.g.: Judgment of 13 December 2001 by the ECHR in the case Metropolitan Church of Bessarabia and Others v. Moldova*, Appl. No. 45701/99, Para 114, and *Judgment of 5 October 2006 “The Moscow Branch of the Salvation Army v. Russia*”, Appl. No. 72881/01, Para 57).

**7.2.** Article 116 of the Satversme provides: “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. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs.”

Likewise, it follows from Article 9 of the Convention and Article 18 of the Covenant, as well as from Article 99 of the Satversme if considered in conjunction with Article 116 of the Satversme that the internal aspect of religious beliefs (*forum internum*)

and the right to devote oneself to religion or the freedom of expression of religious beliefs being the right to external expression of the freedom of religion (*forum externum*) are distinguished. The EHCR has indicated the following: While religious freedom is primarily a matter of individual conscience, it also implies the right to devote oneself to religion or the right to manifest one's religion (*see: Judgment of 25 May 1993 by the ECHR in the case „Kokkinakis v. Greece”, Appl. No. 14307/88, Para 31*).

The Satversme does not provide any explanation of the term “expression of religious beliefs”, whilst Article 9 of the Convention and Article 18 of the Covenant indicates that expression of religious beliefs includes cultivation of worships, execution of religious and ritual ceremonies, as well as preaching. In its General Comment No. 22 on the right to freedom of thought, conscience and religion (hereinafter – the General Comment 22), the UN Committee on Human Rights has indicated that manifestation of religion includes also use of religious objects (*see: General Comment 22 on the right to freedom, conscience and religion of the UN Committee of Human Rights of 30 July 1993, Para 4, <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>, consulted on 1 March 2011*).

Pursuant to Article 116 of the Satversme, this is only expression of religious beliefs rather than the rights referred to in Article 99 of the Satversme that can be restricted. External aspects of the freedom to thought and conscience are closely related with the freedom of speech guaranteed in Article 100 of the Satversme and they are admissible in a democratic society to ensure necessary restrictions. Consequently, internal expressions of thoughts, conscience and religious beliefs cannot be restricted. A similar conclusion was made also by the ECHR (*see: Para 33 of the ECHR judgment in the case “Kokkinakis v. Greece”*), and the UN Committee on Human Rights (*see: Para 3 and 3 of the General Comment 22*).

**8.** The Applicant holds that the prohibition to prisoners to keep religious objects contradicts Article 99 of the Satversme. Consequently, the Constitutional Court has to investigate whether the Contested Norm causes the restriction of the fundamental rights established in Article 99 of the Satversme.

**8.1.** One of the basic principles included in the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (hereinafter – the European Prison Rules) is as follows: Persons deprived of their liberty retain all basic 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: the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Para 2 and 3, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=955747>, consulted on 1 March 2011*).

**8.2.** A UN Special Rapporteur on freedom of religion or belief (*Asma Jahangir*) has indicated there is a real risk that the circumstances of detention, as well as specific policies by prison authorities, may result in undue restrictions of the opportunity of detainees to practice their religion or belief. Consequently, prisoners find themselves in a situation of enhanced vulnerability and can therefore be an easy target for harassment (*see: Interim Report of the Special Rapporteur on freedom of religion or belief, 17 June 2009, Para 19 – 20, [//www2.ohchr.org/english/issues/religion/docs/A-64-159.pdf](http://www2.ohchr.org/english/issues/religion/docs/A-64-159.pdf), consulted on 1 March 2011*). In the General Comment 22, it has also been emphasized that persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint (*see: the General Comment 22, Para 8*).

**8.3.** The Annex enumerates objects and food products that a prisoner shall have the right to keep. It follows from Para 4 of the Regulation no. 423 that objects referred to in the Annex should be transferred to the imprisonment establishment for storing. Pursuant to Para 7 of the same regulation, objects, wares and substances prohibited to be kept, found during search and not have been voluntarily submitted to the imprisonment establishment shall be deprived of and destroyed.

The Annex does not *expressis verbis* mentions any religious objects. However, certain objects that are included into the Annex and are formulated in a general manner can also be of religious nature, like, books, photography, headdress.

Based on the fact that Buddhist rosary is not included into the Annex, the Applicant was prohibited to keep them.

**Consequently, the prohibition to keep religious objects that follows from the Contested Norm can restrict the right of prisoners to express their religious beliefs.**

9. Like in relation to any basic right, also in relation to observance, protection and ensuring of the freedom of religion commits the State to positive and negative duties.

In the present case, the State prohibits the Applicant to keep rosary by thus restricting his freedom to express his religious beliefs. The Cabinet of Ministers and the Latvian Prison Administration holds that Article 99 of the Satversme has not been infringed because prisoners kept in imprisonment establishments have been ensured other possibilities of expressing their religious beliefs, namely, they were ensured to attend public worships, concerts or classes of religious literature analysis. However, the decisive role is played by the fact that the established restriction is lawful rather than the fact that the State has fulfilled its positive duties. Consequently, it is necessary to investigate whether by adopting the Contested Norm the State has or has not infringed its duty to refrain from infringing the basic rights established in Article 99 of the Satversme.

