



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G M E N T

On Behalf of the Republic of Latvia

Riga, 20 December 2010

Case No. 2010-44-01

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 an application of the Ombudsman of the Republic of Latvia,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 (1), Article 17 (1) Indent 8, and Article 28.<sup>1</sup> of the Constitutional Court Law

on 26 November 2010 in writing examined the case

**“On Compliance of the Words of Section 7 (5) Indent 1 “the Height of Which Does not Exceed 1.2 Meters” of the Law “On Procedures for Keeping of Detained Persons” and Para 1 of Transitional Provisions Thereof with Article 1 and Article 95 of the Satversme of the Republic of Latvia”.**

### The Facts

1. Section 7 (1) of the Law “On Procedures for Keeping of Detained Persons” (hereinafter – the Law on Keeping Detained Persons) provides that a detention cell must be supplied with toilet facilities connected with a water-main, the facilities being

separated from the rest of the premise by means of a wall, the height of which does not exceed 1.2 meters; whilst Para 1 of Transitional Provisions provide that requirements established in Section 2 (2) and Section 7 (3) and (5) shall be fulfilled before 31 December 2013 (hereinafter also referred to as the Contested Norms).

**2. The Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates in its application that Article 95 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) provides prohibition of inhuman treatment of persons. The content of this norm shall be established in conjunction with international treaties binding on the Republic of Latvia, namely, Article 7 of the International Covenant on Civil and Political Rights (hereinafter – the Covenant, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), and the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – the Council of Europe Convention) with its Additional Protocols No. 1 and No. 2. The above mentioned legal acts provide for an absolute prohibition of inhuman treatment, and no exceptions are permissible.

Any kind of deprivation of liberty is related to causing of suffering or humiliation. This does serve as sufficient grounds to establish infringement of the rights of a person. However, deprivation of liberty cannot subject a person to such suffering that inevitably exceeds the level characteristic to places of deprivation of liberty.

To ensure humane circumstances, this requires free access to toilet facilities complying with standards of hygiene. Toilet facilities must be separated from the rest of premises. The boundary cannot be only of a formal character. It must appropriately protect privacy of a person in respect to other detained persons and employees of the place of deprivation of liberty. These standards shall be applied to places of temporary detention at police administrations and other prisons.

By referring to several judgments of the European Court of Human Rights (hereinafter – the ECHR), it has been concluded in the application that a persons being kept in a place of temporary detention shall have the right to protection of his or her privacy also if he person attends toilet facilities. If a person is prohibited such possibility, requirements of Article 3 of the Convention are breached. It also follows from recommendations of the Committee of the Council of Europe for the Prevention of

Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – the Committee) that toilet facilities cannot be visible to other persons when using it.

In the period from 2007 to 2010, employees of the Ombudsman office have visited 17 places of temporary detention, and none of them complied with standards established by the Committee. It has been established during the visits that toilet facilities are separated from the rest of premises by a plate of 1.2 meters. The above mentioned plate separates toilet facilities only from a sink and beds on one side of the cell. Thus a person who uses the toilet facilities is visible to other persons kept in the same cell. Several cells of places of temporary detention are equipped by bunk beds, and therefore boundary of the toilet facilities cannot ensure privacy. Moreover, certain places of temporary detention do not have any toilet facilities.

Consequently, the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons does not ensure privacy and fails to comply with Article 95 of the Satversme.

It has been indicated in the application of the Ombudsman that Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons fails to comply with the principle of legitimate expectations that follows from article 1 of the Satversme. Namely, the legislator has, without reason, extended the term, up to which requirements of improvement and equipment of places of temporary detention should be met in accordance with what has been established by law.

Initially, Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons established the term of 31 December 2008, i.e. up to this date, all places of temporary detention were to be equipped in accordance with requirements of law. The particular term was reasonable because, before the Law on Keeping of Detained Persons was adopted, there existed no legal regulatory framework regarding requirements for places of temporary detention. To improve living conditions in these places to ensure their compliance with standards of human rights, certain time period and financial resources were necessary.

Action by the legislation, namely, the fact that the term established in Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons was extended to 31 December 2013 on urgent basis, was inadmissible because it is prohibited by Article 1 of the Satversme. Lack of financial resources may neither serve as justification for the

extension of the term. The rights guaranteed in Article 95 of the Satversme and Article 3 of the Convention are absolute, namely, they cannot be restricted. By pleading to the lack of financial resources, one cannot justify circumstances that breach prohibition of inhuman treatment, namely, the minimum threshold of suffering. Such action not only destroys trust into the State administration but also fails to comply with the principle of legitimate expectations. Moreover, budget of the State Police has been constantly increased in the time period from 2005 to 2008; it was even doubled. Consequently, Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons fails to comply with Article 1 of the Satversme.

The Ombudsman also indicates that what has been established in Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons is only one of the circumstances that testify non-compliance of places of temporary detention with standards of the human rights. The most important infringement of the human rights established in Article 95 of the Satversme follows from the fact that the legislator has adopted Para 1 of Transitional Provisions of the above mentioned law and thus it has extended the term, within which it is permitted that places of temporary detention do not comply with standards of the human rights.

**3. The institution that issued the contested act, the Saeima** does not share the opinion of the Ombudsman and asks the Constitutional Court to recognize the Contested Norms as compliant with legal norms of a higher legal force.

Circumstances at places of temporary detention infringe requirements of Article 95 of the Satversme only in case if they reach the minimum level of cruelty. By referring to the case-law of the ECHR and the Committee, the Saeima indicates that prohibition of torture, other kind of inhuman and degrading treatment of a person shall be regarded as one of the main norms of the Convention. Unlike other norms of the Convention, Article 3 thereof has a categorical wording and it does not establish any exceptions or deviation.

Based on the facts mentioned in the applicant and the information furnished by the Ministry of the Interior, it can be concluded that what has been established in Section 7 (5) indent 1 of the Law on Keeping of Detained person does not reach the minimum level of cruelty that would allow establishing infringement of Article 95 of the

Satversme. Moreover, improvement of toilet facilities in accordance with requirements of the Law on Keeping of Detained Persons and international standards of human rights is the issue that falls within the scope of competence of intuitions applying the law rather than within that of the legislator.

