



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

**Riga, 18 December 2009**

**in Case No. 2009-10-01**

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra,

having regard to the application of Pāvels Rožkovs

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

on 23 November 2009 in writing examined the case

**“On Compliance of the Second Part of Section 49 of the Sentence Execution Code of Latvia with Article 96 of the Satversme of the Republic of Latvia”.**

### **The Facts**

1. The Latvian Sentence Execution Code (hereinafter – the Code) with the title “Latvian SSR Corrective Labour Code” was adopted on 23 December 1970 and is effective since 1 April 1971. On 29 August 1991 the decision of the Supreme Council of the Latvian SSR “On Application of the Latvian SSR Legislative Acts” was adopted and came into force. This decision provided that the Latvian SSR Corrective Labour Code shall be regarded as the Latvian Corrective Labour Code until a new code is

elaborated. On 30 December 1994 the Law of 15 December 1994 “Amendments to the Latvian Corrective Labour Code” adopted on came into force. This Law provided for the present title of the Code.

Section 49 of the Code regulates, among the rest things, the right of convicted persons deprived of liberty to have correspondence. Initially Section 49 (2) provided for a prohibition for the convicted persons to have correspondence among them unless they are relatives. On 11 November 2004, the Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima) adopted the Law “Amendments to the Sentence Execution Code of Latvia”. According to this Law, Section 49 (2) (hereinafter – the Contested Norm) was provided in the following wording: “Correspondence between convicted persons in places of deprivation of liberty shall be prohibited, unless they are relatives or spouses.” After 11 November 2004, no amendments have been introduced to the Contested Norm.

**2. The Applicant** Pāvels Rožkovs (hereinafter – the Applicant) asks the Court to recognize the Contested Norm as non-compliant with Article 96 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant indicates that Article 96 of the Satversme and several international documents, including Article 8 the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provide for the right of convicted persons to communicate, and guarantee the right to inviolability of correspondence. However, Section 24.1 of 11 January 2006 Council of Europe Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (hereinafter – the European Prison Rules) provides that prisoners shall be allowed to communicate as often as possible by letters, telephone or other forms of communication with their families and other persons.

The Applicant holds that the Contested Norm is not appropriate for reaching the legitimate objective. The right of convicted persons to inviolability of correspondence is being restricted with a view to ensure order and security of the society and to prevent disorder and crimes in a place of deprivation of liberty. Reaching of the above

mentioned objective is ensured by Section 41 (7) of the Code that provides for examination of correspondence of prisoners by reading their letters. According to the Applicant, examination of correspondence is an appropriate measure for reaching the legitimate objective. Moreover, the Contested Norm is not proportional. The restrictions established regarding correspondence of prisoners should not exceed the necessary limits for reaching the legitimate objective.

Referring to the judgment in the case of the European Court of Human Rights (ECHR) *Frérot v. France* of 12 June 2007, the Applicant concludes that the prohibition of interpersonal correspondence of convicted persons does not comply with the right to private life and inviolability of correspondence enshrined in Article 96 of the Satversme.

When answering the questions set by the Constitutional Court, the Applicant also indicates that he wanted to communicate with their acquaintances from other places of deprivation of liberty. Such correspondence was necessary to maintain contacts acquired before custody. By means of letters, it is possible to provide moral support and help in dealing with different social life issues.

The Applicant has tried to send a letter to Iļģuciems Prison with a view to get acquainted with new people, however the letter was sent back to him with a reference to the Contested Norm. The Applicant holds that this is another person also held in a place of deprivation of liberty that is the best collocutor to discuss social life problems because both such persons enjoy similar conditions and they understand their problems very well. Moreover, such correspondence would permit the convicted person gaining new contacts and broaden the number of acquaintances to communicate with during custody. This would also provide a possibility to get acquainted with persons of opposite gender also held in places of deprivation of liberty. The Contested Norm particularly restricts the rights of such persons as the Applicant who has no relatives or acquaintances outside prison. The Contested Norm also denies the Applicant the possibility to form personal or even family-oriented relations.

The Applicant indicates that a prisoner held in a place of deprivation of liberty has a restricted circle of persons with whom he or she may communicate. It is possible

to have constant contact with cell-mates, whilst with other convicted persons from other cells – only once per seven days when in a sports-ground.

After having got acquainted with case materials, the Applicant indicates that he does not agree with the opinion of the Saeima provided in its reply, namely, that control of correspondence cannot be regarded as a sufficient measure to prevent threats to order and security of the society. The Applicant holds: if private correspondence of convicted persons is subject to control, then planning of new crimes is impossible.