In order to establish whether the particular restriction is lawful, the Constitutional Court shall investigate the following:

- 1) whether it has been established by law and whether it has been adopted on lawful basis;
- 2) whether it has a legitimate aim;
- 3) whether it is proportional (*see: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 8*).

10. Any restriction of fundamental rights should be established by law or adopted on lawful basis.

The Cabinet of Ministers indicates in its reply that the restriction that follows from the Contested Norm has been established by law. The Cabinet of Ministers has regulated the particular issue based on an authorization by the Saeima; moreover, the Regulation No. 423 has been established according to a stipulated procedure, they have been clearly formulated, and they comply with other norms of normative acts.

The Annex has been adopted based on Section 11 (5) and Section 47 (1) of the Latvian Sentence Execution Code. Section 11 (5) of the Latvian Sentence Execution Code establishes: “Internal procedural regulations of deprivation of liberty institutions shall be approved by the Cabinet.” However, Section 47 (1) of the same code provides: “In deprivation of liberty institutions only non-food goods shall be permitted to be received by way of parcels and deliveries. The procedures by which parcels or deliveries shall be received and issued, as well as the list of those things which are permitted to be received by way of parcels and deliveries shall be regulated by Cabinet regulations”.

Moreover, Section 42 of the Latvian Sentence Execution Code provides that in deprivation of liberty institutions strictly regulated internal procedures shall be determined by also determining a list and the number of objects and possessions which they can keep in their possession.

The Constitutional Court concludes the following: in the present case, there is no dispute whether the Regulation No. 423 has or has not been adopted according to the stipulated procedures. The legislator has granted to the Cabinet of Ministers a general authorization to elaborate internal procedures regulations of imprisonment establishments and to determine the list of objects that the prisoners would have the right to keep.

**Consequently, the restriction of fundamental rights following from the Contested Norm has been established in accordance with law.**

**11.** Article 116 of the Satversme provides that expression of religious beliefs can be restricted in order to protect the rights of other persons, the democratic structure of the state, and public safety, welfare and morals.

The Cabinet of Ministers indicates that the legitimate aim of the Contested Norm is ensuring order in imprisonment establishments. Restrictions regarding the kind and number of objects allow ensuring order in imprisonment establishments. Religious objects, including rosary, can be used for assaults or unlawful communication among prisoners; therefore keeping of them should be prohibited. Consequently, the aim of the Contested Norm is to protect security of the society and rights of other persons.

**Consequently, the restriction of the fundamental rights that follows from the Contested Norm does have a legitimate objective.**

12. In order to investigate whether the legal provision passed by the legislator complies with the principle of proportionality, the Constitutional Court shall investigate the following:

first, whether the means utilized by the legislator are suitable for achieving the legitimate objective or whether the aim set can be reached by the measure selected;

second, whether such action is indispensable, i.e., whether the objective can not be reached by other means that restrict the rights and legal interests of a persons at a lesser extent;

third, whether the action of the legislator is proportionate or commensurate, i.e., whether the benefit gained by the society is greater than the losses caused to the rights and legal interests of a person.

If, when assessing the legal provision, it is acknowledged that it is in conflict with at least one of the above criteria, then it is in conflict with the principle of proportionality and is unlawful (*see, e.g.: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

13. The Appendix provides a list of objects that are permitted to be kept by prisoners; consequently, keeping of all other objects is prohibited. The Appendix does not refer to any religious objects.

The Latvian Prison Administration has indicated that certain religious objects, like rosary can be kept and used for assault, unlawful inter-cell communication and preservation of prohibited substances. However, neither materials furnished by the Latvian Prison Administration (*see: Case materials, pp. 53 – 67 and 69 – 76*), nor other case materials prove that religious objects would cause any grater danger to security of the society or rights of other persons if compared to other objects, keeping of which is permitted. Objects listed in the Appendix can also used for unlawful actions.

Consequently, it cannot be stated that the restriction of fundamental rights included in the Contested Norm is appropriate for reaching of the legitimate aim.

**14.** When assessing whether the legitimate aim could be reached by other measures that would restrict the basic rights at a lesser extent, the Constitutional Court first has to assess the current practice.

**14.1.** Replies to questions regarding keeping of religious objects presented by imprisonment institutions manifest the following: in several imprisonment institutions, including closed prisons, keeping of such objects is permitted based on an individual assessment. The procedure, according to which a decision whether to permit or to prohibit keeping of a religious object by assessing peculiarities of a particular object of other individual circumstances, can not as such be regarded as the measure that would restrict the basic rights at a lesser extent.