The Saeima agrees with the opinion of the Ombudsman that a person kept in a place of temporary detention should be ensured the access to toilet facilities that would be separated from the rest of premises by means of a wall and would guarantee protection of his or her privacy. However, it does not agree that insufficiently separated toilet facilities from the rest of premises as such imply infringement of Article 95 of the Satversme. When assessing the facts of the cases of the ECHR referred to by the Ombudsman, the Saeima concludes that different situations have been assessed therein.

The ECHR has particularly emphasized that in case of infringement of Article 3 of the Convention, it is necessary to establish the aim of an inadmissible treatment of a person, namely, abasement of injuring somebody's pride. The aim of the legislator, when adopting Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons, was not to abase or injure persons' pride. Consequently, the Saeima holds that Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons does comply with Article 95 of the Satversme.

When assessing compliance of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons with the principle of legitimate expectations, the Saeima holds that the above mentioned principle has not been infringed. This principle may protect only such rights that have already been granted to a person. Its main objective is to protect the rights of a person in cases when legal status of persons may or has deteriorated in the result of amendments into a normative regulatory framework. Amendments into Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons do not deteriorate legal status of persons because it only extends the period necessary for improving places of temporary detention. Thus, the amount of rights granted to persons is not restricted; neither has it cancelled the duty of the State to improve places of temporary detention in a certain period of time.

The reprimand of the Ombudsman that, within the initial transitional period, the State has failed to pay enough attention to improving of places of temporary detention is ungrounded. It can be concluded from the annotation to the draft law "Amendments to

the Law on Procedures for Keeping of Detained Persons” that it provides an explicit overview on the situation in such places. It also contains tasks already executed, as well as tasks to be effected to improve places of temporary detention.

The Saeima draws attention of the Constitutional Court to the fact that introduction of standards established in the Law on Keeping of Detained Persons requires extensive works to be effected in places of temporary detention, as well as considerable financial resources. Recognition of Para 1 of Transitional provisions of the Law as unconstitutional and declaring of it as null and would not accelerate improvement of places of temporary detention; instead, it would cause only negative consequences, namely, the work of courts, prosecutor’s offices and police would be burdened.

Taking into account the aforesaid, the Saeima asks the Constitutional Court to recognize the works “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons as compliant with Article 95 of the Satversme, whilst Para 1 of Transitional Provisions of the same Law – as compliant with Article 95 and Article 1 of the Satversme.

**4. The summoned person – Ms. Ilvija Pūce, member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** indicates that two aims, due to which the height of the walls of toilet facilities is established as 1.2 meters established in Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons, follows from the annotation of the draft law “Amendments to the Law on Procedures for Keeping of Detained Persons”. Namely, the aims are as follows: not to limit full view of a cell and ensure circumstances protecting person’s dignity. However, these aims are contradictory and they cannot be implemented simultaneously. If one of the aims is implemented, the other is not.

In Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons, the legislator has established a particular maximum height of the wall ensuring full view of the cell for other detained persons, as well as employees of the place of temporary detention. Consequently, the legislator has prioritized the first aim, namely, not to restrict full view of a cell. As to the second aim, i.e. protection of privacy of a person, it has been ensured only formally. If the primary aim were protection of privacy of a person, then the

law would not establish the minimum height of the wall indispensable for ensuring respectable circumstances.

As to the minimum standards of places of temporary detention, the Committee has indicated that all persons should be ensured convenient access to toilet facilities. If toilet facilities are situated in a cell, they must be separated from the rest of premises. However, none of the documents of the Committee establish the way of separating toilet facilities from the rest of a cell. This has not been done with the aim to permit a particular institution to assess all its circumstances and ensure effective protection of privacy of persons. For instance, it is possible to separate toilet facilities by installing curtains or proper screens.

The argument of the Saeima indicated in its reply that, in the decisions of the ECHR, arrangement of toilet facilities is regarded as a less important issue if compared to other requirements of protection of the human rights, is ungrounded. The ECHR has reiterated that circumstances of detention should be assessed as a single whole, and the fact that arrangement of toilet facilities is mentioned as the first or the last consideration is of no importance.

Likewise, the argument that in case of breach of Article 3 of the Convention it is not necessary to establish the aim of inadmissible treatment, namely, abasement or injuring somebody's pride, is ungrounded. Quite on contrary, the ECHR has recognized that the character and impact of action of the state in respect to a injured party rather than the aim of such action plays the decisive role.

When assessing constitutionality of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons, it should be taken into account that lack of financial resources does not release the State from the duty to ensure meeting of minimum requirements in respect to persons kept in places of temporary detention. Such conclusion follows from both, documents adopted by the Committee and rulings of the ECHR.

Consequently, Ms. I. Pūce concludes that the Contested Norms fail to comply with the words "degrading treatment of human beings is prohibited" of the second sentence of Article 95, as well as with standards established by the Committee in the respective field.

**5. The summoned person – the Latvian Centre for Human Rights** indicates that the aim of functioning of the Committee is to prevent possible infringements of human

rights in closed institutions and to establish criteria for observance of minimum standards therein. It can be concluded from standards of the Committee that detained persons should be ensured such toilet facilities that comply with hygiene requirements and protect privacy of persons. However, the Committee gives no technical recommendations to the Member States to improve cells. Practical introduction of standards is the issue to be dealt with by the Member States.

It can be concluded from reports of the Committee that partially separated toilet facilities, namely, those where a person can be seen up to his or her waist, as well as those, the height of walls of which is one meter, fails to comply with the standards established. In such cases, the Member States are recommended to ensure protection of privacy of persons.

By referring to several judgments of the ECHR, the Latvian Centre for Human Rights indicates that insufficient height of the wall separating toilet facilities from the rest of a cell is one of the circumstances permitting the court establishing breach of Article 3 of the Convention. Although in none of the cases *expressis verbis* indicates any particular height of the wall separating toilet facilities from the rest of a cell, insufficient protection of privacy of a person is one of the factors that proves non-compliance of circumstances of places of temporary detention with requirements of the Convention.