**3.** The institution that adopted the Contested Norm – **the Saeima** – agrees with the opinion of the Applicant and holds that the Contested Norm does comply with Article 96 of the Satversme.

The Saeima indicates that the restriction included in the Contested Norm has a legitimate objective, namely, to protect constitutional values mentioned in Article 116 of the Satversme – security of the society and the rights of other persons. The Contested Norm does not restrict the possibility to plan and commit new criminal offences or breaches of the order of the place of deprivation of liberty because this prevents forming of any contacts for such purpose.

It is indicated in the reply that restriction of mutual contacts of prisoners is an element of re-socialization because this withholds a person willing to change for better from the negative impact of criminal environment. Moreover, the Contested Norm protects certain prisoners, who have witnessed against other prisoners, from psychological influence. Consequently, the Contested Norm is appropriate for reaching the legitimate objective.

The Saeima draws attention to the fact that in the judgment in the case *Frérot v. France*, as indicated by the Applicant, the prohibition of mutual correspondence of prisoners was not analysed on the merits; instead other issues related with factual restrictions of correspondence were analysed. Consequently, the circumstances of the above mentioned case are different from the ones in the case under review. Therefore it is not grounded to apply conclusions made in the above mentioned judgment to the Contested Norm.

The Saeima holds that control of mutual correspondence of prisoners, in the case if such correspondence were allowed, would require great resources. Moreover, it is not always possible to prevent, by means of control, such threats that are encoded in the text or hidden in seemingly polite letters. Consequently, monitoring of correspondence alone would not be efficient enough. The Saeima holds that no other more lenient means that would ensure reaching of the legitimate objective exist.

It is indicated in the reply that the Contested Norm provides for an exception to the prohibition. It allows correspondence between spouses and relatives also held in a place of deprivation of liberty. Consequently, the Contested Norm ensures proportionality and it complies with the principle of proportionality.

**4.** The summoned Person, **the Ministry of Justice** holds that the Contested Norm complies with Article 96 of the Satversme. The restriction included in the Contested Norm is socially necessary and proportional. Arguments provided by the Ministry of Justice supporting such opinion are similar to those of the Saeima.

Referring to the case-law of the ECHR, the Ministry of Justice holds that the duty of the State to help a person to maintain relations with relatives when in custody follows from the right to private and family life. The right of prisoners to communicate with other persons are restricted in accordance with the type of the place of deprivation of liberty. Section 24.2 of the European Prison Rules also provides for restrictions to communication of convicted persons insofar as they are necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime.

The Ministry of Justice holds that Article 96 of the Satversme and Article 8 of the Convention obligate the State to ensure prisoners with the possibility to preserve social relations that they had before custody, rather than to ensure mutual correspondence between prisoners.

The Ministry of Justice also indicates that the European Prison Rules provide for the following fundamental principle: custody should not contribute to losing contacts with outside world. Persons need contacting with outside world in order to eliminate the baleful influence of custody on a person. All other provisions – duties of

the administration of the place of deprivation of liberty and rights of prisoners – are regarded as concretization of the same fundamental principle and these cannot be examined separately from its objective, namely, to ensure contact with the outside world. The Contested Norm does not restrict contact of a convicted person with the outside world; moreover, it does not restrict his or her right to maintain contact with a spouse or relatives.

The Ministry of Justice draws attention of the Constitutional Court to the fact that the issue regarding prohibition of correspondence of prisoners was discussed on 17 June 2009 during the meeting of the working group of Criminal Punishment execution policy (*see: case materials, pp. 82 – 85*). When discussing this issue, the above mentioned group that was composed of experts in the field of criminal penalty execution and human right, concluded that the prohibition of mutual correspondence of prisoners is grounded.

5. The summoned person, **the Latvian Prison Administration** indicates that the aim of the norm is to prevent circulation of such information between prisoners that would threaten social order and security in the prison and outside it.

The Latvian Prison Administration agrees with the opinion of the Saeima that prisoners should be protected from negative influence of criminal environment for them to be able to effectively participate in the process of re-integration. The Contested Norm ensures the process of re-socialization because it permits correspondence with a spouse and relatives, and allows maintaining and preserving family-oriented relations.

When replying to the questions set by the Constitutional Court, the Latvian Prison Administration informs that 7137 prisoners were held in places of deprivation of liberty as on 17 August 2009: 1979 prisoners and 5158 convicts. Convicted persons held in the same place of deprivation of liberty but in different units and cells are not allowed to have written exchange of information between them based on security considerations. Convicted persons held in places of deprivation of liberty send and receive, in average, 1500 letters per day, however the amounts before holidays has increased twice.