There is no reason for the Constitutional Court to hold that thus the legitimate aim would be reached at a lesser extent if compared by total prohibition to keep religious objects. Moreover, the fact that such practice in certain imprisonment establishments already exists prove that religious objects cause no substantial threat to security of the society or rights of other persons, the latter requesting total prohibition of keeping of such objects.

**14.2.** In the authorization granted by the legislator to the Cabinet of Ministers, namely, the authorization to regulate internal rules of procedure of imprisonment establishments, one cannot establish the intent of the legislator to restrict, in such a way, the freedom to express religious beliefs by prisoners. In the Latvian Sentence Execution Code, the Cabinet of Ministers has been generally authorized to determine objects that prisoners can keep in their possession. When elaborating a particular regulation, the Cabinet of Ministers has the duty to take into account the basic rights, including the freedom to express religious beliefs.

The Cabinet of Ministers had the possibility to select another way of regulating the issue regarding objects that can be kept by prisoners in imprisonment establishments. For instance, to determine a list of objects that would be prohibited to be kept or to

enumerate those objects that are permitted to be kept by also ensuring the possibility to decide on the right to keep other objects if this is requested by a prisoner.

Moreover, Para 2 of the Appendix establishes that the total weight of those objects that a prisoner shall have the right to keep shall not exceed 30 kilograms. Certain objects are limited in their dimensions. Such restrictions regarding weight and dimensions that can be regarded as measure that restricts the rights of a person at a lesser extent would ensure reaching of the legitimate objective and would permit avoiding all such situations when a prisoner wants to keep any religious object that fails to comply with regulations.

**14.3.** In the judgment, the Constitutional Court must not enumerate all possible measures that would restrict the rights of a person at a lesser extent. Having established that there exists at least one more lenient remedy, it is possible to recognize that the Contested Norm restricts the basic rights of a person in a non-proportionate manner (*see: Judgment of 23 April 2009 by the Constitutional Court in the case No. 2008-42-01, Para 17.2*).

Consequently, it can be concluded that there exist other measures that restrict the basic rights of persons at a lesser extent, and the restriction that follows from the Contested Norm is not obligatory for reaching the legitimate aim.

**15.** The duty of the State to ensure prisoners with the possibility to keep religious objects also follows from the European Prison Rules. Section 29.2 of the European Prison Rules provides: The prison regime shall be organized so far as is practicable to allow prisoners to practice their religion and follow their beliefs, which requires using of other religious objects.

In certain cases, the decision of an imprisonment institution to allow a prisoner keeping of any religious objects excludes infringement of the fundamental rights established in Article 99 of the Satversme. Therefore, individual assessment of circumstances of each case shall be assessed positively. However, the practice in different imprisonment establishments differ because the procedure, according to which prisoners are allowed or prohibited keeping of religious objects has not been established in the normative act. Consequently, it is probable that persons enjoying similar

circumstances are treated differently, and this might cause breach of the principle of equality. Therefore the Cabinet of Ministers has the duty to establish common principles to render the practice of imprisonment establishments more compliant with requirements of the fundamental rights.

It is also necessary to take into account what has been established in the doctrine, namely, that in certain cases the convicts can use the freedom to religion as pretext for reaching of other aims, for instance, to gain advantage over others, which would not be possible otherwise [see: *van Dijk P. et al. (eds). Theory and Practice of the European Convention on Human Rights. 4th ed. – Antwerpen, Oxford : Intersentia, 2006, p. 313*]. Therefore the Constitutional Court does not contest the necessity to establish certain restrictions in respect to keeping of religious objects.

Normative regulatory frameworks should allow an imprisonment institution to decide either to allow or to prohibit prisoners keeping of religious objects taking into account circumstances of each individual case, and it should also be ensured that such practice is based on common principles. Such solution would ensure that the benefit gained by the society from restriction of the fundamental rights of a person is greater than the detriment caused to the rights of a person.

**Consequently, the restriction of fundamental rights that follow from the Contested Norm is not proportional and therefore the Contested Norm fails to comply with Article 99 of the Satversme.**

**16.** Article 32 (3) of the Constitutional Court Law provides that a legal norm (act) that the Constitutional Court has declared as non-compliant with the norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, if the Constitutional Court has not determined otherwise

Since the normative regulatory framework should establish procedure, according to which an administration of an imprisonment establishment can decide either to permit or to prohibit keeping of religious objects by prisoners, the Constitutional Court holds that the Contested Norm shall be regarded as null and void as from 1 October 2011.

## **The Constitutional Court**

Based on Article 30-32 of the Constitutional Court Law

**h o l d s:**

**the First Appendix of 30 May 2006 Cabinet of Ministers Regulations No. 423 “Regulations of Internal Procedure in Imprisonment Establishments” insofar as it regulates keeping of religious objects does not comply with Article 99 of the Satversme of the Republic of Latvia and shall be null and void as from 1 October 2011.**

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing thereof.

Presiding Judge

G. Kūtris

Translated by Egija Labanovska, translator of the Constitutional Court