Consequently, the height of the wall separating toilet facilities from the rest of a cell established in Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons is insufficient for protecting privacy of persons.

**6. Saeima Defence, Internal Affairs and Corruption Prevention Committee** informs the Constitutional Court on the fact that suggestions of the Ombudsman regarding the Contested Norms have been assessed at the 4 November 2009 meeting of the Committee, wherein representatives of the Ombudsman Office, the Ministry of Finance and the Ministry of Interior participated. A representative of the Ombudsman Office has indicated that Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons fails to ensure protection of privacy of detained persons. A representative of the Ministry of Finance has admitted that, taking into account economic situation of the State, suggestions of the Ombudsman cannot be supported.

However, a representative of the Ministry of the Interior has informed that, when elaborating the Law on Keeping of Detained Persons, suggestions of the State Human Rights Bureau and recommendations of the Committee have been taken into account. It has not been substantiated in the suggestion of the Ombudsman why Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons would establish the height of the separating wall of 1.2 meters particularly. Such requirement has not been included in any of international standards for protection of the human rights. Moreover, the issue regarding improvement of circumstances of keeping of detained persons in places of temporary detention should be solved in a complex manner, whilst cancelling of the Contested Norms would cause negative consequences for Latvia.

The Committee indicates that, pursuant to Section 79 of the Saeima Rules of Procedure, suggestions of the Ombudsman in respect to the Contested Norms should be set forth in the form of a draft law. It should analyse, among the rest, impact of the draft law on the State budget. Due to lack of financial resources, the initiative of the Ombudsman cannot be implemented at present.

The rights included in Article 95 of the Satversme and Article 3 of the Convention cannot be restricted; however, failure to separate toilet facilities from the rest of a cell as such does imply breach of Article 95 of the Satversme.

**7. The Ministry of the Interior of the Republic of Latvia** informs the Constitutional Court that there are 22 places of temporary detention in Latvia. Toilet facilities that comply with requirements of Section 7 (5) Indent 1 of the Law on Keeping of Detained persons are installed in 19 of them, whilst toilet facilities are situated outside cells in three places of temporary detention.

The Committee has several times attended places of temporary detention and prepared several recommendations and reports on improvement of circumstances therein. It has been indicated among the rest in the reports that, when using toilet facilities, it should not be visible to other persons. However, it has not been indicated in any of reports that walls separating toilet facilities do not comply with international standards and would be regarded as degrading.

At present, none of the places of temporary detention comply with the proposition of the Ombudsman regarding the height of the wall separating toilet facilities (two

meters). In order to separate toilet facilities in all 270 cells in places of temporary detention by means of a wall of two meters, about 24 300 lats are necessary.

The height of walls separating toilet facilities as established in the law is based on practical experience, as well as considerations of safety. A wall of two meters that would separate toilet facilities in the cell would exceed the height of a person and thus would considerably hamper full view of the cell by causing additional risk, namely, detained persons could do harm to themselves or other persons.

To improve places of temporary detention and to meet requirements of the Law on Keeping of Detained Persons, more than three million lats are necessary, whilst the funding granted it insufficient.

Should the Constitutional Court recognize Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons as non-constitutional, the majority of places of temporary detention should be immediately closed. This would suspend work of courts, prosecutors' offices, the State Police and other law enforcement bodies because functions of places of temporary detention could no more be fulfilled or would be fulfilled only partially by breaching requirement of the law regarding the maximum number of detained persons per cell.

## **The Findings**

**8.** The applicant has asked to assess compliance of the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons with Article 95 of the Satversme of the Republic of Latvia. It follows from addendum to the application and opinions of the summoned persons that, in fact, compliance of the above mentioned norm with the words “degrading treatment of human beings is prohibited” of the second sentence of Article 95 is contested.

**8.1.** When establishing the content of the fundamental rights established in the Satversme it is necessary to take into consideration international liabilities of Latvia in the field of human rights. The Constitutional Court has already interpreted Article 95 of the Satversme in conjunction with international acts for the protection of human rights

(see: *Judgment of 22 October 2002 by the Constitutional Court in the case No. 2002-04-03, Para 5 of the findings*).

Article 3 of the Convention provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. The ECHR has recognized in its case law that the above mentioned that the above mentioned article enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment that the Member States cannot derogate from (see, e.g.: *Judgments of the ECHR in the following cases: Chahal v. the United Kingdom, no. 22414/93, 23 EHRR. 413, para. 79; Labita v. Italy [GC], no. 26772/95, ECHR 2000-IV, para. 119*). Exception of derogation from liabilities established in Article 3 of the Convention is not allowed even in exceptional cases (see, e.g.: *Judgments of the ECHR in the following cases:: Assenov and Others v. Bulgaria, no. 90/1997/874/1086, 28 October 1998, Reports 1998-VIII, para. 93; Selmouni v. France [GC], no. 25803/94, 28 July 1999, ECHR 1999-V, para. 95*).

Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterized as degrading and also fall within the prohibition of Article 3 (see, e.g.: *Judgment by the ECHR in the following cases: Kudła v. Poland [GC], no. 30210/96, ECHR 2000-XI para. 94; Pretty v. the United Kingdom, 2346/02, ECHR 2002-II, para. 52*).

Article 10 (1) of the Covenant also establishes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The above mentioned norm applies to the duty of the State to ensure meeting of basic needs of a person, like, food, clothes, medical care, toilet facilities, education, work, rest, cell illumination, communication with the outside world, walks and privacy (see: *Nowak M. U.N. Covenant of Civil and Political Rights. CCPR Commentary. 2<sup>nd</sup> revised edition: Norbert Paul Engel Verlag, e.K., 2005, p. 250*).

The Republic of Latvia has ratified several treaties establishing prohibition of inhuman and degrading punishment. Article 2 (1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “each State Party shall take effective legislative, administrative, judicial or other measures to

prevent acts of torture in any territory under its jurisdiction”. Whilst Article 1 (1) of the Convention provide a list of actions that shall be regarded as torture.