Correspondence of convicted persons is controlled by an employee of the security department of the place of deprivation of liberty (censor) acting in accordance with an agreement or an official (an inspector who fulfils functions of a censor). The duty of such employee is to register addresses of letters sent, arrest prohibited items, control hidden writing, control slang and uncensored expressions, and report to the head of the place of deprivation of liberty on letters that would be useful for operative investigation. Likewise, the employee has the responsibility to control implementation of the prohibition established in the Contested Norm. Based on Section 49 (4) of the Code, the employee has the right to arrest letters addressed to or sent by convicted persons. The Latvian Prison Administration also indicates that 196 incoming and outgoing letters were arrested in 2008 and in the first half of 2009.

6. The summoned person, **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) holds that the Contested Norm does not comply with Article 96 of the Satversme.

The Ombudsman indicates that correspondence is a way of maintaining and preserving social relations, which is related with the right of a person to private life. The Contested Norm not only restricts the right of convicted persons to inviolability of correspondence but it could also infringe the right to private life. Namely, if two convicted persons want to get married or if they are expecting a common child, prohibition of mutual correspondence restricts the right of these persons to family life. Consequently, it is necessary to assess whether general prohibition on correspondence of convicted persons is justified.

The Ombudsman holds that the necessity to ensure the regime of the place of deprivation of liberty and the necessity to control correspondence of prisoners for the sake of security of the society might serve as the grounds for establishing the restriction established in the Contested Norm. However, the control and arrest of correspondence established in the Code is a sufficient measure for reaching the legitimate objective. By establishing several restrictions to the right of convicted persons to private life, the principle of proportionality is breached.

The Ombudsman emphasizes that the argument of the Saeima regarding non-proportional expenditure of great resources required by the control of correspondence of convicted persons is ungrounded. Non-observance of human rights cannot be justified by lack of resources; moreover, a place of deprivation of liberty has the duty to ensure control of the correspondence disregarding the amount of it and increasing workload. Likewise, the Ombudsman does not agree with the argument that the Contested Norm is a factor that facilitates re-socialization of convicted persons. Only the willingness of a person to return into the society and supervision of the State when implementing this intention serve as preconditions for effective re-socialization.

7. The summoned person, *Dr. iur.*, Associated Professor of the Latvian Police Academy **Vitolds Zahars** indicates that the restriction of the right to private life established in the Contested Norm is related to both, measures of social rehabilitation and re-socialization of a person and aspects of protection of social security and the rights of other persons. Re-socialization is a set of measures that helps convicted persons to break with criminal environment, get free from addictions, master new social skills and abilities, and thus form a positive contact with the society.

The Code provides for broad possibilities for the convicted persons to communicate with the outside world. For instance, convicted persons are allowed to communicate with relatives, an advocate, a sworn notary, and a person providing State guaranteed legal assistance. Likewise, convicted persons can attend public worships lead by the chaplain of the prison, send and receive letters and telegrams without any restriction to the amount thereof, to submit applications to State institutions, social organizations and officials, use personal TV and radio receiver. The aim of all these possibilities is to restore socially valuable contacts of a convicted person and offering of new social possibilities.

V. Zahars concludes that the Contested Norm complies with Article 96 of the Satversme because it is appropriate for reaching the legitimate objective, namely, to prevent planning and committing of new criminal offences by convicted persons by facilitating re-socialization and integration into the society of convicted persons after serving the sentence.

8. When preparing the case under review, the Constitutional Court requested, from Daugavgrīva Prison where the Applicant is held, information on the practice of application of the Contested Norm.

The administration of Daugavgrīva Prison informs that at present there are 1015 convicted persons serving their sentence in the Prison, whilst 248 persons are imprisoned. The amount of correspondence between convicted persons, imprisoned persons and private persons are 400 – 500 incoming and outgoing letters per day, whilst the amount increases threefold before and after holidays.

Based on Section 49 (4) of the Code, two letters have been arrested this year. Letters received by a convicted person by another convict who is not his or her spouse or relative are sent back to the sender with a reference that such kind of correspondence is forbidden.

#### **The Constitutional Court holds:**

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

The Constitutional Court has recognized that the right to private life guaranteed in Article 96 of the Satversme comprise the rights to form and maintain relations with family members and other human beings (*see: Judgment of 23 April 2009 by the Constitutional Court in the case No. 2008-42-01, Para 10*).