Likewise, the Republic of Latvia has adhered to the Council of Europe Convention. Pursuant to the abovementioned Convention, the Committee shall supervise observance of Article 3 of the Convention in the Member States and shall elaborate recommendations in this respect.

Consequently, when assessing the infringement of the fundamental rights referred to by the Ombudsman, the Constitutional Court shall take into account the minimum standards for the protection of the human rights binding on Latvia.

**8.2.** The rights included into Article 95 of the Satversme in conjunction with international legal norms provide for an imperative duty. No derogations are permitted. Therefore, in order to assess compliance of the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons with Article 95 of the Satversme, the Court shall investigate whether the regulatory framework included into the Contested Norm can cause any infringement that would exceed the minimum level of cruelty. After having established whether the particular norm exceeds or not the above mentioned level of cruelty, the Court shall assess whether the norm is clear enough in order to avoid the particular infringement of the fundamental rights established in Article 95 of the Satversme when applying the norm.

When assessing constitutionality of the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons, it is necessary to take into account several considerations. First, the above mentioned norm applies to circumstances of keeping of detained persons that are related with the regime of places of temporary detention. This fact as such does not establish any certain restrictions of rights and causes certain amount of suffering to a person. The rights of a convicted person differ from those of a person in freedom. For instance, as to imprisoned persons, the Constitutional Court has recognized that these persons shall not enjoy rights to private life at the same extent as persons in freedom (*see: Judgment of 23 April 2009 by the Constitutional Court in the case No. 2008-42-01, Para 11 and judgment of 7 October 2009 in the case No. 2009-05-01, Para 14*).

Second, the majority of persons kept in places of temporary detention, are not deprived of liberty based on a valid court decision. In such case, a person is protected by

the principle of presumption of innocence, and he or she can be applied only such restrictions that are necessary for performing criminal procedural activities or for maintaining order and security (*see: Judgment of 22 October 2002 by the Constitutional Court in the case No. 2002-04-03, Para 4 of the Findings*).

9. The Ombudsman indicates in its application that the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons fail to ensure protection of privacy of detained persons. However, the Saeima has indicated in its reply that this norm does not reach the minimum level of cruelty that would cause breach of Article 95 of the Satversme. Substantiation for the fact why the particular height of the wall, i.e. 1.2 meters, has been established as the maximum height, has not been provided in the reply. The substantiation neither follows from the reply of the Saeima Defence, Internal Affairs and Corruption Prevention Committee (*see: Case materials, Vol. 1, pp. 42 – 44*).

It can be concluded from the annotation to the Law on Keeping of Detained Persons that the above mentioned height of the separating wall has been established so that it would not limit full view of a cell and ensure circumstances protecting person’s dignity when using toilet facilities (*see: Annotation to the Law on Procedures for Keeping of Detained Persons, [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre), consulted on 7 December 2010*). It has also been indicated in the reply of the Ministry of the Interior that the requirement to construct a separating wall 1.2 meters is based on practical experience, as well as measures of security required in places of temporary detention. A higher wall separating toilet facilities from the rest of a cell would hamper full view of the cell and would cause additional risk that detained persons could do harm to themselves, for instance, by crippling themselves or trying to suicide, or to physically influence one another, or to use the wall as a screen for storing prohibited articles with the purpose to use them when attacking other persons or escaping (*see: Case materials, Vol. 1, pp. 49*).

When deciding the issues of protection of the human rights, the task of the legislator is to establish such legal regulatory framework that would balance the different interests related with protection of the human rights. It has been recognized in the case-law of the Constitutional Court that those legal norms that are aimed against

infringements of the rules of procedure of places of imprisonment shall be regarded as appropriate for protection of security of the society (*see, e.g.: Judgment of 18 December 2009 by the Constitutional Court in the case No. 2009-10-01, Para 14*).

It has been established in the application practice of the Convention that it does not prohibit a State to take measures necessary to guarantee security of the society and prevent the risk of escape, attack or disturbance of the prison community (*see, e.g.: Judgment of the ECHR in the case Ramirez Sanchez v. France, no. 59450/00, 4 July 2006, Para. 138*).

However, it is not possible to speak of the necessity to prevent threats of social security in an abstract way by ignoring the facts of the case. For such substantiation to be admissible, it is necessary to clearly explain the present or potential link between adoption of a particular legal regulatory framework and strengthening of security of the society, prevention of threats to security or reduction thereof (*see: Judgment of 7 October 2010 by the Constitutional Court in the case No. 2010-01-01, Para 12.2*).

It is possible to agree with what has been indicated by Ms. I. Pūce, namely, that the aim of the above mentioned norm mainly is to ensure full view of a cell of a place of temporary imprisonment rather than to protect privacy of a person. Such aim is also testified by the fact that the legislator has used the word “wall” in singular (*see: Opinion of Ms. I. Pūce, Case materials, vol. 1, pp. 199 and 200*). In fact, disregarding their location in a cell, toilet facilities are usually separated from the rest of the cell only by one separating wall; consequently, a person would always been seen from at least one of the sides.

Consequently, the Constitutional Court has gained to confirmation of the fact that the necessity of the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons in the light of security of the society is balanced with the interests of protection of privacy of a person.

**10.** In order to assess whether the regulatory framework of the Contested Norm can reach the minimum level of cruelty, the Constitutional Court shall have to establish the minimum requirements in respect to procedure for keeping of persons in places of temporary detention.

The ECHR has indicated in its case-law that one of the circumstances, based on which a court can establish infringement of Article 3 of the Convention, is the insufficient height of walls separating toilet facilities from the rest of a cell. For instance, in the case *Makarov v. Russia*, the height of walls separating toilet facilities was about 1.45 – 1.65 meters; moreover, toilet facilities were separated only from one side; in the case *Novoselov v. Russia*, the height of the wall of toilet facilities was 1.1 – 1.3 meters; whilst in the case *Mamedova v. Russia*, the height of the wall was 1.5 meters (*see: Judgments of the ECHR in the following cases: Novoselov v. Russia, no. 66460/01, 2 June 2005, para. 44; Khudoyorov v. Russia, no. 6847/02, 8 November 2005, para. 107; Mamedova v. Russia, no. 7064/05, 1 June 2006, para. 65, un Aleksandr Makarov v. Russia, no. 15217/07, 12 March 2009, paras. 93, 97*).