When analysing Article 96 of the Satversme, the Court has concluded that the duty of the State to help a prisoner maintain relations with relatives follows from the right to private life. Since the possibilities of a person, due to custody, to maintain contacts and relations with other persons are restricted and thus an imprisoned person may get alienated from his or her family members, the State should prevent these negative consequences of the place of imprisonment as much as possible. Moreover, not only the duty of the State to refrain from intervention into private life, but also the duty of the State to carry out necessary activities to secure these rights follows from

Article 96 of the Satversme (*see: Judgment of 7 October 2009 by the Constitutional Court in the case No. 2009-05-01, Para 9*).

**9.1.** The contents of Article 96 must be interpreted in conjunction with Article 89 which determines that “The State shall recognize and protect fundamental human rights in accordance with the Satversme, the laws and international agreements binding on Latvia.” When interpreting the Satversme and the international obligations of Latvia, it is necessary to find a solution that ensures harmonious interpretation of norms. Therefore, international law and practice may serve as an instrument to establish the scope of the rules and principles established in the Satversme (*see, e.g.: Judgment of 7 April 2009 by the Constitutional Court in the case no. 2008-35-01, Para 13*).

The right to inviolability of private life and correspondence is also established in Article 8 of the Convention. Section 17 (1) of the International Covenant on Civil and Political Rights provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

It has been recognized in law that the right to private life, the right to family life, the right to inviolability of home and the right to inviolability of correspondence cannot be precisely separated. These rights supplement each other and overlap (*see: Reid K. A Practitioner’s Guide to the European Convention on Human Rights, London: Sweet&Maxwell, 2008, p.481*). Therefore, the term “private life” often is used as a broader notion that includes family life, inviolability of home and correspondence (*see: Dijk P., Hoof G.J.H. Theory and Practice of the European Convention on Human Rights. Hague, London, Boston: Kluwer Law International, 1998, p.489*).

Therefore it can be concluded that the right to private life established in Article 96 of the Satversme also include such fundamental rights as inviolability of correspondence.

**10.** In order to assess compliance of the Contested Norm with Article 96 of the Satversme, first of all it is necessary to establish whether it restricts the rights of the Applicant established in Article 96 of the Satversme.

**10.1.** According to the Contested Norm, all other convicted persons who are not a spouse or relatives of a convicted person are excluded from the circle of private persons with whom he or she has the right to have correspondence. Thus it is possible to restrict the circle of persons with whom a convicted person has the right to have correspondence.

The ECHR has indicated that breach of “inviolability of correspondence” established in Article 8 of the Convention is restriction of freedom of correspondence. The ECHR has concluded that the prohibition established for a convicted person, namely, the prohibition to receive letters from any addressee shall be regarded as interference with his or her rights and breach of inviolability of correspondence (*see: Judgment of ECHR in the case Schönenberger and Durmaz v. Switzerland, judgment of 20 June 1988, application no. 11368/85*). Consequently, it is possible to conclude that if the circle of persons with whom a convicted person has the right to have correspondence is restricted, this restricts the right of a person to inviolability of correspondence.

**The Contested Norm restricts the fundamental right to inviolability of correspondence established in Article 96 of the Satversme.**

**11.** The primary objective of the fundamental rights to inviolability of private life established in Article 96 of the Satversme is to allow a person develop his or her individuality by preventing, as much as possible, any interference by the State or other persons. Namely, the right to private life include the right to establish and develop relationships with other human beings and the outside world, especially in the emotional field with a view to ensure personal development (*see: Judgment of the ECHR in the case Peck v. The United Kingdom, judgment of 28 January 2003, application no. 44647/98, para. 57*).

One of the basic needs of a person is the need for social relationships based on understanding and respect. Written correspondence is regarded as one of the ways of forming and maintaining social relationships (*see: Social Psychology, ed. by B. Giles Kent : Grange Books, 2005, pp.164 – 169*).

Consequently, correspondence is one of the possibilities to have private life. If convicted persons are prohibited to have correspondence, they are also denied the possibility to form and maintain social relations with other persons. The regulation included in the Contested Norm restricts the fundamental rights to inviolability of private life established in Article 96 of the Satversme.

**Consequently, the prohibition on mutual correspondence of convicted persons not only restricts the fundamental right to inviolability of correspondence established in Article 96 of the Satversme, but also the fundamental right of a person to inviolability of private life.**

12. According to Article 116 of the Satversme, certain restriction of the right to private life can be regarded as justified. Article 8 (2) of the Convention also provides that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security and public safety.