However, the Committee has reiterated in its reports that Latvian State administration institutions should ensure that detained persons are provided such toilet facilities that are separated from the rest of a cell and ensure protection of privacy of persons [*see, e.g.: Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 November to 7 December 2007, para. 31, <http://www.cpt.coe.int/documents/lva/2009-35-inf-eng.htm>, consulted on 7 December 2010*].

The UNO Committee against Torture has, among the rest, indicated in its recommendations that the Republic of Latvia has already taken certain initiatives to improve places of deprivation of liberty and places of temporary detention; however, the infrastructure is still inadequate, and no acceptable living conditions have been ensured therein. Concerns of the Committee are testified by the fact that national law enforcement institutions receive more and more complaints on degrading conditions in closes institutions. Due to this fact, the Committee against Torture recommended Latvia to perform effective measures to improve infrastructure of places of deprivation of liberty (*see: CAT/C/LVA/CO/2, 19 February 2008, Conclusions and recommendations of the Committee against Torture, para. 11, <http://tb.ohchr.org/default.aspx>, consulted on 7 December 2010*). The UNO Committee against Torture has submitted similar recommendations also before that by particularly emphasizing the poor condition of places of temporary detention (*see: CAT/C/CR/31/3, 5 February 2004, Conclusions and*

*recommendations of the Committee against Torture, Par 7 „b”, <http://tb.ohchr.org/default.aspx>, consulted on 7 December 2010).*

The Constitutional Court has concluded that, when regulating employment of imprisoned persons, the State must, as far as possible, guide itself by the recommendations elaborated by the United Nations Organization and the Council of Europe in this respect (*see: Judgment of 14 June 2007 by the Constitutional Court in the case No. 2006-31-01, Para 14.2*).

Para 19.3 of the European Prison Rules provides that prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy [*see: Council of Europe, Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, [www.coe.int](http://www.coe.int), consulted on 7 December 2010*].

Section 12 of the UN Minimum Standard Rules for the Treatment of Prisoners [*adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977*] indicates that the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

By referring to Section 12 of the UN Minimum Standard Rules for the Treatment of Prisoners, a representative of the Cabinet of Ministers of the Republic of Latvia in international institutions of human rights has recognized, among the rest, that a detained person should have access to adequate and clean toilet facilities; moreover, they should be equipped in a way to protect dignity of a person and covering the person when using it (*see: Section “b” indent 3 of the UNO Committee against Torture, conclusion and suggestion analysis of 5 February 2004, <http://www.mkparstavis.am.gov.lv/lv/@id=168>, consulted on 7 December 2010*).

The European Prison Rules and the Minimum Standard Rules for the Treatment of Prisoners are applicable to a person who has been imprisoned, as well to a person who has been deprived of liberty. Moreover, these documents contain recommendations only regarding minimum guarantees of protection of human rights.

Consequently, it can be concluded from decisions of the ECHR, reports and recommendations of international institutions for protection of human rights that, in places of temporary detention, toilet facilities should be separated so to ensure protection of privacy of a person. The Republic of Latvia has already been reproached for non-compliance of places of keeping of detained persons with the minimum standards of protection of human rights.

One can agree with what has been indicated in the Saeima reply that the above mentioned documents do not identify any particular minimum height of the wall separating toilet facilities from the rest of the cell. However, it clearly follows from reports of international institutions of human rights that the legislator has the duty to adopt such norms that would effectively protect privacy of persons.

Consequently, the Constitutional Court agrees that, by determining the maximum height of the wall separating toilet facilities from the rest of the cell in accordance with the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons, this might cause such infringement to the rights of a persons that would contradict the words “degrading treatment of human beings is prohibited”.

**11.** The Saeima indicates in its reply that implementation of requirements of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons is the issue of application of law that pertains to the field of competence of responsible institutions, namely, that of the executive power.

It has been recognized in the case-law of the Constitutional Court that a legal norm establishing restrictions to the fundamental rights of a person shall be clear and precise (*see: Judgment of 6 February 2006 by the Constitutional Court in the case No. 2005-17-01, Para 10*). Such requirement follows from the principle of legal certainty, and it plays an important role in case when the State deprives a person of liberty. Legal norms regarding protection of the fundamental rights in places where persons deprived of liberty are kept shall clearly establish minimum guarantees of human rights.

Establishment of procedure for implementing fundamental rights and minimum guarantees for protection of the human rights is an important issue of public life. For the

executive power to be able to execute its duty, i.e. to implement laws adopted by the Saeima in practice, it is necessary to establish clear criteria for application of the law. Restriction of the fundamental rights of a person by referring to an unclear or ambiguous legal norms is not allowed (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 7 and 10*). Moreover, when legislating, the legislator has to decide on the most important issues of public life, and it does not have the right to transfer responsibility for adopting important issues regarding protection, observance and exercise of the human rights to the executive power.

Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons provides that the wall separating toilet facilities from the rest of the cell cannot exceed 1.2 meters. However, it does not establish the minimum height of the wall ensuring the right of a person to privacy, observance of which can be requested by the person from the state. Thus the legislator has granted the executive power a broad freedom of action because it has failed to establish clear and foreseeable criteria for implementing the norm. The regulatory framework of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons, in fact, provides only the maximal limit of the freedom of action of the executive power insofar as it is entitled to exercise protection of privacy of persons.

It can be concluded from the case materials that equipment of premises of places of temporary detention differ. For instance, cells in several places of temporary detention have bunk beds (*see: Case materials, Vol. 1, pp. 101, 106, 109 and 128*). In separate cameras, bunk beds are situated relatively close to toilet facilities, in certain cases there is no wall separating beds from toilet facilities (*see: case materials, Vol. 1, pp. 61*).

Consequently, when establishing the maximum permitted height of the separating wall, the legislator has restricted the possibility of the executive power to act in accordance with Article 95 of the Satversme and, taking into account the specific conditions of places of temporary detention, to ensure the right to privacy of detained persons.

The Constitutional Court shares the opinion of Ms. I. Pūce, namely, that in the present case the argument of the Saeima that the height of the separating wall is the issue of application of the law is ungrounded. This is first of all proven by the action of the legislator when establishing the maximum height of the separating wall and failing to

ensure that this is the executive power that decides how to act in order to ensure protection of privacy of persons (*see: Case materials, Vol. 1, pp. 200*).

**12.** The Saeima has indicated that in case of breach of Article 3 of the Convention, it is necessary to establish the aim of the inadmissible treatment, namely, degrading or humiliation a person.

It clearly follows from judgments of the ECHR that this is the character and impact on the person, against whom an action is aimed, rather than the intent of the actor that would serve as the basis for establishing breach of Article 3 of the Convention (*see, e.g.: Judgments by the ECHR in the following cases: V. v. the United Kingdom [GC], no. 24888/94, ECHR 1999-IX, para. 71; Peers v. Greece, no. 28524/95, ECHR 2001-II, para. 74; Valašinas v. Lithuania, no. 44558/98, ECHR 2001-VIII, para. 101*).

Ms. I. Pūce also indicates in her opinion that the above mentioned argument of the Saeima is ungrounded. It can be clearly concluded from decisions of the ECHR that the aim or intent of the respective treatment serves only as an additional factor that the court should take into account. However, lack of such aim or intent cannot serve as the basis for non-establishment of the breach of Article 3 of the Convention (*see: Case materials, Vol. 1, pp. 202*).

Consequently, the Constitutional Court recognizes that the particular argument of the Saeima is ungrounded.

**13.** In its application, the Ombudsman has contested compliance of the words “the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons with Article 95 of the Satversme only. However, the Constitutional Court has established in Para 9 of the present judgment that the words “by means of a wall” of the above mentioned norm are understood and applied in a way that does not ensure protection of privacy of a person.

The words “by means of a wall” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons is a part of the sentence, to which the contested phrase pertains. Therefore these words are closely related with the contested phrase forming a common regulatory framework. If only a part of a norm, for instance, a subordinate clause or separate words, is contested in an application, the Constitutional Court shall have the

duty to act, if necessary in a way to ensure that, after recognizing off the contested part of a norm as null and void, the valid part of the norm would be clear and consistent with the Satversme.

**Consequently, the Constitutional Court recognizes that the words and number “by means of a wall, the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons fail to comply with article 95 of the Satversme.**

14. According to the application, compliance of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons with Article 1 and Article 95 of the Satversme has been contested. It can be concluded from the application and additional information furnished by the Ombudsman that constitutionality of the above mentioned norm shall be assessed in the context of Article 95 of the Satversme because this is the infringement of the fundamental rights of detained persons that is of the greatest importance. The Saeima indicates, however, that Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons applies to Section 2 (2), Section 7 (3) and (5) of the Law. Section 2 (2) of the Law establishes the list of premises to be properly equipped in places of temporary detention. However, Section 7 (3) of the Law establishes requirements regarding the size of cells, whilst Section 7 (5) – requirements of equipment thereof. In the light of fundamental rights, the above mentioned norms are one of the most important ones of the Law on Keeping of Detained Persons because they establish the minimum guarantees of protection of the human rights of detained persons. However, Para 1 of Transitional Provisions admit a situation what, up to 31 December 2013, places of temporary detention do not comply with the minimum standards of human rights.

14.1. The initial wording of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons established that “requirements established in Section 2 (2) and Section 7 (3) and (5) of this law shall be fulfilled before 31 December 2008”. On 18 December 2009, the Saeima adopted the Law “Amendments to the Law on Procedures for Keeping of Detained Persons by extending the transitional period established in the above mentioned nor by five years, namely, up to 31 December 2013. It follows from the annotation to the law that equipment of places of temporary detention in accordance with requirements of the human rights is a time-consuming process. Moreover, resources

allocated for improvement of these places have been transferred for other aims (see: annotation of the draft law “Amendments to the Law on Procedures for Keeping of Detained Persons”, <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/9075F91CE9156A9DC225750B005465DE?OpenDocument>, consulted on 7 December 2010).

In the period from February 2008 to March 2010, the Ombudsman has established that places of temporary detention fail to comply with the minimum requirements of protection of human rights. For instance, they are not equipped with natural ventilation and access to daylight; no promenades are established or detained persons are not ensured walks in fresh air; no access to drinking water is ensured in cells; there is lack of beds (bunks), therefore people can lay on them in turns; there are no separate shower premises; there are no tables, chairs and banks in cells. Moreover, in certain cases toilet facilities are not separated from the rest of the cell or they are not even installed in the cell. In the latter case, buckets places in the corner of a cell function as toilet facilities (see: *Case materials, Vol. 1, pp. 87 – 132*).

By referring to the information obtained during the visits, the Ombudsman addressed a proposition to the Saeima regarding exclusion of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons. The Saeima Defence, Internal Affairs and Corruption Prevention Committee assessed the above mentioned proposition of the Ombudsman at the meeting of 4 November 2009, wherein representatives of the Ministry of Finance and the Ministry of Interior participated. The Commission rejected the proposal of the Ombudsman by referring to non-compliance thereof with requirements of the Saeima Rules of Procedure, namely, the source of necessary financial resources was not indicated in the proposition (see: *Case materials, Vol. 1, pp. 43 and 44*).