**Consequently, the fundamental rights established in Article 96 of the Satversme can be restricted if the restriction is established by a law adopted according to proper procedure, it has a legitimate objective and it is proportional.**

13. In the case under review, there is no dispute that the Contested Norm is established by a law adopted according to proper proceedings.

14. It is indicated in the reply of the Saeima that the legitimate objective of the Contested Norm is to protect the constitutional values mentioned in Article 116 of the Satversme – security of the society and the rights of other persons.

The Constitutional Court agrees that the aim of the Contested Norm is to protect the rights of other persons and security of the society. Namely, the restriction to private life of the Applicant has been restricted to ensure security of the society.

**Consequently, the Contested Norm has a legitimate objective.**

**15.** The Constitutional Court has concluded that the principle of proportionality establishes in general that there should be reasonable relations between the activities of state authorities restricting rights and legal interests of a person and the objective that the authority tries to reach by means of such activities (*see: Judgment on termination of proceedings of 27 February 2007 by the Constitutional Court in the case No. 2006-41-01, Para 11*).

In order to establish whether the principle of proportionality has been observed, it is necessary to investigate whether the measures selected by the legislator are appropriate for reaching the legitimate objective, whether there exist any other more lenient measures for reaching the legitimate objective and whether the activities of the legislator are appropriate. If the Court establishes that the Contested Norm does not comply with any of these criteria, the Norm would not comply with the principle of proportionality and would be unlawful.

**15.1.** It was indicated in the reply of the Saeima that the Contested Norm is adopted with a view to reach the legitimate objective, because the prohibition for convicted persons to have mutual correspondence included therein is an element of re-socialization.

The Constitutional Court agrees with the opinion of the Ombudsman that prohibition of mutual correspondence of convicted persons cannot be regarded as an element of re-socialization. This is also proved by a policy planning document in the field of penalty execution of 9 January 2009 “Re-Socialization Conception for Persons Convicted to Deprivation of Liberty” (hereinafter – the Conception). It has been established in the Conception that re-socialization is a set of measures for correcting social behaviour and ensuring social rehabilitation, the aim of which is facilitation of lawful behaviour model, formation of positive understanding of social values for a convicted persons and reaching of the aim of punishment – deprivation of liberty (*See: case materials, pp. 101*).

The Constitutional Court has concluded that the aim of the Latvian penalty execution law is to ensure re-socialization of a convicted person. The legislator is granted with a broad freedom of action for formation and improvement of an efficient re-socialization system; however freedom of action can be used only insofar as to

ensure an efficient system of service of sentence and re-socialization, namely, the legislator is not allowed to create preconditions for ungrounded violation of the basic rights of imprisoned persons (*see: Judgment of 14 June 2007 by the Constitutional Court in the case No. 2006-31-01, Para 18.1*).

The Constitutional Court has recognized in its case-law that the European Prison Rules is an authoritative source for establishing the minimum amount and content of the rights of convicted persons (*see, e.g.: Judgment of 2 December 2009 by the Constitutional Court in the case No. 2009-37-0103, Para 14 of the concluding part*). The above mentioned Rules provide that any kind of custody should be organized in such a way to help persons deprived of liberty to reintegrate into the society outside the place of custody. It is also indicated in the commentaries to the European Prison Rules that the aim of punishment policy is not only supervise behaviour of convicted persons but also to provide the support necessary for ensuring their lawful behaviour in the society after the release (*see: Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, para. 24*).

It was concluded in the conception that traditionally when executing the penalty of deprivation of liberty, isolation and severity of the regime is mainly accentuated in Latvia (*see: case materials, pp. 102*). However, having spent long time in custody, a person loses skills necessary for independent life; therefore any communication of convicted persons, even the one between the convicts is welcomed. Mutual correspondence of convicted persons during the period of custody could indeed serve as an element of re-socialization especially in cases if a convicted person does not have other persons in liberty whom to have correspondence with. Consequently, it is possible to conclude that the aim of re-socialization is not restriction of mutual contacts of convicted persons provided that these contacts do not threaten the aims of penalty execution.

Consequently, the prohibition of mutual correspondence of convicted persons shall not be regarded as an element of re-socialization.

**15.2.** Section 49 (4) of the Code enumerates cases when the correspondence can be restricted. According to section 49 (4) of the Code, “Letters and telegrams addressed to the convicted persons or to be sent to addresses shall be arrested if:

1) their content infringes aims of penalty execution, security and order of the place of deprivation of liberty;

2) transfer of the content of them would facilitate commitment of any criminal or administrative offence;

3) they could infringe legal rights and interests of other persons.”