Section 12 (8) of the Ombudsman Law mentions the duty of the Ombudsman to provide the Saeima, the Cabinet, local governments or other institutions with recommendations in respect of the issuance of or amendments to the legislation. It has been *expressis verbis* indicated in the annotation to the draft law of the Ombudsman Law that the Ombudsman shall be granted a broad scope of competence and it shall become an effective instrument for protection of human rights guided by the Saeima (see: *Annotation to the draft law of the Ombudsman Law, http://helios-web.saeima.lv/bi8/lasa?dd=LP0858\_0, consulted on 7 December 2010*). Consequently,

observing what has been established in the Ombudsman Law, the Saeima shall have the duty to assess, as carefully as possible, the suggestions submitted by the Ombudsman regarding the necessity to amend existing legal acts or to adopt new ones in respect to exercise, ensuring or protection of human rights. The interaction between the legislator and the Ombudsman, the latter being a national mechanism for implementation of human rights, should be aimed at effective elimination of gaps in legal acts established in the field of protection of human rights.

It is not permissible that the Saeima commissions would fail to assess suggestions of the Ombudsman on their merits by alleging their non-compliance with requirements established in the Saeima Rules of Procedure in respect to draft laws and indicating that the suggestions do not mention the source of financial resources necessary to implement the suggestions. This, first of all, is the duty of the Saeima to ensure that the existent legal system would fully comply with requirements of the fundamental rights and the human rights.

**14.2.** Non-compliance of circumstances of places of temporary detention referred to by the Committee in its reports, in fact, coincide with what has been established by the Ombudsman [*see, e.g.: Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 November to 7 December 2007, Paras. 31 – 33*].

Deficiencies analogous to those referred to in the application of the Ombudsman and reports of the committee have been also established in decisions of administrative courts. For instance, in the Judgment of 14 September 2009 by the Administrative Regional Court in the case No. A42583206, and judgment of 9 June 2010 by the Senate Administrative Case Department (hereinafter – the Senate) in the case No. SKA-126/2010, the above mentioned authorities assessed compliance of circumstances of places of temporary detention with the minimum standards of protection of the human rights. The applicant of the present case has indicated several circumstances, due to which his keeping at the place of temporary detention should be regarded as non-compliant with requirements of Article 95 of the Satversme and Article 3 of the Convention.

The Administrative Regional Court recognized only failure to ensure daily walks as a substantial infringement of the human rights and ruled to disburse compensation at the amount of 1000 lats to the considered person. The Senate cancelled the above mentioned judgment by recognizing, among the rest, that the Administrative Regional Court has separately made conclusion on the particular circumstance of the place of temporary detention without reason. Namely, in cases when each circumstance taken separately causes no infringement of the human rights and does not breach Article 95 of the Satversme, the Court shall assess whether the circumstances considered as proven in total form or not a substantial infringement of the human rights and breach of Article 95 of the Satversme (*see: Judgment of 14 September 2009 by the Administrative Regional Court in the case No. A4258320, and judgment of 9 June 2010 by the Senate Administrative Case Department in the case No. SKA-126/2010; case materials, Vol. 1, pp. 163 – 184*).

As to circumstances of keeping of persons in places of temporary detention, it can be considered that the state itself, in certain cases, recognize them as non-compliant with requirements of Article 3 of the Convention. For instance, the ECHR has initiated several cases wherein persons have referred to non-compliance of circumstances at places of temporary detention with requirements of the Convention. Latvia has reached settlements in such cases, and persons were disbursed compensations at the respective amounts of 4000 and 5000 EUR (*see: Judgments of the ECHR in the following cases: Sergejs Talankovs v. Latvia, no. 5001/04, 4 January 2008, un Aleksejs Radiņš v. Latvia, no. 31849/03, 16 March 2010*).

Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons permits, up to 31 December 2013, to preserve such circumstances in places of temporary detention that fail to comply with Article 95 of the Satversme, as well as international standards for the protection of the human rights. The above mentioned norm provides for even greater infringement of the fundamental rights of persons because it permits not to improve the conditions for an extended period, which would prevent any unacceptable conditions at places of temporary detention.

By failing to ensure compliance of places of temporary detention with the standards for the protection of the human rights, the State undergoes other expenses on long term basis. These expenses are first of all related with disbursement of

compensations that persons are granted by administrative courts at the national level and by institutions for protection of the human rights at the international level, the competence of the latter having been recognized by the Republic of Latvia.

**15.** The Saeima substantiated adoption of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons by the fact that introduction of stipulated standards requires extensive improvement works at the places of temporary detention and considerable financial expenses.

It can be concluded from the information furnished by the Ministry of the Interior and the draft law “On Procedures for Keeping of Detained Persons” that in 2005, 2006 and 2007, in total 339 182.15 were granted to improve conditions at places of temporary detention, which is considerably lower sum if compared to the one indicated in the annotation to the draft law. However, in 2008 and 2009, no resources at all were transferred for this purpose; whilst in 2010, 7789 lats instead of 272 428 lats were allocated. Consequently, the funding received in 2008, 2009 and 2010 has been less the one percent of the estimated one (*see: Case materials, Vol. 1, pp. 48 – 49, and the annotation to the draft law “On Procedures for Keeping of Detained Persons” [http://helios-web.saeima.lv/bi8/lasa?dd=LP1364\\_0](http://helios-web.saeima.lv/bi8/lasa?dd=LP1364_0), consulted on 7 December 2010*).

As to the rights of convicted persons, it has been recognized that the State does not have the right to refuse fulfilling its duty by referring to considerations of economical character in case if this results in failure to observe the minimum requirements for protection of the human rights (*see: Judgment of 9 March 2010 by the Constitutional Court in the case No. 2009-69-03, Para 8.2, 8.3 and 11*). The above mentioned conclusions shall equally be applied to persons kept in places of temporary detention.

When assessing responsibility of the State for infringements of Article 3 of the Convention, the ECHR has rejected arguments regarding financial resources at the disposal of the State by recognizing that lack thereof cannot justify bad conditions in places of imprisonment violating requirements of Article 3 of the Convention (*see, e.g.: Judgments by the ECHR in the following cases: Poltoratskiy v. Ukraine, no. 38812/97, 29 April 2003, para. 148; Iovchev v. Bulgaria no. 41211/98, 2 February 2006, para. 136, and Bazjaks v. Latvia, no. 71572/01, 19 October 2010, para. 111*).