This enumeration also applies to persons mentioned in the Contested Norm. Namely, a letter of a convicted person that is addressed to a spouse or a relative who is also held in a place of deprivation of liberty, and the content of which could infringe legal rights and interests of other persons, or security and order of the place of deprivation of liberty shall be arrested.

The Constitutional Court holds that control of correspondence of convicted persons is justified by consideration of order and security that should be taken into account in places of deprivation of liberty; moreover, by means of this control, it is also possible to ensure security of the society. The ECHR has also recognized that private correspondence of convicted persons in certain cases might be censored, for instance, if it is related with other convicted persons or unlawful activities taking place in the prison (*see: Judgment of the ECHR in the case Silver et al. v. The United Kingdom, judgement of 25 March 1983, application no. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75*).

Control of correspondence shall be regarded as a sufficiently effective measure to protect the society from crime provided that a reasonable balance between security of the society and the necessity to re-integrate convicted persons into the society is observed (*see: Coyle A. A Human Rights Approach to Prison Management. Handbook for prison staff. London: International Centre for Prison Studies, 2002, pp. 59 – 73*). Section 24.2 of the European Prison Rules provides among the rest things that communication with family members and other person may be subject to restrictions and monitoring necessary for maintenance of good order and security.

The aim of the prohibition of correspondence between convicted persons is to guarantee good order and security in places of deprivation of liberty and thus protect security of the society. The Constitutional Court recognized that in certain cases it is necessary to restrict mutual correspondence of convicted persons to guarantee security of the society. Namely, in democratic states the contents of the concept “public safety” is oriented to the protection of public interests (*see: Judgment of 26 January 2005 by the Constitutional Court in the case No. 2004–17–01, Para 13*). Consequently, the content of correspondence which is a part of private life of a person who has committed a criminal offence pertains to the field of protection of lawful interests of the society.

It is possible to restrict private life of convicted persons and such aspects of it as correspondence can be restricted in case if it is suspected that by means of correspondence new criminal offences are being planned. Mutual correspondence of convicted persons can also be restricted in case if the convicted persons who are willing to have mutual correspondence have committed a common criminal offence.

The Contested Norm is appropriate for reaching the legitimate objective.

**15.3.** According to the Applicant, the legitimate objective can be reached by other means that would restrict the rights of a person at a lesser extent, namely, by assessing each situation individually because there is no reason to suggest that mutual correspondence always threatens security of the society.

It is necessary to agree with the opinion of the Saeima that in the judgment of the ECHR in the case *Frérot v. France*, as indicated by the Applicant, the prohibition of mutual correspondence of prisoners was not analysed on the merits because the right of convicted persons to be in correspondence are already established in the Criminal Procedure Code of France. In the same judgment, the ECHR indicated that the State, acting in the framework of freedom of action granted to it, has the duty to provide for certain criteria, based on which it would be possible to restrict the right to inviolability of correspondence because in the case if in the result of interpretation of the term “correspondence” any subject is excluded form the circle of persons of private correspondence, Article 8 of the Convention is breached (*see: Judgment of the*

*ECHR in the case Frérot v. France, judgment of January 2007, application no. 70204/01, para. 59 – 61).*

The Constitutional Court indicates that the rights of a person would be restricted at a lesser extent if the regulation would permit determining the impact of the correspondence of a convicted person on the security of the society, as well as security and order of the place of deprivation of liberty, whether the particular correspondence infringes the aims of penalty execution, and if each particular situation and circumstances were examined individually.

The prohibition of mutual correspondence of convicted persons included in the Contested Norm is not socially indispensable insofar as it is individually grounded by means of criteria established by law, and it is possible to provide more lenient measures to protect the right of a person to private life at a lesser extent and to guarantee security of the society.

Taking into account the fact that the fundamental rights established in Article 96 of the Satversme are being restricted by monitoring the content of correspondence of convicted person, which ensures reaching of the legitimate objective, establishment of additional restrictions insofar as they are not individually grounded based on criteria established by law is non-proportional.

Consequently, the Contested Norm restricts the rights established in Article 96 of the Satversme in a non-proportional manner.

### **The Constitutional Court**

Based on Articles 30 – 32 of the Constitutional Court Law

#### **h o l d s :**

The Second Part of Section 49 of the Latvian Sentence Execution Code does not comply with Article 96 of the Satversme.

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