Likewise, Section 10 of the Covenant establishes the duty of the State to ensure the minimum guarantees of protection of the human right even if the State undergoes economical difficulties (*see: Nowak M., pp. 250*).

Likewise, the Senate has recognized that lack of budgetary funds cannot serve as justification for non-observance of the fundamental rights established in Article 95 of the Satversme in respect to persons kept in places of temporary detention (*see: Judgment of 6 May 2010 by the Senate in the case No. SKA-160/2010, Para 19, and judgment of 9 June 2010 in the case No. SKA-126/2010, Para 14, www.at.gov.lv, consulted on 14 December 2010, and case materials, Vol. 1, pp. 181*).

One of the most important aims for adopting the Law on Keeping of Detained Persons was to ensure such living conditions for persons kept in places of temporary detention that would comply with the minimum standards of the human rights (*see: Annotation to the draft law "On Procedures for Keeping of Detained Persons"*). However, action of the Saeima when deciding on allocation of funding for improving living conditions at places of temporary detention in accordance with the stipulated requirements has not been appropriate. Even after extension of the period up to 31 December 2013, the planned schedule of allocation of funds has not been observed.

The fact that the funds have not been allocated pursuant to the planned schedule raise doubts to the Constitutional Court regarding the fact that even before the expiry of the term at the end of 2013 it would again be necessary to decide on extension of the term because places of temporary detention would not meet the stipulated requirements. The situation admitted by Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons exists for a long time already, and no considerable improvements have been executed until now. Moreover, based on the above mentioned norm, the present situation might be preserved for the three following years. Such action of the legislator obviously fails to comply with the Satversme.

**Consequently, the Constitutional Court recognizes that Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons fails to comply with Article 95 of the Satversme.**

**16.** Having established non-compliance of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons with at least one legal norm of a higher legal force,

it shall be regarded as unlawful. Consequently, there is no necessity to assess compliance thereof with Article 1 of the Satversme.

**17.** Pursuant to Article 32 (3) of the Constitutional Court Law, 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

**17.1.** In the present case, immediate recognition of the words and the number “by means of a wall, the height of which does not exceed 1.2 meters” of Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons as null and void is permitted because the above mentioned norm fails to establish any minimum standard for protection of the human rights. After the norm would become ineffective, Section 7 (5) Indent 1 of the Law on Keeping of Detained Persons will establish that cells shall be equipped “with toilet facilities connected with a water-main, the facilities being separated from the rest of the premise”.

The Constitutional Court also holds that the Saeima is committed to adopt a new wording of Section 7 (5) Indent 1 of the Law on Keeping of Detained persons. This norm should establish guarantees for protection of privacy of persons, them being fairly balanced with measures for prevention of threat to other persons and the society.

The term of implementation of the regulatory framework to be adopted, however, shall be established 1 January 2012, and at least the present level of protection of privacy of detained persons must be preserved until then.

**17.2.** When deciding on declaring of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons as null and void, the Constitutional Court shall take into account the fact that the condition of places of temporary detention is poor, and immediate recognition of the above mentioned norm as null and void could threaten effective work of law enforcement institutions, like, courts of general jurisdiction, prosecutors offices and the State Police. Namely, immediate recognition of Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons as null and void could cause a situation when the State lacks sufficient number of places of temporary

detention where persons could be held. Consequently, elimination of the above mentioned deficiencies needs time.

The Constitutional Court has reiterated that in cases when immediate cancelling of a contested norm is regarded as even greater infringement of the Satversme if compared to leaving the contested norm as valid, it is possible to establish a term for execution of the judgment (*see, e.g.: Judgment of 22 October 2002 by the Constitutional Court in the case No. 2002-04-03, Para 3 of the Concluding Part, Judgment of 21 October 2008 in the case No. 2008-02-01, Para 12, and Judgment of 9 March 2010 in the case No. 2009-69-03, Para 16*).

Exercising the rights granted by Section 32 (3) of the Constitutional Court Law, the Constitutional Court shall see to it that the situation, which might develop from the moment the impugned norms lose validity, to the moment while the Saeima passes new norms, violates neither the fundamental rights of the submitters of the claim, guaranteed by the Satversme, nor creates relevant harm to state or public interests (*see: Judgment of 16 December 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 25*).

On the one hand, issues of improvement of places of temporary detention have not been considered for several years and no necessary funding has been granted. Thus the rights of several tens of thousands of people have been infringed. On the other hand, the information furnished by the Ministry of Finance shows that execution of requirements established in Section 2 (2) and Section 7 (3) and (5) of the Law on Keeping of Detained Persons requires more than three million lats (*see: Case materials, Vol. 1, pp. 49*). Moreover, the amount of improvements to be made is considerable, and it requires elaboration of a respective action plan in accordance with the funding granted. Namely, elaboration of improvement projects of places of temporary detention, execution of procedures established in the Public Procurement Law and implementation of works demands considerable time.

Pursuant to the Satversme, this is the legislator that decides on issues concerning the State and social life, including issues on the State budget (*see: Judgment of 21 December 2009 by the Constitutional Court in the case No. 2009-43-01, Para 35.3*). The Constitutional Court is committed, as far as possible, to refrain from adopting any decisions that would be financially or organizationally difficult to fulfil.

Taking into account the above mentioned consideration, the Constitutional Court recognizes that Para 1 of Transitional Provisions of the Law on Keeping of Detained Persons shall become null and void as from 1 January 2012.

### **The Constitutional Court**

Based on Article 30 – 32 of the Constitutional Court Law,

**h o l d s :**

**1. The words of Section 7 (5) Indent 1 “by means of a wall, the height of which does not exceed 1.2 meters” of the Law “On Procedures for Keeping of Detained Persons” fail to comply with Article 95 of the Satversme of the Republic of Latvia.**

**2. Para 1 of Transitional Provisions of the Law “On Procedures for Keeping of Detained Persons” fail to comply with Article 95 of the Satversme of the Republic of Latvia and shall become null and void as from 1 January 2012.**

The Judgment is final and not subject to appeal.

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

Presiding Judge

G. Kūtris